Progress Energy

February 2, 2009

VIA HAND DELIVERY

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: *Petition for waiver of Rule 25-17.250(1) and (2)(a), F.A.C., which requires Progress Energy Florida to have a standard offer contract open until a request for proposal is issued for same avoided unit in standard offer contract, and for approval of standard offer contract*; Docket No. 080501-EQ

Dear Ms. Cole:

Please find enclosed for filing on behalf of Progress Energy Florida, Inc. ("PEF") the original and seven (7) copies of the direct testimony of David W. Gammon in the above referenced docket.

Thank you for your assistance in this matter. Should you have any questions, please feel free to call me at (727) 820-5184.

Sincerely,

John T. Burnett lms

John T. Burnett

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ECR ____
GCL ____
OPC ____
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SSC ____
SGA ____
ADM ____
CLK ____

JTB/lms

cc: James Brew, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for waiver of Rule 25-17.250(1) and (2)(a), F.A.C., which requires Progress Energy Florida to have a Standard Offer Contract open until a request for proposal is issued for same avoided unit in standard offer contract, and for approval of standard offer contract.	)	**DOCKET NO. 080501-EQ**
		FILED: February 2, 2009

DIRECT TESTIMONY OF DAVID W. GAMMON

ON BEHALF OF PROGRESS ENERGY FLORIDA, INC.

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I. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

A. My name is David W. Gammon. My business address is P.O. Box 14042, St. Petersburg, Florida 33733.

Q. By whom are you employed and in what capacity?

A. I am employed by Progress Energy Florida, Inc. ("PEF" or "the Company") as a Senior Power Delivery Specialist.

Q. What are your job responsibilities?

A. I am currently employed as a Senior Power Delivery Specialist for PEF. This position has responsibility for cogeneration contracts and renewable energy contracts. In this position, I have responsibility for PEF's Qualifying Facility ("QF") power purchases, including the development of Standard Offer Contracts. My responsibilities further include administering long-term QF contracts, negotiating extensions, resolving disputes, and administering payments to cogeneration and renewable suppliers.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science in Engineering degree from the University of Central Florida in 1980 and a Master of Business Administration from the University of South Florida in 2001. I am a registered Professional Engineer in the State of Florida.

My employment with Progress Energy Florida/Florida Power Corporation has been related to QF purchases since 1991. Prior to this position, I have had other positions at Florida Power Corporation including Project Engineer in Energy Management Resources and Project Engineer in Relay Design. My employment with Florida Power Corporation began in 1977.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the structure and history of PEF's Standard Offer Contracts for QF and Renewable Energy Producers ("Renewables"). I also explain why certain terms and conditions are included in PEF's current Standard Offer Contract.

Q. Please summarize your testimony.

A. PEF is required by law to have a Standard Offer Contract available for QFs and Renewables. A QF or a Renewable can accept PEF's Standard Offer Contract without any negotiation, and PEF is compelled to abide by the terms and conditions of that contract for any and all counterparties who wish to agree to sell power under it. While almost all QFs and Renewables elect to enter into a negotiated power purchase contract with PEF instead of utilizing PEF's Standard Offer Contract, the Standard Offer Contract provides a comprehensive baseline of acceptable terms and conditions for energy providers to use in their negotiations with PEF, and PEF has had excellent success in obtaining power purchase agreements with QFs and

Renewables by using its Standard Offer Contract as a "first draft" against which negotiated contracts are developed.

PEF has made a number of changes to its Standard Offer Contract in order to comply with rule changes and to incorporate feedback that PEF has received from QFs and Renewables including PCS Phosphate. By making these changes, PEF has developed a Standard Offer Contract that both promotes Renewables to engage into negotiations with PEF and that strikes a balance between the interests of PEF and its customers and such energy producers.

Q. Are you sponsoring your testimony with any exhibits?

A. Yes, I am sponsoring the following exhibits:

- Exhibit No. ___ (DWG-1) – Protest of PCS Phosphate–White Springs (Dkt# 070235)
- Exhibit No. ___ (DWG-2) – Direct testimony of David Gammon (Dkt# 070235)
- Exhibit No. ___ (DWG-3) – Direct testimony of Martin J. Marz on behalf of PCS Phosphate – White Springs (Dkt# 070235)
- Exhibit No. ___ (DWG-4) – Rebuttal testimony of David Gammon (Dkt# 070235)

II. OVERVIEW

Q. Please provide an overview of what actions were taken prior to, and including, Docket No. 080501-EQ.

A. Pursuant to Rule 25-17. 250(1) and (2)(a), F.A.C., PEF filed its standard offer contract for approval by the Commission on April 2, 2007 which established Docket

No. 070235-EQ. The Commission approved PEF's standard offer contract at the May 22, 2007 Agenda Conference. Order No. PSC-07-0493-TRF-EQ was issued on June 11, 2007 approving PEF's standard offer contract and associated tariffs. On July 2, 2007, White Springs Agricultural Chemicals, Inc. ("PCS Phosphate – White Springs"), a customer located in PEF's service territory, protested Order No. PSC-07-0493-TRF-EQ stating PEF's standard offer contract was understated, unnecessarily complicated and contains unnecessary and burdensome requirements (*See Exhibit No. ___ (DWG-1), Pages 4-16*). A hearing was scheduled for April 10, 2008. PEF filed its direct testimony of David Gammon on January 14, 2008 (*See Exhibit No. ___ (DWG-2)*). PCS Phosphate – White Springs filed their testimony of Martin J. Marz on February 18, 2008 recommending changes to PEF's Standard Offer Contract (*See Exhibit No. ___ (DWG-3)*). On March 10, 2008, PEF filed its rebuttal testimony (*See Exhibit No. ___ (DWG-4)*). Since a new standard offer contract was being filed on April 1, 2008, PCS Phosphate – White Springs filed a Motion for Continuance on March 21, 2008 until new standard offer was filed. As a result, the April 10, 2008 hearing was canceled.

On April 1, 2008, PEF filed its standard offer contract creating Docket No. 080187-EQ. The Commission was scheduled to vote on PEF's SOC at the July 29, 2008 Agenda Conference. PEF diligently worked to create a standard offer contract that incorporated some of PCS Phosphate concerns addressed in their original protest (*See Exhibit No. ___ (DWG-1)*) and on July 15, 2008 PEF filed a revised standard offer contract creating Docket No. 080501-EQ. PEF requested that no action be taken on Docket No. 080187-EQ, but instead asked the Commission to take action on

Docket No. 080501-EQ. On July 23, 2008 PEF filed a Notice of Withdrawal of its standard offer contract filed in Docket No. 080187-EQ. Order No. PSC-08-0695-FOF-EQ was issued on October 20, 2008 acknowledging PEF's Notice of Withdrawal and closing Docket No. 080187-EQ.

The standard offer contract filed in Docket No. 080501-EQ was approved by the Commission at the September 29, 2008 Agenda. PCS Phosphate – White Springs filed a protest on November 13, 2008 seeking a final resolution concerning, in their view, unreasonable non-price terms and conditions that continue to be reflected in PEF's standard offer contract.

III. STANDARD OFFER CONTRACTS, RULES AND TARIFFS

Q. Please briefly give an explanation of what a Standard Offer Contract is and the history of the development of Standard Offer Contracts.

A. Standard Offer Contracts were developed pursuant to the Public Utility Regulatory Policy Act ("PURPA"), which was passed by Congress in 1978. Utilities in Florida have had Standard Offer Contracts approved by the Florida Public Service Commission ("FPSC" or "Commission") in effect since 1984, offering the same contract terms to any and all suppliers, although different terms can be developed through negotiation.

Because the Standard Offer Contract is offered to all renewable suppliers, its terms must be broad enough to cover all possible circumstances. The particular contractual needs of a specific type of supplier, such as a solar supplier, may be

different than the contractual needs of another supplier, such as a biomass facility, but the Standard Offer Contract must be available to all suppliers regardless of the resource used. The fact that different types of suppliers may benefit from different terms is the reason that the terms and conditions in a Standard Offer Contract have to be broad-based and comprehensive.

Q. Can you also provide a brief history of the development of the rules governing Standard Offer Contracts for Renewable Generation?

A. The rules regarding Standard Offer Contracts have been in place since 1984. As the rules have evolved and changed over time, the Commission has given careful consideration to the development of contractual terms to balance the needs of suppliers and utility customers. Accordingly, the rules have been amended several times. Most recently, the Standard Offer Contract rules were amended in 2006 to specifically address renewable energy generation. All of the rule changes were made according to the rulemaking procedures in place at the time, and comments from all interested parties were solicited, heard and thoughtfully evaluated by the Commission.

Q. You mentioned a rule change in 2006 regarding renewable energy. What particular aspects of the Commission's rules promote renewable generation?

A. There are numerous provisions of the Commission's rules that promote renewable generation. They include:

- Removing the previous cap limiting Renewables to 80 MW or less.

- Requiring updated Standard Offer Contracts be filed by each utility each year by April 1.
- Requiring a separate Standard Offer Contract for each technology type identified in the utility's Ten Year Site Plan ("TYSP").
- Requiring that a Standard Offer Contract be continuously available to Renewables.
- Providing the Renewable the option to choose the term of the Standard Offer Contract between ten years and the economic life of the avoided unit.
- Allowing a portion of the energy payment under a Standard Offer Contract to be fixed.
- Removing subscription limits in the Standard Offer Contract.
- Requiring a provision in the Standard Offer Contract to reopen the contract in the event of changes in environmental and governmental regulations.
- Requiring that Renewable Energy Credits ("RECs") remain the exclusive property of the Renewable.
- Requiring prior approval by the Commission before equity adjustments for imputed debt can be made to a utility's avoided cost.
- Providing for dispute resolution between a Renewable and a utility.

Q. What changes did PEF make in its tariff to comply with the FPSC's 2006 rule revisions?

A. In order to comply with the rule changes and in response to comments received during recent contract negotiations with Renewables, numerous changes were made

to PEF's Standard Offer Contract. PEF's Standard Offer Contract now includes the following:

- The Standard Offer Contract is based on the next avoidable fossil fueled generating unit identified in PEF's TYSP, as required by Rule 25-17.250(1), F.A.C., which is currently a combined cycle unit.

- The Standard Offer Contract is available to both Renewables and QFs less than 100 kW, as provided by Rule 25-17.250(1), F.A.C.

- The Standard Offer Contract is offered on a continuous basis, as required by Section 366.91, F.S., and Rule 25-17.250(2), F.A.C.

- The Standard Offer Contract allows a Renewable or QF to choose any contract term from 10 years up to 25 years, which is the projected life of the avoided unit, as required by Section 366.91, F.S., and Rule 25-17.250(3), F.A.C.

- The Standard Offer Contract includes normal payments, early payments, levelized payments, and early levelized payments, as required by Rule 25-17.250(4) and (6), F.A.C.

- The Standard Offer Contract contains no preset subscription limits for the purchase of capacity and energy from Renewables, as required by Rule 25-17.260, F.A.C.

- The Standard Offer Contract contains a provision to reopen the contract based on changes resulting from new environmental or regulatory requirements that affect the utility's full avoided costs of the unit on which the contract is based, as required by Rule 25-17.270, F.A.C.

- The maximum number of capacity tests specified in the Standard Offer Contract is reduced from six times per year to two times per year.

Q. Other than the changes listed above, is the Standard Offer Contract substantially the same as previously-approved versions?

A. Yes. Although there were other changes made to PEF's 2007 Standard Offer Contract, in addition to those described above, including grammatical changes, capitalization of defined terms, renumbering of sections, and the like, the bulk of the Standard Offer Contract has remained unchanged since it was last reviewed and approved by the Commission in 2003.

In 2008, additional changes were made to the Standard Offer Contract based upon suggestions from PCS Phosphate. These changes are:

- Specifying a minimum of 10 days notice before a Committed Capacity Test is required.
- Specifying a minimum of 7 business days notice before an examination of the books and records of the counterparty. Such inspections also must be performed on a normal business day. The right of inspection of books and records has been changed to apply to both parties.
- The Force Majeure definition has been changed to exclude PEF's loss of markets, PEF's inability to use or resell the capacity and energy, or the renewable's inability to sell the capacity and energy at a greater price. The need to "conclusively" demonstrate that the event was not foreseeable has been changed to "reasonably" demonstrate.

- Allow the renewable supplier's discretion as to the form and substance of documentation for some of the Conditions Precedent.
- Changed the requirement for planned outage notices from a detailed plan to a good faith estimate.
- Changed the assignment language from "PEF's sole discretion" to "may not be unreasonably withheld".

Q. One of the requirements of Rule 25-17.250, F.A.C., is that the utility make separate Standard Offer Contracts available for each type fossil-fueled generating unit in that utility's TYSP. Has PEF done that?

A. Yes. PEF's 2008 TYSP contained four proposed generating units. Of those four units, the Bartow Repowering was already under construction, making it ineligible for a Standard Offer Contract. Two other proposed generating units are nuclear facilities, and they are also ineligible for a Standard Offer Contract. The remaining eligible generating unit is a combined cycle unit. In compliance with Commission rule, PEF's filed a Standard Offer Contract is based on that unit. Subsequent to the that filing, PEF issued a RPF for its combined cycle unit and PEF asked for a rule waiver to retain that combined cycle unit as the avoided unit until another qualifying unit appears in PEF's TYSP.

Q. Has the FPSC approved PEF's TYSP on which the Standard Offer Contracts in this case are based?

A. Yes. PEF's TYSP was approved by the Commission on December 1, 2008.

IV. SPECIFIC PROVISIONS OF THE STANDARD OFFER CONTRACT

Payments

Q. How are "avoided costs" derived for both energy and capacity payments in PEF's Standard Offer Contract?

A. The "avoided costs" for capacity are calculated using the data from the TYSP and in accordance with the formula in Rule 25-17.0832(6), F.A.C. The formula in Rule 25-17.0832(6), F.A.C., utilizes the value of deferral method to determine the capacity cost. Simply stated, the value of deferral method determines the savings produced by deferring the construction of generation.

The avoided energy cost is determined in accordance with Rule 25-17.0832(5), F.A.C., which states that the avoided energy cost is determined using the heat rate of the avoided unit when the avoided unit would have operated; and, when the avoided unit would not have operated, the avoided energy cost is equal to the as-available rate. For purposes of the Standard Offer Contract, it is assumed that the avoided unit would operate in any hour when the as-available rate is greater than the energy cost calculated using the heat rate of the avoided unit. Therefore, the energy payment rate is determined hourly by comparing the as-available rate to the energy cost using the avoided unit heat rate and then using the lower of those two values. This methodology to determine the hourly rate has been used in Standard Offer Contracts for a number of years.

The as-available energy cost is PEF's marginal cost of energy before the sale of interchange energy and is calculated in accordance with Rule 25-17.0825, F.A.C., and PEF's Rate Schedule COG-1.

Q. Does PEF's Standard Offer Contract include a provision requiring a renewable energy generator to maintain a 69% or greater capacity factor in order to qualify for a capacity payment and a 89% capacity factor or greater in order to qualify for the full capacity payment?

A. Yes.

Q. Why is it appropriate to require a renewable generator to maintain a 89% or greater capacity factor to qualify for the full capacity payment?

A. It is appropriate to require a Renewable to maintain a 89% capacity factor to qualify for the full capacity payment because 89% is the projected availability of the avoided unit. Under the Standard Offer Contract, the supplier has the right to deliver to PEF whenever it chooses. To ensure that PEF's customers receive the capacity that they are paying for and have contracted to receive, the Standard Offer Contract must require the supplier to deliver to PEF at the same capacity factor during the on-peak hours (89%) that the avoided unit would deliver. Said another way, the Standard Offer Contract requires the supplier to be available 89% of the on-peak hours.

Q. Why is the specified capacity factor included in PEF's Standard Offer Contract?

A. The specified capacity factor ensures that PEF's customers are receiving equivalent capacity compared to the avoided unit and are therefore receiving what they are paying for. In addition, the specified capacity factor ensures that PEF can count on the Standard Offer Contract to meet its capacity and reserve margin requirements.

Right of Inspection

Q. PEF's Standard Offer Contract includes a provision granting PEF a right to inspect a renewable generator's facility and books. Why is this provision included?

A. A right to inspection provision is included because it assures PEF has the ability to inspect a facility and/or its books to determine a supplier's compliance with the terms of the Standard Offer Contract, if PEF has reason to believe that the supplier may not be complying with the contract. For instance, if a renewable supplier has contracted to use biomass as its fuel to qualify as a renewable generator, but PEF has reason to believe that it may be using only natural gas, then an inspection and/or review of the facility and its books would verify the type of fuel that was being consumed. The intention of this provision is not for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, but for PEF to have the ability to inspect when necessary. This has been a requirement in previous versions of PEF's approved Standard Offer Contract.

Conditions Precedent

Q. Does PEF's Standard Offer Contract include a provision outlining conditions precedent for a renewable energy generator to meet?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. A provision regarding conditions precedent is included in the Standard Offer Contract to provide protection to PEF's customers. Most facilities that enter into a QF or renewable contract with PEF are new facilities. The conditions precedent section provides milestones that the supplier must meet to ensure that the project continues to move forward and that the facility will be on-line when expected. In other words, the conditions precedent section gives PEF assurances that a project will stay on course for successful completion, and it gives PEF advance notice that it may need to make other plans to secure replacement capacity to meet customer demand if a counterparty cannot comply with those conditions.

Renewable Energy Credits

Q. Does PEF's Standard Offer Contract include a provision specifying that PEF has the right of first refusal to purchase any RECs?

A. Yes, as have previous versions of PEF's approved Standard Offer Contract.

Q. Could a renewable generator negotiate a different arrangement regarding RECs?

A. Yes. As with most provisions of the Standard Offer Contract, the supplier has the right to negotiate different terms than those contained in the Standard Offer Contract. PEF has done so a number of times, most recently in its contracts with the Florida Biomass Group, Biomass Gas and Electric and Horizon Energy.

Use of Interruptible Standby Service for Start-up

Q. PEF's Standard Offer Contract includes a provision restricting the use of a renewable energy generator's ability to use interruptible stand-by service tariffs. Why is this provision included?

A. This provision is part of PEF's Standard Offer Contract to ensure that the supplier's generation is available when it is needed most. If the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. The standby service purchased must be firm stand-by service to assure there is power available to start the unit. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

Committed Capacity Test Results

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy generator demonstrate that it can deliver at least 100% of Committed Capacity?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. This provision is included simply to ensure that PEF's customers receive the capacity that they have contracted to purchase. If a contract is for 100 MW, but the facility can only reliably deliver 90 MW, then PEF's customers are being short-changed. This provision has been included in previously-approved versions of PEF's Standard Offer Contract.

Test Period

Q. Does PEF's Standard Offer Contract include a provision setting the test period to establish a facility's capacity?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included to ensure that PEF's customers receive all the capacity that they have contracted to purchase. Under the provisions of the Standard Offer Contract, the supplier selects a time when it will perform a Committed Capacity Test. During that period, the supplier is to run the facility consistent with industry standards without exceeding its design parameters, and supplying the normal station service load. The capacity of the facility is the minimum hourly net output of the facility. Although this has been a requirement in previously-approved versions of PEF's Standard Offer Contract, as I have previously explained, PEF has lowered the number of tests PEF can request in a year from six to two, in response to suggestions from Renewables.

Detailed Annual Plan

Q. PEF's Standard Offer Contract includes a provision requiring that a renewable energy facility prepare a detailed plan of the electricity to be generated and delivered to PEF. Why is this provision included?

A. The Standard Offer Contract requires the supplier to provide an estimate of its deliveries to PEF. These estimates are required so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

Total Electrical Output

Q. PEF's Standard Offer Contract includes a provision requiring a renewable energy facility to provide its "total electrical output" to PEF. Why is this provision included?

A. In the event the supplier is selling its output to PEF and another party, contract provisions to accommodate partial deliveries to both parties would need to be negotiated. These types of negotiations are unique to each facility, exist with multiple purchasers, and are outside of the scope of the Standard Offer Contract. Such provisions would be handled through a negotiated contract. This provision requiring "total electric output" has been included in previously-approved versions of PEF's Standard Offer Contract.

Operating Personnel

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy facility have operating personnel on duty 24 hours a day, seven days a week?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. The Standard Offer Contract is a firm contract, so the facility needs to have operating personnel on duty 24 hours a day, seven days a week to comply with the requests of PEF's generation dispatcher. Personnel must be available to respond to requests to reduce output or alter the power factor to maintain system reliability. In rare cases, the unit may need to be taken off-line to prevent overloads to the transmission system, or be brought on-line, if possible, to address local or system-wide reliability issues. A similar requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

Three Day Fuel Supply

Q. Does PEF's Standard Offer Contract include a provision requiring a three day supply of fuel?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included because it helps to ensure that during an extreme operating event, such as a cold snap or after a natural disaster such as a hurricane, the supplier will be able to continue operating for 72 hours. Just as with other generating plants, Renewables should be required to maintain a fuel inventory to assure availability of the unit if for some reason the fuel supply is interrupted. Accordingly, this requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

Q. What if a facility does not store its fuel on site, such as wind or solar power?

A. If a facility uses a fuel that cannot be stored, such as wind, then this provision obviously would not apply. If such a facility wished to utilize PEF's Standard Offer Contract with the exception of this provision, the simple solution would be to simply delete this section and enter into an otherwise identical negotiated contract with PEF.

Performance Security

Q. PEF's Standard Offer Contract includes a provision setting performance security. Why is this provision included?

A. Performance securities are typically found in all firm energy and capacity contracts and have been included in approved Standard Offer Contracts for many years. They are used to help ensure that if a supplier can no longer meet its obligations under the contract, then the purchaser has funds available to cover a portion of the replacement cost of energy. The performance security typically does not cover all the costs of the replacement energy, but it does offset some of the costs that are otherwise borne by

PEF's customers. These provisions are important to appropriately shift some of the risk of default away from PEF's customers and to the party that is not meeting its obligations under a purchase power contract.

Termination Fee and Insurance

Q. Does PEF's Standard Offer Contract include provisions setting a termination fee and requiring insurance?

A. Yes.

Q. Why are these provisions included in PEF's Standard Offer Contract?

A. Both of these provisions are required by Commission rule. The termination fee is required by Rule 25-17.0832(4)(e)10, F.A.C. The termination fee is designed to ensure the repayment of capacity payments to the extent that the capacity payments made to the supplier exceed the capacity that has been delivered. For example, early capacity payments, as defined in applicable rules, are capacity payments made before the in-service date of the avoided unit. In this example, those payments made before the avoided unit's in-service date must be secured to ensure that if the supplier does not operate for the term of the contract, PEF's customers are refunded the payments for the capacity that they did not receive. A termination fee has always been a part of the Standard Offer Contract. The insurance provision is required by Rule 25-17.087(5)(c), F.A.C., and helps to protect the utility and its customers from liability claims resulting from the operations of the supplier.

Default

Q. PEF's Standard Offer Contract includes a provision listing events of default. Can you explain the purpose of this provision?

A. Like all contracts for capacity and energy, the Standard Offer Contract contains a listing of events of default so that the parties know the circumstances under which the contract can be terminated for non-performance. These provisions are basic to any purchase power contract that I have ever seen and have been a requirement in previously-approved versions of PEF's Standard Offer Contract.

Force Majeure

Q. Does PEF's Standard Offer Contract include a provision setting forth *force majeure* terms?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. *Force Majeure* sections have always been included in PEF's Standard Offer Contracts and every other power purchase agreement that I have seen. These provisions define the responsibilities of the parties in the event that something outside the control of the parties makes one party unable to perform its obligations under the contract. The *force majeure* language is designed to limit damages for such an event outside the control of the parties but also to limit the financial exposure of PEF's customers.

Representations and Warranties

Q. Does PEF's Standard Offer Contract include a provision requiring the renewable energy generator make representations, warranties or covenants?

A. Yes.

Q. Why is this provision a part of PEF's Standard Offer Contract?

A. This provision is a standard contract term that helps ensure that the supplier entering into the Standard Offer Contract can do so legally, is responsible for its compliance with environmental laws, has any governmental approvals required, and so forth. These kinds of provisions have been contained in previously-approved versions of PEF's Standard Offer Contract.

Assignment

Q. PEF's Standard Offer Contract includes a provision prohibiting assignment without approval from PEF. Why is this provision included?

A. A provision prohibiting assignment without approval is included because it is not uncommon for a contract to be sold and assigned, possibly numerous times. The requirement for PEF's approval of any such assignments ensures that PEF can assess the purchasing party's ability to perform under the contract. This, of course, allows PEF to mitigate some degree of risk that would otherwise be borne by its customers. This provision has been a part of previously-approved versions of PEF's Standard Offer Contract.

Record Retention

Q. Does PEF's Standard Offer Contract include a provision specifying that the renewable energy facility must retain its performance records for five years?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included so that in the event that a dispute arises regarding the operation of the supplier, the supplier's records will be available for five years. PEF retains these records for a minimum of five years as well. Record retention has been a requirement in previously-approved versions of PEF's Standard Offer Contract and has allowed PEF to successfully resolve would-be disputes with counterparties in the past.

V. FINANCING

Q. Does PEF's Standard Offer Contract permit the financing of renewable energy projects?

A. Yes. Most renewable energy projects require financing, and PEF's current Standard Offer Contract does more than ever to help projects obtain financing. Typically, the issue with financing is the certainty of the payment stream to the power generator. To address this issue, the capacity payments in the current Standard Offer Contract can be front-end loaded to help with financing and a portion of the energy payment can be fixed as well.

Q. Have any generators signed a Standard Offer Contract with PEF in the past three years?

A. No, but this is not surprising. Given the fact that power producers almost always have unique projects, circumstances, and needs, some modifications, even if minor in nature, usually have to be made to PEF's Standard Offer Contract, which will result in a negotiated contract. In 2008, PEF entered into contract with Vision Power that contains only minimal changes from the Standard Offer Contract but is still considered a negotiated contract.

Q. Have any generators signed significant negotiated contracts with PEF in the past three years?

A. Yes. In 2006, PEF entered into a negotiated contract for 116.6 MW with the Florida Biomass Energy Group LLC, in 2007 PEF entered into two negotiated contracts with Biomass Gas & Electric for 75 MW each, in 2008 PEF entered into a contract with Horizon energy for up to 60 MW and in 2008 PEF entered into a contract with Vision Power for 40 MW. These contracts show that while PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, negotiated contracts best address the unique concerns of renewable suppliers. Thus, the combination of PEF's Standard Offer Contract and the ability for energy producers to negotiate contracts against that Standard Offer Contract advances and promotes the use of renewable energy in PEF's service territory.

VI. PCS PHOSPHATE'S CONCERNS OF PEF's STANDARD OFFER CONTRACT

Q. Have you reviewed the testimony and exhibits filed in Docket No. 070235-EQ by Martin Marz, the witness testifying for White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate – White Springs ("PCS ")?

A. Yes, I have. While PEF does not know for sure what challenges PCS will raise in this docket, it is logical to assume that PCS will raise many, if not all of the issues they raised in Docket No. 070235-EQ. Therefore, I have addressed those challenges in my testimony in this docket below.

Q. Did you agree with Mr. Marz's prior testimony?

A. No, I do not. The theme of Mr. Marz's prior testimony that PEF's Standard Offer Contract does not encourage renewable energy development and his characterization of PEF's Standard Offer Contract as an "industry-type" contract that two parties can choose to utilize if it fits their needs are simply not true, as explained in detail below. PEF's Standard Offer Contracts are contracts that are mandated and pre-approved by the Public Service Commission ("PSC"). PEF is required to accept a signed Standard Offer Contract from a counterparty without any negotiation, unless it can be shown that the supplier is not financially or technically viable; or, it is unlikely that the committed capacity and energy would be available by the date specified in the Standard Offer Contract. In contrast, an industry-type contract, as suggested by Mr. Marz, provides a forum for mutual negotiation where two parties can agree upon a contract that fits their needs. Either party can decide that part of the industry-type contract may not work for them and negotiate changes Mr. Marz's suggestion that PEF's Standard Offer Contract should be a "one size fits all" document without

regard for the fact that PEF must accept it without negotiation is both impractical and unrealistic.

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

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

Further, because the Standard Offer Contract is offered to all renewable producers with a broad range of sizes, fuel types, types of generation, geographical location, and performance characteristics, its terms must be broad enough to cover all possible circumstances; thus, some of its provisions may be inappropriate for a particular project or type of supplier and may require revision to meet a specific supplier's needs. PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, and, if necessary, to revise in order to address the unique concerns of renewable suppliers. In PEF's recent experiences with Florida Biomass Group, LLC, Biomass Gas & Electric and Horizon Energy, changes to the Standard Offer Contract were successfully negotiated

to accommodate the unique nature of these projects. In addition, the Commission recently approved the Vision Power contract which contained minimal changes from the Standard Offer Contract. In summary, Mr. Marz's theoretical contentions that PEF's Standard Offer Contract somehow inhibits renewable energy contracts are belied by actual fact and experience.

PRICE TERMS

Q. Explain how PCS Phosphate is mistaken in previously alleging that PEF's required availability factor of 71% is inconsistent with the avoided unit and with the operation of PEF's existing combined cycle units.

A. The mistake can be seen in Mr. Marz's understanding of the purpose of a capacity payment. In his prior testimony, Mr. Marz states that in his understanding, a capacity payment is "simply a payment made to reserve the right to call upon a particular asset to provide the payer with service when required." That is not correct with respect to this Standard Offer Contract; nor is it correct with respect to most qualifying facilities ("QFs") or renewable energy contracts in Florida. The Standard Offer Contract can be characterized as a "must-take" contract. That is, PEF does not have the right to call on the capacity in a Standard Offer Contract when PEF chooses. Rather, PEF "must-take" and pay for energy and capacity whenever the renewable facility is generating. But, in order to be eligible for capacity payments, the renewable generator must be available to provide generating capacity in a manner similar to the capacity that would be available from the avoided unit. The availability factor of the

2007 avoided unit was 91% of all hours and so that is the capacity factor required for the renewable generator to receive the full capacity payment. The capacity payment is reduced if the availability of the renewable generator is less than 91% but at least 71%. If the capacity factor is less than 71%, then the renewable supplier is not really providing the capacity necessary to avoid the unit and therefore should not receive a capacity payment.

Mr. Marz's comment that the availability factors are unreasonable in light of the capacity factors of PEF's existing combined cycle units is also misplaced. The generation in PEF's fleet is dispatchable, whereas the generation provided under a Standard Offer Contract is not. PEF has the ability to start or stop its various generating units depending on PEF's system economics and reliability criteria. This "dispatchability" accounts for the weighted average capacity factor of the existing combined cycle units being less than 91% and for the capacity factor of the avoided unit being less than 91%. The avoided unit will be available for dispatch 91% of all hours, but for economic and reliability reasons maybe dispatched less often. PEF could have chosen to require the renewable supplier to have the same capacity factor as the avoided unit, but the renewable supplier would have been required to be dispatchable. That is, the renewable energy supplier would have been required to start or stop generating depending upon PEF's system economics and reliability criteria. Furthermore, once the renewable energy supplier was dispatched on, it may have been required to vary its output to match PEF's changing load. PEF felt that it would be much easier for the renewable energy supplier to simply operate whenever it could. This can seen by the fact that PEF has entered into well over twenty (20) QF or

renewable contracts since the late 1980's and all have required capacity factors based upon the projected availability of the avoided unit, and nearly all have required capacity factors between 80% and 93%. This includes the recent contracts with Florida Biomass Group LLC, Biomass Gas & Electric, Horizon Energy and Vision Power. It should be noted that the 2008 Standard Offer Contract requires a capacity of 89% in accordance to the currently anticipated availability of the avoided combined cycle unit.

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

A. Yes. I agree that a renewable energy producer should be entitled to a full capacity payment when it achieves an availability factor equivalent to that of the avoided unit. In 2007, the avoided unit's projected availability is 91%, so since the Standard Offer Contract is not dispatchable and it is therefore presumed that the renewable energy supplier will deliver to PEF whenever it is available to operate, this is the level a renewable energy producer must achieve to receive a full capacity payment. This presumption that the renewable energy supplier will deliver to PEF whenever it is able to operate is meant to encourage renewables by eliminating the need to dispatch their output thereby reducing their operational requirements.

NON-PRICE TERMS

A. Renewable Energy Credits ("RECs")

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

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

B. Capacity Test Periods

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

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

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

A. Again, Mr. Marz misunderstands the purpose of the Standard Offer Contract and the basis on which capacity payments are made. The Standard Offer is a firm offer that PEF and its customers are obligated to take without revision or negotiation and which, accordingly, must be constituted to protected PEF's customers. The Standard Offer Contract "avoids" a combined cycle unit and the capacity to be provided under

the contract should be able to operate in a similar manner as the combined cycle unit would.

Mr. Marz erroneously makes comparisons to "tolling agreements" such as PEF's Vandolah Agreement. In a tolling agreement, the purchaser provides the fuel and dispatches the facility to operate when needed for system reliability or when it is economically justified. The Vandolah Agreement is fundamentally a different type of agreement that was negotiated with compromises on many terms. It is unreasonable to pick and choose terms from the Vandolah Agreement and conclude that PEF should be amenable to these same terms in all Standard Offer Contracts.

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

A. The 10 day notice seems reasonable and has been included in the current Standard Offer Contract. Regarding the number of tests per year, it should be noted that PEF has already lowered the requirement from six times per year to two times per year. Two tests per year is reasonable and necessary. If PEF has some reason to believe that a supplier cannot reliably delivery energy, PEF must not be required to wait up to 12 more months to ask for a test, which is necessary to ensure that PEF's ratepayers are not paying for capacity that is not being provided. Finally, as seen on Sheet No. 9.456 of the Standard Offer Contract, PEF would already be obligated to pay for the test energy generated during the test since the Standard Offer Contract provides for

energy payments for any energy received from the supplier before or after the Avoided Unit In-Service Date.

C. Right of Inspection

Q. **Mr. Marz's prior testimony alleges that the right of inspection provision is not limited and that inspection could occur at any time, day or night, and that notice is needed so that appropriate personnel can escort inspectors for safety and liability reasons. Exhibit MJM-1 indicates that the provision should be deleted and replaced with a new paragraph in Section 20. Explain the purpose behind this provision and whether you agree with revising it.**

A. While I do not agree with deleting the provision on page 15 of Exhibit MJM-1 and replacing it wholesale with the suggested paragraph, some revision of the existing provision, incorporating some elements of Mr. Marz's suggested language on page 41 of Exhibit MJM-1 is acceptable. The intention of this provision is not and has never been for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, or to inspect in the middle of the night or during other periods when a renewable energy producer representative would be unavailable. The intention is simply for PEF to have the ability to inspect when necessary. Accordingly, a revision to allow PEF inspection of a renewable energy producer's books and/or facility upon seven (7) days notice and during normal business hours is now included in PEF's current Standard Offer Contract.

GENERAL TERMS AND CONDITIONS

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

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

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

Finally, Mr. Marz's many references to the Edison Electric Institute Master Power Purchase and Sale Agreement, the North American Energy Standards Board Base Contract for the Sale and Purchase of Natural Gas and the International Swaps and Derivatives Association's ISDA Master Agreement are inapplicable. As explained previously, these are not examples of firm offer contracts that must be

accepted by PEF without further negotiations. Therefore, the terms contained in these agreements are irrelevant.

A. Performance Security

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

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

Q. Please explain what would happen if, as PCS Phosphate has suggested, the performance security was "associated with the expected level of loss."

A. Typically, the required performance security amount does not cover all the costs of the replacement energy, but merely offsets some of the costs that are otherwise borne

by PEF's customers. If the performance security truly covered the expected level of loss, as PCS Phosphate suggests, the amounts specified in PEF's Standard Offer Contract would have to be significantly increased. The magnitude of the required increase could be very large. For instance, if a renewable supplier signed a Standard Offer Contract for 100 MW with a 25 year term and then defaulted in contract-year 4, PEF would have to purchase and/or build 100 MW of capacity to provide energy for the remaining 21 years to replace the energy not delivered by the renewable supplier. Further, even if only the replacement cost is considered until another facility could be built, the security amount would have to be much larger.

B. Creditworthiness, Default, Representations and Warranties

Q. Mr. Marz previously suggested adding a new section entitled "creditworthiness" after Section 11, which would require both parties to maintain acceptable creditworthiness or provide performance assurance. Is this new section desirable?

A. No, this new section is neither necessary nor desirable. Creditworthiness is relevant to the issue of a party's ability to perform under the contract, which for PEF means the ability to pay for the capacity and energy delivered. PEF's ability to pay is addressed through the fact that Standard Offer Contract is pre-approved by the PSC and therefore eligible for cost recovery from PEF customers through a cost recovery clause, making the creditworthiness of PEF irrelevant as it relates to Standard Offer Contracts. Further, as a regulated company, the PSC has oversight over PEF's financial condition, which is not true for renewable generators. The suggested

provision is undesirable because it implies the need for further performance assurances that are in fact inferior to those already existing.

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

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

- Sections 14.2 (a), (h) and (j) - Remain unchanged from the previous language.
- Section 14.2 (b) - The added language regarding *force majeure* or waiver is not necessary because the Capacity Delivery Date is the date that the supplier begins receiving capacity payments, not a deadline. The deletion of the 71% (now 69%) would mean that a supplier could deliver to PEF at a single digit capacity factor for years and PEF's ratepayers would still be obligated to make capacity payments under this contract. To be clear, the 71% capacity

factor requirement is a 12-month rolling calculation; in order to drop below 71%, a supplier would have been off-line for a total of 106 days out of the last 365.

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

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

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

Q. PCS Phosphate suggested revising Section 12.1.4 to read that upon termination arising from default on the part of the renewable energy producer, PEF shall be entitled to retain only such portion of the termination fee sufficient to cover any liability arising from early payments. Do you agree with the suggested change?

A. The suggested change is not needed. In PEF's Standard Offer Contract, the Termination Fee already only covers the liability arising from early payments in accordance with Rule 25-17.0832(4)(e)10, F.A.C.

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

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

C. Assignment

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

A. Conceptually, PEF does not object to the changes in the assignment provision proposed by Mr. Marz and has changed its current Standard Offer Contract to incorporate these changes.

D. *Force Majeure*

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

A. Yes. Again, because a Standard Offer Contract has been pre-approved by the PSC, there is no need for the reciprocal changes to the *force majeure* language that Mr. Marz suggests. As to the changes Mr. Marz suggests regarding PEF's loss of markets, PEF's economic use, or the renewable supplier's ability to sell at a higher price, while I do not think these are necessary or significant, PEF has no objection to incorporating these changes into the Standard Offer Contract. Similarly, because a Standard Offer Contract has been pre-approved by the PSC, there is no need for the reciprocal changes suggested by Mr. Marz, but PEF is willing to agree to these changes. Mr. Marz also suggests that the standard of "conclusively demonstrate" should be changed to "reasonably demonstrate." Again, these changes are acceptable to PEF and are included in the current Standard Offer Contract.

E. Conditions Precedent

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

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

- Section 5(a) – The revisions making the conditions precedent provisions apply to both parties are unnecessary. As explained previously, PCS Phosphate fails to recognize that PEF's actions and activities are subject to the PSC's oversight and the renewable generators are not, resulting in some asymmetry in the provisions of the Standard Offer Contract.
- Sections 5(a)(i), (ii), (iii) and (iv) – Mr. Marz suggests that the form and substance in which information is provided be at the renewable generator's sole discretion. PEF does not object to this language as long as the provision that the renewable supplier has to certify that the conditions are met remains intact. This change has been made in the current Standard Offer Contract.
- Section 5(v) – PEF does not agree with deleting the requirement that a renewable generator obtain insurance as required by Section 17. This is further explained below.
- Section 5(a)(vi) - Once again, because a Standard Offer Contract has been pre-approved by the PSC and PEF is subject to the oversight of the PSC, there is no need for the delivery of constitutional documents and corporate resolutions from PEF that Mr. Marz suggests.
- Sections 5(a)(vii) – This section, as well as the last paragraph of Section 2, require the supplier to obtain QF status from the PSC and to maintain that status throughout the term of the Standard Offer Contract. These provisions are

reasonable because the Standard Offer Contract is only available to QFs or renewables that can be certified as a QF by the PSC. If a supplier cannot meet these requirements then another type of contract would be more appropriate.

- Section 5(b) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary.
- Section 5(c) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary. PEF does not object to the suggested change to allow termination of the contract with proper notice.
- Sections 5(d) and (e) – The provisions Mr. Marz suggested moving are properly considered conditions precedent and therefore should be included in that section. It is understood that failure to meet the conditions would amount to a default, so there is some logic to his suggestions. However, it would seem the provisions are appropriately placed in the current contract.

F. Annual Plan and Electricity Production and Plant Maintenance Schedule

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

A. No. A renewable energy producer should be able to provide an estimate of its deliveries to PEF so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF to ensure at any given moment there is adequate generation to meet demand. Meeting the plan requirements in this section is critical to PEF's responsibility and ability to serve its customers and maintain system reliability. PEF must plan to serve its

customers in a reliable manner while minimizing cost. Without the requirement to coordinate outages, a large renewable supplier could take an outage and jeopardize PEF's system reliability or force uneconomic purchases or sales to accommodate the renewable supplier's unforecasted outage or deliveries.

Q. What is your response to Mr. Marz's previously suggested revisions in Section 10.1 to change "detailed plan" to "good faith estimate"?

A. Conceptually, I do not oppose changing "detailed plan" to "good faith estimate" in Section 10.1. This change has been made in PEF's current Standard Offer Contract. A "good faith estimate" would include a maintenance schedule with anticipated output levels during the maintenance periods.

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

A. This section is vitally important to PEF's responsibility and ability to serve its customers and maintain system reliability. PEF must coordinate the outages of its units with those of its suppliers to ensure at any given moment there is adequate generation to meet demand. By the deletion of Section 10.2, a large portion of PEF's generation could decide to take outages at the same time or a large supplier could choose to take an outage during a time of high demand. These potential situations would make it difficult for PEF to maintain system reliability. Obviously, PEF coordinates the outages of its own generation, including combined cycle units, so that

the maximum amount of generation is available when it is likely to be most needed. For instance, PEF would avoid planning outages of its own units during the heat of the summer.

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

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

G. Insurance

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

A. No. Rule 25-17.087(5), F.A.C., requires insurance. In addition, the recent amendments to Rule 25-6.065, F.A.C. require insurance for the interconnection of

systems greater than 10 kW. As part of the recent net metering and interconnection rulemaking, the PSC thoroughly discussed and considered the issue of insurance and determined that insurance is required for all but the smallest systems.

H. Use of Interruptible Standby Service for Start-up

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

A. No, this provision is not unreasonable as it ensures the supplier's generation is available when it is needed most. If the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. The standby service purchased must be firm stand-by service to assure there is power available to start the unit.

I. Energy

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

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

VII. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

DWG-1

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: July 2, 2007**

PETITION TO INTERVENE,
PROTEST OF PROPOSED AGENCY ACTION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A
PCS PHOSPHATE – WHITE SPRINGS

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.201, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate"), through its undersigned attorney, files its Petition to Intervene and Protest to Commission Order No. PSC-07-0493-TRF-EQ, which approved the Standard Offer Contract of Progress Energy Florida ("PEF") for energy and capacity purchased from renewable energy and small qualifying facilities. In support thereof, PCS Phosphate states as follows:

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

   Florida Public Service Commission
   2540 Shumard Oak Boulevard
   Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

   White Springs Agricultural Chemicals, Inc.
   d/b/a PCS Phosphate – White Springs
   15843 SE 78th Street, P.C. Box 300
   White Springs, Florida 32096

3. All pleadings, motions, orders and other documents directed to the petitioner should be served on:

James W. Brew
F. Alvin Taylor
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Notice of Receipt of Agency Action

4. PCS Phosphate received notice of the Commission's proposed agency action on or about June 12, 2007.

Statement of Affected Interests

5. PCS Phosphate is a manufacturer of fertilizer products with plants and operations in or near White Springs, Florida that are located within PEF's electric service territory.[1] PCS Phosphate receives electric service under various PEF tariffs. In addition, PCS Phosphate uses waste heat recovered from the manufacture of sulfuric acid to cogenerate electric energy. This electric energy production is

[1] PCS Phosphate mines phosphate ore on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

considered renewable energy pursuant to Section 366.91(2)(b), Florida Statutes. PCS both uses that renewable energy to offset its load and sells excess energy to PEF.

6. In the above-referenced docket, Commission Order No. PSC-07-0493-TRF-EQ (the "Order") approved PEF's Standard Offer Contract for purchasing firm capacity and energy from renewable energy producers and qualifying facilities with a capacity less than 100 MW. This Standard Offer Contract is intended to implement Section 366.91, Fla. Statutes, which articulates an express state policy to promote renewable energy production. The PEF Standard Offer Contract, however, will undermine rather than effectuate that policy. The Standard Offer Contract imposes unnecessary and onerous terms, and offers contract payments that are understated and inadequate. Collectively, those prices and terms will have a chilling effect on renewable energy development and production.

7. Further, PEF's standard offer capacity payments are linked to the utility's decision first announced in its 2007 Ten Year Siting Plan ("TYSP") to abandon a planned coal-fired generation addition for 2013. PEF instead will rely on increased power purchases and natural gas-fired generation. This change in course shown in the 2007 TYSP will lead to a PEF system that gets 44% of its energy from oil- and gas-fired generation (compared to 32% today). This year's TYSP charts a course wholly at odds with express Florida policy to reduce its already excessive reliance on natural gas and restore a more balanced generation fuel mix. That TYSP policy, which is not sustainable, understates the full avoided cost that should be reflected in the renewable standard offer.

Disputed Issues of Material Fact and Law

8. Disputed issues of material fact and law include, but are not limited to, the following:

9. *PEF's Avoided Costs Rates Are Understated*: On the same day that PEF submitted its petition to approve its Standard Offer Contract, the utility also submitted the 2007 version of its TYSP. For purposes of this proceeding, the 2007 TYSP contained one significant change from the 2006 TYSP. Specifically, in the new TYSP, PEF removed two supercritical coal-fired generating units from its planned generation capacity additions. Construction of these units, according to the 2006 TYSP, was scheduled to commence in June 2008 and June 2009, respectively.

10. As a direct result of the removal of these units from PEF's planned capacity addition, the next avoidable fossil fueled unit identified in PEF's TYSP will now be a combined cycle unit scheduled to come into service in 2013. Thus, because under the new TYSP there will be no unit to be "avoided" until 2013, PEF offers no "normal" monthly capacity payment to RF/QFs until 2013 (except for those received pursuant to the prepayment options for post-2013 capacity).

11. PEF's avoidance of the monthly capacity payment for calendar years 2010, 2011 and 2012 discourages the production of renewable energy for sale to PEF. Consequently, the Commission should have completed its review of PEF's TYSP before accepting PEF's Standard Offer Contract. This review of the TYSP should include a thorough inquiry into the basis of PEF's decision to remove the coal-fired facilities from the utility's planning horizon.

12. PEF's removal of the planned coal-fired units and determination to increase its reliance on natural gas and power purchases is openly at odds with the Florida goal to reduce reliance on natural gas for electric generation and improve the diversity of the fuels utilized by Florida's generators. PEF concedes in its 2007 TYSP that, as a result of its decision to remove the coal-fired facilities and construct primarily natural gas-fired units for its additional capacity needs, natural gas will be the energy source for 43.6% of PEF's energy needs in 2011, more than double the percentage in 2006. *See* PEF's 2007 TYSP, Schedule 62. This increased dependence on natural gas will undoubtedly lead to higher prices to PEF's customers. The Commission should carefully examine the validity and basis for PEF's removal of the coal-fired facilities, in both this proceeding and in the proceeding for PEF's 2007 TYSP before approving a Standard Offer payment schedule.

13. *PEF's Standard Offer Contract is Unnecessarily Complicated*: As currently constructed, the Standard Offer Contract consists of approximately seventy pages of contractual language that includes a number of excessive restrictions and unneeded obligations that will deter renewable energy investment and production. These are discussed in greater detail below. Any potential renewable energy producer confronted with the Standard Offer Contract must question whether the substantial undertaking required to satisfy the numerous conditions is worthwhile.

14. Contrary to the direction of Section 366.92, Florida Statutes, the proposed mess of terms and provisions will neither "promote the development of renewable energy" nor "minimize the costs of power supply to electric utilities and their customers."

15. In contrast to the unnecessarily burdensome procedures proposed by PEF for its Florida operations, the treatment of RF/QF analogous generators in North Carolina

and South Carolina by PEF's affiliated utility (Progress Energy Carolinas) demonstrates that a more straight-forward, uncomplicated approach can be implemented. Specifically, the tariff provisions in South Carolina only encompass three pages, and in North Carolina, five pages. Within this limited space, Progress Energy Carolinas is able to clearly set forth the payments that a supplier can expect to receive as well as the conditions necessary to receive those payments. This concise presentation of the conditions surrounding the provision of alternative energy supplies is much more conducive to the development and utilization of these resources than PEF's current proposal, as this simple approach reduces the burden placed on both the supplier and the utility. The Commission should require PEF to revise the Standard Offer Contract to simplify its terms and reduce the difficulty of compliance with those terms.

16. *The Standard Offer Contract Contains Unnecessary and Burdensome Requirements*: The Standard Offer Contract imposes significant obligations and restrictions on potential renewable energy suppliers with no corresponding responsibilities imposed on PEF. The Commission's approval of these contractual terms may reduce PEF's costs, but only by eliminating the likelihood that renewable suppliers will agree to contract with PEF. However, using potential cost saving to justify such onerous terms is at odds with the intent of the Florida Legislature. As Senator Michael S. Bennett explained to the Commission, the Florida Legislature "expected [the Commission] to take some serious steps that looked at the future of the State of Florida and understood the difference between price and cost."[2] Thus, to address its statutory obligation to promote the development of renewable energy, the

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2 Transcript of November 9, 2006 hearing on the Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, Docket No. 060555-EI at 10-11.

Commission needs to require PEF to modify the following terms:

(a) Section 2 – Right of Inspection: The Standard Offer Contract provides that PEF "shall have the right *at all times* to inspect the Facility and to examine any books, records, or other documents of the RF/QF that PEF deems necessary . . ." (emphasis added). This provision grants PEF an unlimited right to an RF/QF's facility and books that are not typical of wholesale power sales agreements. For example, in neither of the two power supply agreements that PEF filed with the Federal Energy Regulatory Commission ("FERC") in the last year[3] did PEF grant the capacity purchaser such unlimited access to its facilities or its records.

The unchecked access sought by PEF would complicate the ability of a supplier to operate its facility efficiently, especially in the case of a cogenerator like PCS Phosphate, whose primary business focus is its mining operations. To avoid this provision becoming a tool to dampen an RF/QF's desire to interact with PEF, the Commission should establish reasonable limits on PEF. For example, the Commission should restrict PEF's access to a facility to normal business hours and should impose a

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[3] PEF, filing as Florida Power Corporation, submitted two power supply agreements with FERC in the past year. The first was a five-year full requirements Cost-Based Power Sales Agreement with the City of Mount Dora, Florida ("Mount Dora Agreement") which was submitted on November 1, 2006 in FERC Docket No. ER07-141-000. The second agreement was a Cost-Based Power Sales Agreement with Seminole Electric Cooperative, Inc. ("Seminole Agreement") in which PEF committed to provide 150 MW of system intermediate capacity and associated energy, and 600 MW of seasonal capacity and associated energy, starting in 2014 and continuing for six years. This agreement was filed on March 30, 2007 in FERC Docket No. ER07-692-000. The Mount Dora Agreement and the Seminole Agreement are referred to collectively as the "PEF Supply Agreements." The sections of the Mount Dora Agreement and the Seminole Agreement cited herein are provided as Attachment A and Attachment B, respectively.

reasonableness requirement on PEF's exercise of any right to facility inspection and record examination.

In addition, the Standard Offer Contract places no obligation upon PEF to maintain books and records that support its energy payments and operational decisions directly affecting the RF/QF. By comparison, in the above-referenced FERC-filed wholesale PEF Supply Agreements, the recordkeeping requirements apply to symmetrically to both parties.[4]

(b) Section 5(a) – Conditions Precedent: Pursuant to this section, within twelve months of the execution of this contract, the supplier must, *inter alia*, have (i) obtained firm transmission service, (ii) obtained all required Project Consents, (iii) obtained all required Financing Documents, (iv) obtained all required Project Contracts, and (v) satisfied the insurance requirements. While many of these provisions can be satisfied by an existing facility, they may be infeasible for an entity that is seeking to develop a new generating facility to meet PEF's power needs. For example, a project developer often may not enter into a firm transmission service agreement or a fuel supply agreement such a long time before its project has been completed. Furthermore, some of requirements that must be fulfilled, including most of the Project Consents, are not fully within the developer's control. Indeed, PEF likely will have control over the satisfaction of several of the Conditions Precedent, e.g., the electrical interconnection and operating agreement and the transmission service agreement, thus providing it with the direct ability to affect a developer's capacity to satisfy the Conditions Precedent.

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[4] *See* Seminole Agreement, §§ 9.4 and 9.5, and Mount Dora Agreement, Article 17.

(c) Section 6.2 – Ownership and Offering For Sale of Renewable Energy Attributes: By granting PEF an unconditional right of first refusal to purchase any Environmental Attributes, the Standard Offer Contract ignores the possibility that an existing RF/QF may have a pre-existing commitment for its Environmental Attributes. As a result, the RF/QF could not satisfy this term of the Standard Offer Contract and would be precluded from supplying PEF. To remedy this oversight, the Commission should require PEF to incorporate an exception for those cases where a RF/QF has sold or otherwise committed its Environmental Attributes prior to the execution of the Standard Offer Contract.

(d) Section 6.3 – Use of Interruptible Standby Service for Start-up: PEF offers no reason for restricting a RF/QF's ability to utilize interruptible stand-by service tariffs. There is no legitimate basis for this provision, which serves only to increase the rates that PEF can collect from the RF/QF or unreasonably limit RF/QF access to this service. This requirement should be stricken from the Standard Offer Contract.

(e) Section 7.3 – Committed Capacity Test Results: PEF's requirement that an RF/QF "demonstrate[] at least one hundred percent (100%) of Committed Capacity" is an unreasonable requirement that contradicts standard industry practice. Typically, unit-specific power purchase agreements either will accept as satisfactory a test result that is within a few percentage points of the committed capacity (e.g., 97%) or adjust the capacity results to reflect operational and environmental conditions. This adjustment approach is especially appropriate in the context of RF/QF facilities for which the fuel sources are not comparable to the fossil and nuclear fuels of traditional power plants, and because cogeneration RF/QF

facilities may be subject to operational constraints imposed by the affiliated industrial operations.

(f) Section 8.2 – Test Period: Similar to the Committed Capacity Test Results provision, the test period set forth by PEF to establish a facility's capacity is incompatible with the nature of renewable energy facilities. For example, a solar- or wind-powered facility that is subject to the vagaries of the weather cannot be expected to maintain a steady capacity for a twenty-four hour period. In order to comply with its dual responsibility to promote renewable energy while minimizing costs, the Commission must recognize that the RF/QF facilities favored by the Florida Legislature are not the same as PEF's historic fossil- and nuclear-fueled units, and thus the Standard Offer Contract must be revised to accommodate the operational realities of RF/QF facilities. In fact, renewable energy production facilities that demonstrate utility-like performance capabilities should receive preferred rather than punitive treatment.

(g) Section 10.1 – Detailed Annual Plan: PEF's requirement that an RF/QF facility prepare a "detailed plan of the electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year" imposes an impractical obligation upon an RF/QF. Solar- and wind-powered RF/QFs cannot forecast weather conditions in detail for the next year. Likewise, an RF/QF with an associated industrial load cannot predict in detail its precise generation output for the forthcoming year, as the output will be affected by market conditions for the industrial product.

(h) Section 10.4 – Requirement to Provide "total electrical output": Many RF/QFs, especially a cogenerator like PCS Phosphate, produce electric energy

in support of an industrial or commercial operation. PEF's requirement that the RF/QF provides its "total electrical output" to PEF effectively mandates a "buy all/sell all" arrangement that undercuts the net metering options provided by Rule 25-17.082(3)(a), Florida Administrative Code. This provision of the Standard Offer Contract is contrary to existing practice and Commission rules for cogenerators, and should be rejected.

(i) Section 10.5.4 – 24/7 Operating Personnel: Due to their operational nature or the sophistication of their administrative software, some RF/QF facilities do not require operational personnel to remain on duty around the clock. As a result, PEF's requirement that "operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) days a week" may impose an unnecessary operating expense that could make an RF/QF economically infeasible. PEF has not shown that this provision, which unnecessarily intrudes on a renewable producer's operational and business practices, is required for any legitimate reason. It should be deleted from the Standard Offer Contract.

(j) Section 10.5.6 – Three Day Fuel Supply: PEF again attempts to impose a requirement that is unnecessary, burdensome, and may be inapplicable to many RF/QFs in any event. Unlike a traditional utility's coal- or nuclear-fired generating facility, RF/QFs that utilize solar, wind and waste heat energy do not keep a fuel supply conveniently stashed in some on-site storage area. The Commission must require PEF to delete this provision, or, at a minimum, incorporate sufficient flexibility within this and other sections of the Standard Offer Contract to accommodate the different characteristics of RF/QFs.

(k) Section 11.1 – Performance Security: There are two substantial problems with PEF's collateral requirements. First, the requirements are entirely one-sided. Although the term "Eligible Collateral" is defined to include collateral of both the RF/QF and PEF, Section 11 clarifies that this "dual" nature of the collateral is in reality a sham, as there is no actual requirement for PEF to provide any form of collateral for the benefit of the RF/QF. Thus, even though an RF/QF may be owed significant monies by PEF for the capacity and energy provided, PEF bears no obligation to provide any guarantee to the RF/QF under the contract.

The second critical issue is the actual amount of collateral required from the RF/QF. Pursuant to Table 2, an RF/QF with the highest credit rating and providing 20 MW of capacity would be required to commit $900,000/year initially just to sell power to PEF. PEF has offered no explanation for why such a significant sum is necessary. The inequitable nature of this provision is contrary to how PEF has transacted when it supplies capacity and energy. In the earlier referenced PEF Supply Agreements, the "Acceptable Creditworthiness" provisions apply to both parties.[5] Additionally, neither party is required to provide any collateral so long as it maintains "Acceptable Creditworthiness," and the amount of collateral required is tied to the purchaser's bills, and not to a credit rating. As with PEF's own wholesale power transactions, credit requirements should be flexible and commensurate with the financial capabilities of the parties. For large entities possessing strong financial parameters, no credit requirements should be necessary or required.

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[5] *See* Seminole Agreement, §§ 9.6 – 9.10 and Mount Dora Agreement, Article 8(a)-(f).

(l) Section 12 – Termination Fee: PEF imposes a significant obligation on an RF/QF with no corresponding obligation on itself. While PEF should recover "prepaid" capacity payments when the associated capacity was not actually provided due to the legitimate termination of the contract, PEF also must be accountable to RF/QF if a contract is terminated due to PEF's fault. To this end, the Commission should recognize that an RF/QF developer incurs many financial obligations that are tied to the revenues from the Standard Offer Contract. To protect the developer's investment, the Commission should, in the event of contract termination due to PEF's fault, require PEF to pay a termination fee corresponding to the costs that the RF/QF incurred in reliance on PEF's fulfillment of the Standard Offer Contract.

(m) Section 14 – Default: As an extreme example of the one-sided nature of the Standard Offer Contract, not a single one of the fourteen events of default listed in this section applies to PEF. For example, pursuant to Section 14(i), the RF/QF is in default if it breaches any material provision of the Standard Offer Contract but there is no penalty for PEF's breach of any material provision. Likewise, PEF can declare the RF/QF in breach if bankruptcy proceedings are initiated against the RF/QF, but the RF/QF has no protection if PEF befalls a similar fate. Indeed, the Standard Offer Contract does not even provide a clear basis for the RF/QF to declare PEF in default if PEF simply refused to compensate the RF/QF for the capacity and energy provided.

The Commission must recognize that no rational supplier would accept this section. As an example of this section's incompatibility with standard industry practice, in the Edison Electric Institute's Master Power Purchase & Sale Agreement,

the events of default apply to both parties equally and clearly states that a failure to make a required payment is grounds for default. PEF employs a similar approach in the PEF Supply Agreements, where thirteen of the fourteen total specified events of default apply equally to both parties.[6] The Commission must afford an RF/QF with the same protections and remedies provided to PEF.

(n) Section 17 – Insurance: Although an RF/QF is required to maintain insurance coverage, there is no corresponding obligation for PEF to provide analogous coverage for the RF/QF. The Commission should require PEF to explain why any insurance requirement is necessary, as it bears no insurance obligation in its wholesale power supply agreements with Seminole Electric Cooperative and the City of Mount Dora, Florida. To the extent the Commission concludes that any insurance requirement is necessary, the insurance obligations should apply equally to PEF and the renewable energy supplier.

(o) Section 18.1 – *Force Majeure*: PEF would not permit an RF/QF to claim force majeure for an equipment breakdowns and other issues unless the RF/QF "can conclusively demonstrate" to PEF's satisfaction that the event was not foreseeable or negligent. *Force Majeure* provisions are a basic element of wholesale power transactions, and there is no basis for PEF to impose more onerous terms on renewable energy producers than the terms common to industry practice. To remedy this fault, the Commission should modify the Standard Offer Contract to apply equally to both parties and remove PEF's discretion to arbitrarily reject an RF/QF's claim of force majeure. To this end, the Commission could replace the force majeure provisions in the Standard Offer Contract with the force majeure provisions of either

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6 *See* Seminole Agreement, § 12.1, and Mount Dora Agreement, Article 15.

of the PEF Supply Agreements, as they impose symmetrical terms on both contractual parties.[7]

(p) Section 19 – Representations and Warranties: As with so many other sections of the Standard Offer Contract, only the RF/QF has to make any representations, warranties or covenants. PEF has provided no explanation for why the RF/QF should be required to make these representations and it should have to bear no corresponding obligation. In the PEF Supply Agreements, PEF made similar representations and warranties to those it seeks from the renewable energy supplier,[8] so there is no apparent reason why PEF cannot make the same representations in its Standard Offer Contract. Moreover, to the extent PEF seeks to obtain more detailed representations from a renewable supplier than it provides when it supplies power, PEF should be required to justify any differences.

(q) Section 20.4 – Assignment: The Standard Offer Contract prevents an RF/QF from assigning the agreement to any entity, including any affiliate or successor in interest, unless it receives PEF's approval. Moreover, PEF does not even have to satisfy a reasonableness standard in order to justify its rejection of a proposed assignment. PEF, on the other hand, has no restriction on its ability to transfer the agreement.

The Commission should revise the assignment language so that it is symmetrical and applies evenly to both parties. In addition, neither party should be able to unreasonably withhold its consent to an assignment. These suggested changes would be consistent with standard industry practice as well as the PEF Supply

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7 *See* Seminole Agreement, § 17, and Mount Dora Agreement, Article 27.

8 *See* Seminole Agreement, § 11, and Mount Dora Agreement, Article 13.

Agreements,[9] which could be utilized as a model for developing more equitable language.

(r) Section 20.14 – Record Retention: Although the RF/QF must retain its performance records for five years, PEF is under no concurrent obligation to retain any of its records relevant to the agreement. The Commission should impose the same obligation of PEF as PEF would impose on an RF/QF.

Ultimate Facts Alleged

17. The absence of any capacity payment to RF/QFs for the 2008 through 2012 period is a direct result of PEF's decision to remove the two coal-fired generating facilities from its 2007 TYSP.

18. The Commission has accepted PEF's Standard Offer Contract, including the absence of capacity payments for the 2008 through 2012 period, before it completed its evaluation of PEF's TYSP.

19. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will discourage the development of and investment in renewable resources in contradiction of the intent of the Florida Legislature.

20. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will increase PEF's dependence on natural gas and thus decrease its fuel diversity, in contradiction of the intent of the Florida Legislature.

21. PEF's increased reliance on natural gas will discourage renewable energy development and increase energy costs for all PEF customers.

22. PEF's RF/QF program generally, and its proposed Standard Offer

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[9] *See* Seminole Agreement, § 18.5, and Mount Dora Agreement, Article 18.

Contract specifically, is unnecessarily complicated and burdensome.

23. PEF's proposed Standard Offer Contract imposes on renewable suppliers onerous and one-sided obligations that do not comport with standard industry practice.

Laws Entitling Petitioner to Relief and Relation to Alleged Facts

24. The rules and statutes entitling PCS Phosphate to relief include but are not necessarily limited to the following: Sections 120.569 and 120.57(1), Florida Statutes, which entitle PCS Phosphate to an administrative hearing for the reasons presented above; Section 366.91 and 366.92, Florida Statutes, which enumerate the requirements to promote the development of renewable energy resources; and Rules 25-17.200 through 25-17.310, Florida Administrative Code, by which the Commission has implemented the requirements of Section 366.91.

Request for Relief

WHEREFORE, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests

(1) that the Commission enter an order allowing it to intervene as a full party in this docket;

(2) that the Commission conduct an administrative hearing to determine

(a) whether PEF's proposed capacity rates accurately reflect its true avoided costs;

(b) whether the terms and conditions of the proposed Standard Offer Contract will discourage the development of renewable energy resources; and

(3) that the Commission grant PCS Phosphate such other relief as may be deemed appropriate.

Respectfully submitted this 2nd day of July, 2007,

/s/ James W. Brew

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d/b/a PCS Phosphate – White Springs

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Intervene has been furnished by electronic mail and U.S. Mail this 2nd day of July 2007 to the following individuals:

/s/ James W. Brew

Attachment A

ORIGINAL

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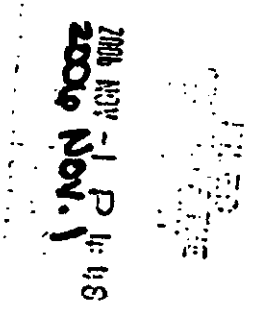

Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Regarding: *Florida Power Corporation*;
Cost-Based Power Sales Agreement
with the City of Mount Dora, Florida;
Docket No. ER07-141-000

Dear Secretary Salas:

Florida Power Corporation ("FPC"), doing business as Progress Energy Florida, Inc., hereby files, pursuant to Section 205 of the Federal Power Act, a cost-based power sales agreement with the City of Mount Dora, Florida ("Mount Dora"). FPC respectfully requests that the Commission accept this power sales agreement ("Agreement") for filing sixty days after the date of this filing and grant an effective date for the Agreement of January 1, 2007, which is the date that service commences under the Agreement.

A. DESCRIPTION OF THE MOUNT DORA AGREEMENT

The Agreement provides that FPC will provide and Mount Dora will purchase capacity and energy to serve all of Mount Dora's load requirements for a five-year period beginning January 1, 2007 through December 31, 2011. Article 3 of the Agreement provides that FPC and Mount Dora may agree to a minimum three-year extension (or a longer extension) of the Agreement if it is mutually agreeable to the parties.[1] The product that FPC is selling to Mount Dora shall be as firm as FPC's

1 Any extension of this Agreement, including the rates for the extension, would be submitted to the Commission for filing in accordance with the Commission's requirements.

POWER SALES AGREEMENT
BETWEEN
FLORIDA POWER CORPORATION,
DOING BUSINESS AS
PROGRESS ENERGY FLORIDA, INC.
AND
CITY OF MOUNT DORA, FLORIDA

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POWER SALES AGREEMENT BETWEEN FLORIDA POWER CORPORATION, DOING BUSINESS AS PROGRESS ENERGY FLORIDA, INC. AND CITY OF MOUNT DORA

This Agreement for the purchase and sale of electric capacity and energy (the "Agreement") dated as of October 17, 2006, is made and entered into by Florida Power Corporation, doing business as Progress Energy Florida, Inc. (the "Company") and the City of Mount Dora, Florida (the "Customer"). The Company and the Customer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS

1. The Company is a public utility as defined in the Federal Power Act and sells electric capacity and energy to other utilities for resale;

2. The Customer is a municipally-owned electric distribution utility; and

3. The Parties desire that the Company sell to the Customer and the Customer purchase from the Company all of its requirements for electric capacity and energy pursuant to the terms and conditions set out in this executed Agreement.

NOW THEREFORE

In consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

When used in this Agreement, terms with initial capitalization shall have the following meanings:

determined based on the highest aggregate kW usage as measured at the Point(s) of Delivery during any two (2) consecutive 15-minute periods of each billing period, as compensated for incurred Losses from the Point(s) of Receipt.

(ii) The total monthly billing energy shall be determined based on the accumulation of 15-minute metered values as measured at the Point(s) of Delivery for each billing period and compensated for Losses from the Point(s) of Receipt.

ARTICLE 7.
TRANSMISSION SERVICE

(a) It is the Customer's responsibility to arrange and pay for transmission and ancillary services for the delivery of energy under this Agreement from the Point(s) of Receipt to the Point(s) of Delivery. There shall be no reduction in the Customer's payment obligation as a result of curtailments, interruptions, or reductions of transmission service or ancillary service.

(b) Until the commencement date of the Delivery Period (and during the Delivery Period, on an as-needed basis), the Company shall, at the option of the Customer, act as the transmission agent for the Customer under the terms of a separately negotiated agreement.

ARTICLE 8.
PAYMENT OF INVOICES; CREDIT SECURITY

(a) The capacity and energy supplied under this Agreement shall be subject to a true-up of the Monthly Fuel Charge in accordance herewith. The Company shall deliver to the Customer an invoice identifying and itemizing (i) the Capacity Charge for that month; (ii) the estimated Monthly Fuel Charge for that month which is equal to the product of the Monthly Energy Delivered multiplied by the estimated Fuel Charge for the calendar month (which is the actual Fuel Charge for the previous calendar month); (iii) a

true-up of the estimated Monthly Fuel Charge included in the previous calendar month's bill (where the true-up credit or charge, as applicable, is equal to the actual Fuel Charge of the previous calendar month minus the estimated Fuel Charge of the previous calendar month multiplied by the Monthly Energy Delivered for the previous calendar month); (iv) the Non-Fuel Energy Charge. Invoices supplied hereunder shall be rendered monthly by the Company as soon as reasonably practical after the first day of each month for the prior month's capacity and energy and shall be due when rendered and payable within thirty (30) days from the date the Customer receives the invoice. An example of the Company's invoices is provided as **EXHIBIT C**. All payments made to the Company by the Customer hereunder shall be by electronic funds transfer or other mutually agreeable method(s) to the account designated by the Company. Invoices not paid within said thirty (30) days shall be deemed delinquent and shall accrue interest at the Interest Rate. In the case of a disputed invoice, the Customer shall (1) pay the invoice to the Company during the thirty (30) day payment period and (2) provide to the Company, prior to the expiration of the thirty (30) day payment period, written notification of the amount of the invoice that is in dispute and the reasons therefor. The Company and the Customer shall fully cooperate with each other to resolve the dispute within thirty (30) days from the date that the Company receives written notification of the dispute. If the Parties cannot resolve the dispute within the time period, either Party may seek to resolve it pursuant to **ARTICLE 15** hereof. If the Customer does not pay an invoice or dispute it pursuant to the provisions set out above, the Company may exercise its rights as set out in this **ARTICLE 8** and in **ARTICLE 15** hereof.

(b) The Parties shall at all times each maintain Acceptable Creditworthiness or shall provide Performance Assurance to the Non-Affected Party. To maintain

Acceptable Creditworthiness, the Parties shall not be in default of any payment obligations as set out in **ARTICLE 8(a)** and **ARTICLE 15(a)(i)** hereof and:

(i) the Parties shall each maintain either a credit rating (i.e. the rating assigned to its unsecured senior long-term debt obligations or Underlying Rating if there is no unsecured senior long term debt) by Standard & Poor's of at least BBB- and/or a Long Term Issuer or Underlying Rating, if there is no Long Term Issuer Rating, from Moody's Investor Services of at least Baa3; or

(ii) if a Party does not have commercial credit ratings as set out in subsection (i), the Party shall provide three (3) years of its most recent financial statements to the other Party which will be evaluated in a commercially reasonable manner to demonstrate to the other Party's reasonable satisfaction that the Party meets standards that are at least equivalent to the standards underlying the credit ratings set out in subsection (i).

(c) "Performance Assurance" shall mean one of the following: (a) as to either Party, an unconditional and irrevocable Letter of Credit or a cash deposit equal to the amount that the Parties estimate that the Customer would owe to the Company for the three months of the calendar year in which the Customer's bills are expected to be the highest; or (b) as to the Customer, advance payment for each month's service based on the Company's estimate of the amount that the Customer will owe for that month, paid not less than five (5) days prior to the beginning of the month, and trued up at the time of the second succeeding month's advance payment to reflect the actual amount the Customer owes. The Company shall pay interest on any prepayments made pursuant to this **ARTICLE 8(c)** at the Interest Rate.

(d) If a Party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, as determined by the Non-Affected Party, the Non-Affected Party shall notify the Affected Party within five Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards and shall request them to provide Performance Assurance to the Non-Affected Party within thirty (30) Business Days of the date on which it ceased to maintain Acceptable Creditworthiness.

(e) If an Affected Party fails to provide Performance Assurance as set out in this **ARTICLE 8**, then:

(i) in the event that the Customer is the Affected Party, the Company may suspend service to Customer, provided that the Company notifies the Customer in writing of its intent to suspend service at least thirty (30) days prior to the date on which service is to be suspended to give the Customer time to correct the deficiency ("Cure Period"). The Company's right to suspend service hereunder shall be in addition to its right to take action for default pursuant to ARTICLE 15 hereof;

(ii) in the event that the Company is the Affected Party, the Customer may terminate this Agreement, provided that the Customer notifies the Company in writing of its intent to terminate service at least thirty (30) days prior to the date on which termination is to occur to give the Company time to correct the deficiency ("Cure Period"). The Customer's right to terminate service hereunder shall be in addition to its right to take action for default pursuant to ARTICLE 15 hereof.

(f) If a Party to this contract that has previously been deemed to not exhibit Acceptable Creditworthiness is subsequently upgraded to Acceptable Creditworthiness pursuant to ARTICLE 8(b), or the Party's audited financial statements demonstrate, after being evaluated by the Non-Affected Party in a commercially reasonable manner, that they are considered to be of Acceptable Creditworthiness, then the Non-Affected Party shall notify the Affected Party within five Business Days of the date that it shall return any Performance Assurance being held by the Non-Affected Party within thirty (30) Business Days of the date on which it gained Acceptable Creditworthiness.

ARTICLE 9.
TAXES

(a) General. The Company and the Customer shall each use reasonable efforts to minimize taxes applicable to the transactions to be carried out under the terms of this Agreement. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax.

(b) Applicable Taxes.

(i) The Company shall be responsible for all existing and any new sale, use, transportation, excise, business and operation, *ad valorem*, or other similar tax, imposed or levied by any governmental authority relating to the energy prior to its delivery to Customer at the Point(s) of Receipt.

(ii) The Customer shall be responsible for all existing and any new sale, use, transportation, excise, *ad valorem*, or other similar tax imposed or levied by any governmental authority relating to the sale, use or consumption of energy at and after its receipt by Customer at the Point(s) of Receipt.

reasonable attorney's fees), damage or injury to persons, and property judgments in a total amount that is in excess of $100,000 per incident. In no event shall this Article 11 apply to a failure by a Party to perform any term or condition of this Agreement, including, but not limited to, a failure to pay the other Party under this Agreement, an Event of Default under this Agreement or a breach of this Agreement.

ARTICLE 12.
PERMITS AND EASEMENTS

The Customer shall furnish the Company with all Customer permits and other easements or licenses which are necessary for the construction and maintenance by the Company of the facilities required for delivery of service to the Customer's Point(s) of Delivery. The obligations of each Party to the other Party under this Agreement are subject to and conditioned upon the other Party securing and retaining all permits and easements and other rights and approvals that the other Party is required to secure under this Agreement and which are necessary for the Company or the Customer (as applicable) to perform under this Agreement.

ARTICLE 13.
REPRESENTATIONS AND WARRANTIES

(a) As a material inducement to enter into this Agreement, each Party represents and warrants to the other Party that as of the Effective Date of the Agreement:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

(b) EXCEPT AS PROVIDED HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 14.
TITLE AND RISK OF LOSS

Title to and risk of loss related to the energy sold hereunder shall transfer from the Company to the Customer at the Point(s) of Receipt. The Company warrants that it will deliver the energy purchased hereunder free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point(s) of Receipt.

ARTICLE 15.
DEFAULT

(a) Each of the following shall be an "Event of Default" under this Agreement:

(i) The failure of either Party to make any payment to the other Party as required by this Agreement within thirty (30) days of the date when such payment became due and payable.

(ii) The failure by either Party to perform any obligation to the other Party under this Agreement, other than obligations for the payment of money, provided that the defaulting Party shall have been given not less than thirty (30) days' notice of such failure by the non-defaulting Party and such defaulting Party

shall have unsuccessfully attempted to correct such default or shall have failed to use its reasonable best efforts to correct such default.

(iii) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than the Company's or the Customer's mortgagee, as the case may be.

(iv) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) days.

(v) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against any Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(vi) Any representation or warranty made by the defaulting Party in the Agreement shall prove to have been false in any material respect when made.

(vii) The failure of the Customer to provide Performance Assurance as required under **ARTICLE 8**.

(b) Whenever an Event of Default occurs, the non-defaulting Party may give the defaulting Party written notice to remedy the default. In the Event of Default, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement.

ARTICLE 16.
DISPUTE RESOLUTION

In the event of any dispute arising out of or relating to this Agreement which the Parties are unable to settle within thirty (30) days after the dispute arose, either Party may refer the dispute to a meeting of senior management, in which case each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) days after the dispute arose to attempt to resolve the dispute. If a resolution cannot be reached within fifteen (15) days after the meeting of senior officers or within sixty (60) days after the dispute arose, then either Party may pursue its rights at law or in equity with respect to such dispute. Unless directed otherwise by a court or government agency of competent jurisdiction or unless otherwise provided by the express terms of this Agreement, no Party shall cease or delay performance of its obligations under this Agreement during the existence of any dispute or the pendency of any proceeding to resolve it, and the Parties shall pay to each other all amounts owing.

ARTICLE 17.
AUDIT RIGHTS

Each Party shall have the right, at its own expense, to audit and to examine any supporting documentation related to any bill submitted or payment requested under this

Agreement for capacity and energy provided to Customer. Any audit hereunder shall be undertaken by the requesting Party, or its representatives, at reasonable times and in conformance with generally accepted auditing standards. The right to initiate an audit shall extend for a period of two (2) years following the end of the month in which service is rendered. Any audit initiated by a Party shall extend for no longer than a period of one (1) year. Each Party shall fully cooperate with any audit by the other Party and retain all necessary records or documentation for the entire length of the audit period. If any audit discloses that an overpayment or underpayment has been made, the amount of any undisputed portion of such overpayment or underpayment shall promptly be paid by the obligated Party, with interest calculated at the Interest Rate from the date on which the payment should have been made to the date on which the payment or repayment is actually made. Upon the mutual agreement of the parties that resolves a disputed portion of such overpayment or underpayment, such overpayment or underpayment shall be paid by the obligated Party, with interest calculated at the Interest Rate from the date on which the payment should have been made to the date on which the payment or repayment is actually made. This provision and the rights of the Parties to audit shall survive the termination of this Agreement.

ARTICLE 18.
ASSIGNMENT

(a) Except as provided herein, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any assignment of this Agreement in violation of this ARTICLE 18 shall be, at the option of the non-assigning Party, void.

(b) Either Party (the "**Assigning Party**") may, without the consent of the other Party:

(i) transfer or assign this Agreement to an Affiliate of the Assigning Party which Affiliate's creditworthiness is equal to or higher than that of the Assigning Party based either on Standard and Poor's or Moody's ratings or, if the Affiliate does not have a such a rating, on credit assurances reasonably acceptable to the non-assigning Party, provided that such Affiliate is financially and operationally capable, including maintaining the same level of reliability and delivering capacity and energy at the same monthly charges as the Customer would have received had the assignment not been made, of performing its obligations under this Agreement; or

(ii) transfer or assign its rights and obligations under this Agreement to any person or entity (the Assignee) succeeding to all or substantially all of the Assigning Party's assets, provided that the Assignee's creditworthiness is equal to or higher than that of the Assigning Party and it is financially and operationally capable of performing its obligations under this Agreement.

(c) An assignment or transfer pursuant to **ARTICLE 18(b)** may be made only if:

(i) any required regulatory approvals that may be required are obtained in connection with such transfer or assignment;

(ii) the Assignee agrees in writing to be bound by the terms and conditions of this Agreement; the Assignee has Acceptable Creditworthiness as defined in **ARTICLE 8(b)** or provides Performance Assurance pursuant to **ARTICLE 8(c)**; and the Assignee is financially and operationally capable of performing its obligations under this Agreement; and

(iii) the non-assigning Party is not obligated to perform its obligations hereunder in favor of the Assignee to the extent the Assignee shall not perform the obligations of the Assigning Party.

(d) If either Party terminates its existence as a corporate entity by merger, acquisition, sale, consolidation or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with this **ARTICLE 18**, the other Party shall have the right, enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights, and obligations.

(e) This **ARTICLE 18** and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE 19.
MATERIAL ADVERSE EVENT

(a) A Material Adverse Event is any of the following events:

(i) This Agreement is not approved or accepted for filing by the FERC without modification or condition.

(ii) A Regional Transmission Organization or regional reliability organization or a restructuring of the electric utility industry in the State of Florida prevents, in whole or in part, either Party from performing any provision of this Agreement in accordance with its terms or imposes obligations on a Party that materially affect the costs that a Party incurs to comply with this Agreement.

(b) Either Party may provide written notice to the other Party of the occurrence of a Material Adverse Event within sixty (60) days of the occurrence of the

Company:

Progress Energy Florida
100 Central Avenue
MAC-BT9G
St. Petersburg, Florida 33701
Attention: Director, Origination & Account Management - FRCC

Customer:

City of Mount Dora
P.O. Box 176
Mount Dora, Florida 32757
Attention: Electric Utility Manager

Either Party may specify a different person to be notified and / or different address by written notice.

ARTICLE 26.
NO AGENCY RELATIONSHIP

Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Company and the Customer.

ARTICLE 27.
FORCE MAJEURE

Neither Party shall be in breach of this Agreement for failure to perform its obligations hereunder if such failure is the result of a Force Majeure Event. A "Force Majeure Event" under this Agreement shall mean an event, occurrence, or circumstance beyond the reasonable control of, and without the fault or negligence, of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes (including strikes), acts of public enemies, orders or absence of necessary orders and permits of any kind which have been properly applied for, from the Government of the United States or from any State or Territory, or any of their departments, agencies or officials, or from any civil or military authority, extraordinary delay in transportation,

inability to transport, store or reprocess spent nuclear fuel, lightning, severe weather, epidemics, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, war, civil disturbances, explosions, sabotage, injunction, blight, blockade, quarantine, breakage of machinery or equipment; or any other similar cause or event which is beyond the Party's reasonable control and which, wholly or in part, prevents the Party claiming Force Majeure from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. Any Party which claims that its performance is being delayed or prevented as a result of a Force Majeure shall proceed with due diligence to overcome the events or circumstance of the Force Majeure and shall use all reasonable efforts to mitigate the effects of the Force Majeure.

ARTICLE 28.
ENTIRE AGREEMENT

The Agreement shall be the final expression of the Parties' agreement and shall be the complete and exclusive statement of the terms thereof. No statements or agreements, oral, or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification, or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, is signed by both Parties and specifically states it is an amendment to the Agreement.

ARTICLE 29.
SEVERABILITY

Except as expressly set forth herein, if any term or provision of this Agreement is held illegal or unenforceable by a court with jurisdiction over the Agreement, all other terms in this Agreement will remain in full force, and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially

Attachment B

ORIGINAL

BRUDER, GENTILE & MARCOUX, L.L.P.

ATTORNEYS AT LAW

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ROBERT T. STROH
GIUSEPPE PINA

GEORGE F. BRUDER
RETIRED 1997

March 30, 2007

Honorable Philis J. Posey
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Regarding: *Florida Power Corporation*;
Cost-Based Power Sales Agreement with
Seminole Electric Cooperative, Inc.;
Docket No. ER07-692-000

Dear Acting Secretary Posey:

Florida Power Corporation ("FPC"), doing business as Progress Energy Florida, Inc., hereby files, pursuant to Section 205 of the Federal Power Act, a cost-based power sales agreement with Seminole Electric Cooperative, Inc. ("SECI"). FPC respectfully requests that the Commission accept this power sales agreement ("Agreement") for filing within 90 days after the date of this filing and grant an effective date for this Agreement of June 28, 2007, which is 90 days after the date of this filing.

A. BACKGROUND

FPC is an investor-owned utility that provides generation, transmission and distribution services to retail customers in the State of Florida. It also is a power supplier for a number of wholesale customers in the State of Florida, including SECI.

SECI is a Florida corporation and a generation and transmission cooperative. SECI has a need for system intermediate capacity and energy and seasonal system peaking capacity and energy to serve its future load requirements beginning January 1, 2014. Pursuant to the Agreement submitted here, FPC has agreed to provide that power supply to SECI under a long-term agreement beginning January 1, 2014 through December 31, 2020. The firmness of the power supply that FPC will be providing to SECI is as firm as FPC's service to its firm native load customers.

AGREEMENT FOR SALE AND PURCHASE

OF

CAPACITY AND ENERGY

BETWEEN

FLORIDA POWER CORPORATION
DOING BUSINESS AS
PROGRESS ENERGY FLORIDA, INC.

AND

SEMINOLE ELECTRIC COOPERATIVE, INC.

DATED AS OF

September 22, 2006

TABLE OF CONTENTS

AGREEMENT FOR SALE AND PURCHASE OF CAPACITY AND ENERGY

This Agreement ("Agreement") is made and entered into as of this 22nd day of September, 2006 by and between Seminole Electric Cooperative, Inc., a Florida corporation ("Customer"), and Florida Power Corporation, a Florida corporation, doing business as Progress Energy Florida, Inc. ("Company"). The Company and the Customer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS

1. The Company is a public utility as defined in the Federal Power Act and sells electric capacity and energy to other utilities for resale;
2. the Customer is a generation and transmission cooperative; and
3. the Parties desire that the Company sell to the Customer and the Customer purchase from the Company electric capacity and energy pursuant to the terms and conditions of this executed Agreement.

NOW THEREFORE

In consideration of the mutual covenants and agreements herein contained, the Parties do hereby mutually agree as follows:

SECTION 1 -DEFINITIONS

For the purposes of this Agreement, the terms defined in this section shall have the following meanings. Except where the context otherwise requires, definitions and other terms expressed in the singular shall include the plural and vice versa.

1.1 "Acceptable Creditworthiness" shall have the meaning set forth in Section 9.7 hereto.

1.2 "Agreement" shall have the meaning set forth in the introductory paragraph hereto.

1.3 "Assigning Party" shall have the meaning set forth in Section 18.5 hereto.

1.4 "Assurance Notice" shall have the meaning set forth in Section 9.9 hereto.

1.5 "Billing Month" shall mean a calendar month billing cycle for invoicing.

1.6 "Binding Arbitration Notice" shall have the meaning set forth in Section 18.3 hereto.

1.7 "Business Day" shall mean any day except Saturdays, Sundays, and Federal Reserve Bank holidays.

1.8 "Change in Environmental Law" shall have the meaning set forth in Section 15.1 hereto.

§35.19a, or if the Dispute is resolved after the termination of this Agreement, any amount owed plus interest shall be paid immediately.

9.4 Audit Rights. Each Party shall have the right, at its own expense, to audit and to examine any supporting documentation related to any bill submitted or payment requested under this Agreement for capacity and Corresponding Energy provided by Company to Customer. Any audit hereunder shall be undertaken by the requesting Party, or its representatives, at reasonable times and in conformance with generally accepted auditing standards. The right to initiate an audit shall extend for a period of two (2) years following the end of the calendar year in which service is rendered. Each Party shall fully cooperate with any audit by the other Party and retain all necessary records or documentation for the entire length of the audit period (and thereafter if an audit is in progress until such audit is completed). If any audit discloses that an overpayment or underpayment has been made, the amount of such overpayment or underpayment shall promptly be paid by the owing Party, with interest calculated at the rate set for refunds under the Federal Power Act pursuant to 18 C.F.R. §35.19a from the date on which the payment should have been made to the date on which the payment or repayment is actually made. This provision and the rights of the Parties to audit and resolve audit-related Disputes as set forth in Section 18.3 shall survive the termination of this Agreement.

9.5 Books and Records. Each Party shall keep complete and accurate records and memoranda of its actions taken hereunder and shall maintain such records, memoranda, and data as may be necessary to determine or justify with reasonable accuracy any item relevant to this Agreement.

9.6 Creditworthiness. Both Parties shall at all times maintain Acceptable Creditworthiness. If a Party no longer maintains Acceptable Creditworthiness, it may be required to provide Performance Assurance to the other Party in accordance with Section 9.9.

9.7 Acceptable Creditworthiness. To maintain Acceptable Creditworthiness, a Party must not be in default of its obligations as set out in this Agreement and it must meet one of the following criteria:

(a) The Party has a credit rating of at least Baa2 (Moody's) or BBB (Standard and Poors); or

(b) The Party provides its most recent financial statements to the other Party and is able to demonstrate that the Party meets standards that are at least equivalent to the standards underlying credit ratings of Baa2 (Moody's) or BBB (Standard and Poors); provided that if the Party is found not to be creditworthy by the other Party based upon an evaluation made in a commercially reasonable manner, the other Party will inform the Party of the reasons for that determination; or

(c) The Customer, which is a borrower from the RUS, has a Times Interest Earned Ratio of 1.05 or better and a Debt Service Coverage Ratio of 1.00 or better in the

most recent calendar year, or is maintaining the Times Interest Earned Ratio and Debt Service Coverage Ratio as established in the Customer's RUS mortgage.

9.8 Performance Assurance. "Performance Assurance" shall mean one of the following: (a) as to either Party, an unconditional and irrevocable Letter of Credit or a cash deposit equal to the amount that the Parties estimate that the Customer would owe to the Company for the three months of the calendar year in which the Customer's bills are expected to be the highest; or (b) as to the Customer, advance payment for each month's service based on the Company's estimate of the amount that the Customer will owe for that month, paid not less than five (5) days prior to the beginning of the month, and trued up at the time of the second succeeding month's advance payment to reflect the actual amount the Customer owes. The Company shall pay interest on any prepayments made pursuant to this Section 9.8(b) at the rates established pursuant to 18 C.F.R. §35.19a(a)(2)(iii).

9.9 Failure to Maintain Acceptable Creditworthiness. If either Party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, such Party shall notify the other Party within five (5) Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards described herein. Upon receipt of such notice, the other Party may give written notice ("Assurance Notice") demanding that the affected Party provide Performance Assurance to the other Party within thirty (30) Business Days of the date of receipt of the Assurance Notice.

9.10 Failure to Provide Performance Assurance. If the affected Party under Section 9.9 fails to provide Performance Assurance as described herein, the non-affected Party may suspend performance hereunder to the affected Party, provided that the non-affected Party notifies the affected Party in writing of its intent to suspend performance at least thirty (30) days prior to the date on which performance is to be suspended. The non-affected Party's right to suspend performance hereunder shall be in addition to its right to take action for default pursuant to Section 12 hereof.

SECTION 10 - CONTINUITY OF SERVICE

10.1 The Company shall exercise due care and diligence to supply electric capacity and Corresponding Energy hereunder free from interruption; provided, however, the Company shall not be responsible for any failure to supply electric capacity and Corresponding Energy, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage results from an event of Force Majeure. Each Party shall promptly notify the other Party of any applicable communication equipment failure or signal problem. The Parties shall work together to avoid any interruption of service upon a failure of electronic transmittal of a schedule.

SECTION 11 - REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties.

(a) As a material inducement to enter into this Agreement, each Party represents and warrants to the other Party that as of the Effective Date of the Agreement, subject to the conditions precedent provided for in Section 3.2:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) subject to subsection (ii) above, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

EXCEPT AS PROVIDED HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY

IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 12 - DEFAULT

12.1 Default. Each of the following shall be an "Event of Default" under this Agreement:

(a) The failure of either Party to make any payment to the other Party as required by this Agreement within thirty (30) days of the date when such payment became due and payable.

(b) The failure by either Party to perform any obligation to the other Party under this Agreement, other than the obligations described in Sections 12.1(a) and (g) herein.

(c) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than the Company's or the Customer's mortgagee, as the case may be.

(d) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any part or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) days.

(e) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against any Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(f) Any representation or warranty made by the defaulting Party in the Agreement shall prove to have been false in any material respect when made.

(g) The failure of a Party to provide Performance Assurance as required by Section 9.9.

12.2 Cure Period for Certain Events of Default. When an Event of Default occurs under Section 12.1(b), the non-defaulting Party will give the defaulting Party written notice of the Event of Default and an opportunity to remedy the Event of Default. If the Event of Default shall not have been fully cured within thirty (30) days from the date of the notice or other mutually agreed upon time, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement and to

the claim, suit or action) by the Party claiming the indemnity. Each indemnifying Party shall also reimburse the other Party for any reasonable expenses and attorney's fees incurred by such Party as a result of the Party's failure to comply with this provision.

16.3 Other Indemnification. In addition to the provisions of Section 16.2, each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, trustees, affiliates, agents, members, employees, contractors, and subcontractors from and against any Claims arising in any manner directly or indirectly connected with or growing out of, the operation of its own facilities, except to the extent such Claims are the result of the other Party's, its agents', servants', or employees' negligence or willful misconduct, or the failure to perform and/or comply with any material provisions of this Agreement. Claims shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting liabilities, including, but not limited to, losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement. This Section 16.3 shall not be applicable to any Claims arising directly or indirectly from or out of any event, circumstance, act or incident associated with the Transmission Provider's obligations to deliver power and other services under the OATT to the Customer or under any other agreement for transmission-related services between the Transmission Provider and Customer.

SECTION 17 - FORCE MAJEURE

17.1 Force Majeure. Neither Party shall be in breach of this Agreement for failure to perform its obligations hereunder if such failure is the result of a Force Majeure Event. A "Force Majeure Event" under this Agreement shall mean an event, occurrence, or circumstance beyond the reasonable control of, and without the fault or negligence, of the Party claiming Force Majeure, including but not limited to, acts of God, labor disputes (including strikes), acts of public enemies, orders or absence of necessary orders and permits of any kind that affect performance hereunder and which have been properly applied for, from the Government of the United States or from any State or Territory, or any of their departments, agencies or officials, or from any civil or military authority, extraordinary delay in transportation, lightning, epidemics, earthquake, fires, hurricanes, tornadoes, storms, floods, washouts, drought, war, civil disturbances, explosions, sabotage, injunction, blight, famine, blockade, quarantine; breakage of machinery or equipment; or any other similar cause or event which is beyond the claiming Party's reasonable control and which, wholly or in part, prevents the Party claiming Force Majeure from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. Notwithstanding the above, the Company may not use this Force Majeure provision to interrupt or curtail service under this Agreement unless (a) Company has already interrupted all of its non-Firm Native Load; and (b) it is at the same time interrupting or curtailing its Firm Native Load, so that the service hereunder is equivalent thereto, as provided for in this Agreement.

17.2 Mitigation. A Party suffering an occurrence of Force Majeure shall remedy with all reasonable dispatch the cause or causes preventing such Party from carrying out its duties

and obligations as required in this Agreement; provided, that the settlement of strikes, lockouts, or other industrial disturbances affecting a Party's facilities shall be entirely within the discretion of the Party, and it shall not be required to make settlement of strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of such Party.

SECTION 18 - MISCELLANEOUS

18.1 Curtailment and Interruption. Whenever the integrity of the Company's system or the supply of the electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, the Company may in conformance with Prudent Electric Utility Practice and its obligations under this Agreement and with the application of standards no more interruptive than service to its other Firm Native Load customers, curtail or interrupt electric capacity or energy deliveries hereunder or reduce voltage for such deliveries to some or all of the service to Customer and such curtailment, interruption or reduction in and of itself shall not constitute negligence by the Company and absent negligence or willful misconduct the Company shall not be liable for such curtailment, interruption or reduction in service under this Agreement.

18.2 Governing Law. This Agreement is made under and shall be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.

18.3 Dispute Resolution. Except as provided in Sections 14.1 and 15, the dispute resolution procedures set forth in this Section 18.3 shall govern the resolution of any dispute, controversy or claim arising out of, under, or relating to this Agreement (a "Dispute") unless mutually agreed to by the Parties. The Parties agree to first negotiate in good faith to attempt to resolve any Dispute that arises under this Agreement. In the event that the Parties are unsuccessful in resolving a Dispute through such negotiations, the controversy may be submitted to binding arbitration as provided below.

(a) Good-Faith Negotiations. The process of "good-faith negotiations" requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to agree on a mutually agreeable resolution of the Dispute. Upon request, each Party shall promptly make available to the other such information, including existing studies and raw data, to the extent related to the Dispute. The related information to be made available must include both studies and raw data that support the position advocated and existing studies and raw data that are related to, but do not support, the position advocated. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such

(c) Confidentiality and Non-Admissibility of Statements Made in, and Evidence Specifically Prepared for, Good Faith Negotiations and Binding Arbitration. Each Party hereby agrees that all statements made in the course of good faith negotiations, as contemplated in Section 18.3(a), and in binding arbitration, as contemplated in Section 18.3(B), shall be confidential, and shall not be disclosed to or shared with any third parties (other than the arbitrator, potential arbitrators or any other person whose presence is necessary to facilitate the negotiation and/or binding arbitration process). Furthermore, each Party agrees that any documents or data specifically prepared for use in good faith negotiations and/or binding arbitration shall not be disclosed to any third party, except those parties whose presence is necessary to facilitate the binding arbitration process. Each Party agrees and acknowledges that no statements made in or evidence specifically prepared for good faith negotiations, under Section 18.3(a) shall be admissible for any purpose in any subsequent binding arbitration.

18.4 No Amendments Without Consent. Except as otherwise provided herein, this Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by an authorized representative of each Party.

18.5 Assignment.

(a) Except as provided herein, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any assignment of this Agreement in violation of this Section shall be, at the option of the non-Assigning Party, void.

(b) Either Party ("the "Assigning Party") may, without the consent of the other Party:

(i) transfer or assign this Agreement to an affiliate of the Assigning Party which affiliate's creditworthiness is equal to or higher than that of the Assigning Party based either on Standard and Poor's or Moody's ratings or, if the affiliate does not have such a rating, on credit assurances reasonably acceptable to the non-Assigning Party, provided that such affiliate is financially and operationally capable, including maintaining the same level of reliability and delivering capacity and energy at the same monthly charges as the Customer would have received had the assignment not been made, of performing its obligations under this Agreement; or

(ii) transfer or assign its rights and obligations under this Agreement to any person or entity (the Assignee) succeeding to all or substantially all of the Assigning Party's assets, provided that the Assignee's creditworthiness is equal to or higher than that of the Assigning Party and it is financially and operationally capable of performing its obligations under this Agreement.

(c) An assignment or transfer pursuant to this Section 18.5 may be made only if:

(i) any required regulatory approvals that may be required are obtained in connection with such transfer or assignment;

(ii) the Assignee agrees in writing to be bound by the terms and conditions of this Agreement; the Assignee has Acceptable Creditworthiness as defined in Section 9.7 or provides Performance Assurance pursuant to Section 9.8; and the Assignee is financially and operationally capable of performing its obligations under this Agreement; and

(iii) the non-Assigning Party is not obligated to perform its obligations hereunder in favor of the Assignee to the extent the Assignee shall not perform the obligations of the Assigning Party.

(d) If either Party terminates its existence as a corporate entity by merger, acquisition, sale, consolidation or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with this Section 18.5, the other Party shall have the right, enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights, and obligations.

(e) Notwithstanding the foregoing, the Customer's interest in this Agreement may be assigned, transferred, mortgaged or pledged by Customer without Company's consent for the purpose of creating a security interest for the benefit of the United States of America, acting through RUS (and thereafter the RUS, without the approval of Company or its Lenders, may cause the RUS's interest in this Agreement to be sold, assigned transferred or otherwise disposed of to a third party).

18.6 Successors. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives, including any entity with which or into which a Party may be merged or which may succeed to the assets or business of a Party.

18.7 Title. Title to and risk of loss related to the energy sold hereunder shall transfer from Company to Customer at the Point(s) of Receipt. Company warrants that it will deliver capacity and Corresponding Energy hereunder free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point(s) of Receipt.

18.8 Agency. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Company and the Customer.

18.9 Headings. Section Headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

18.10 Contract Construction. For purposes of construing this Agreement, it is agreed and understood that both Parties are equally responsible for drafting same.

DWG-2

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HARRY O. THOMAS
DAVID A. YON

January 14, 2008

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Direct 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 Direct 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.

Sincerely,

Lisa C. Scoles

Lisa C. Scoles

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Direct Testimony of David W. Gammon, on behalf of Progress Energy Florida, Inc. was served by U.S. mail or hand delivery this 14th day of January 2008, to the following:

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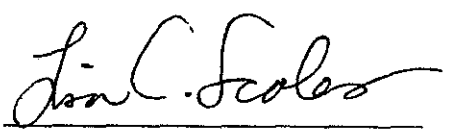

Lisa C. Scoles

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: January 14, 2008

DIRECT TESTIMONY OF DAVID W. GAMMON

ON BEHALF OF
PROGRESS ENERGY FLORIDA, INC.

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I. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

A. David W. Gammon, P.O. Box 14042, St. Petersburg, Florida 33733.

Q. By whom are you employed and in what capacity?

A. I am employed by Progress Energy Florida, Inc. ("PEF" or "the Company") as a Senior Power Delivery Specialist.

Q. What are your job responsibilities?

A. I am currently employed as a Senior Power Delivery Specialist for PEF. This position has responsibility for all cogeneration contracts and renewable energy contracts. In this position, I have responsibility for all of PEF's Qualifying Facility ("QF") power purchases, including the development of Standard Offer Contracts. My responsibilities further include administering all long-term QF contracts, negotiating extensions, resolving disputes, and administering payments to cogeneration and renewable suppliers.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science in Engineering degree from the University of Central Florida in 1980 and a Master of Business Administration from the University of South Florida in 2001. I am a registered Professional Engineer in the State of Florida.

My employment with Progress Energy Florida/Florida Power Corporation has been related to QF purchases since 1991. Prior to this position, I have had other

positions at Florida Power Corporation including Project Engineer in Energy Management Resources and Project Engineer in Relay Design. My employment with Florida Power Corporation began in 1977.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the structure and history of PEF's Standard Offer Contracts for QF and Renewable Energy Producers ("Renewables"). I also explain why certain terms and conditions are included in PEF's current Standard Offer Contract.

Q. Please summarize your testimony.

A. PEF is required by law to have a Standard Offer Contract available for QFs and Renewables. A QF or a Renewable can accept PEF's Standard Offer Contract without any negotiation, and PEF is compelled to abide by the terms and conditions of that contract for any and all counterparties who wish to agree to sell power under it. While almost all QFs and Renewables elect to enter into a negotiated power purchase contract with PEF instead of utilizing PEF's Standard Offer Contract, the Standard Offer Contract provides a comprehensive baseline of acceptable terms and conditions for energy providers to use in their negotiations with PEF, and PEF has had excellent success in obtaining power purchase agreements with QFs and Renewables by using its Standard Offer Contract as a "first draft" against which negotiated contracts are developed.

As of late, PEF has made a number of changes to its Standard Offer Contract in order to comply with recent rule changes and to incorporate feedback that PEF has received from QFs and Renewables. By making these changes, PEF has developed a Standard Offer Contract that both promotes Renewables to engage into negotiations with PEF and that strikes a balance between the interests of PEF and its customers and such energy producers.

Q. Are you sponsoring your testimony with any exhibits?

A. No.

II. STANDARD OFFER CONTRACTS, RULES AND TARIFFS

Q. Please briefly give an explanation of what a Standard Offer Contract is and the history of the development of Standard Offer Contracts.

A. Standard Offer Contracts were developed pursuant to the Public Utility Regulatory Policy Act ("PURPA"), which was passed by Congress in 1978. Utilities in Florida have had Standard Offer Contracts approved by the Florida Public Service Commission ("FPSC" or "Commission") in effect since 1984, offering the same contract terms to any and all suppliers, although different terms can be developed through negotiation.

Because the Standard Offer Contract is offered to all renewable suppliers, its terms must be broad enough to cover all possible circumstances. The particular contractual needs of a specific type of supplier, such as a solar supplier, may be different than the contractual needs of another supplier, such as a biomass facility, but

the Standard Offer Contract must be available to all suppliers regardless of the resource used. The fact that different types of suppliers may benefit from different terms is the reason that the terms and conditions in a Standard Offer Contract have to be broad-based and comprehensive.

Q. Can you also provide a brief history of the development of the rules governing Standard Offer Contracts for Renewable Generation?

A. The rules regarding Standard Offer Contracts have been in place since 1984. As the rules have evolved and changed over time, the Commission has given careful consideration to the development of contractual terms to balance the needs of suppliers and utility customers. Accordingly, the rules have been amended several times. Most recently, the Standard Offer Contract rules were amended in 2006 to specifically address renewable energy generation. All of the rule changes were made according to the rulemaking procedures in place at the time, and comments from all interested parties were solicited, heard and thoughtfully evaluated by the Commission.

Q. You mentioned a rule change in 2006 regarding renewable energy. What particular aspects of the Commission's rules promote renewable generation?

A. There are numerous provisions of the Commission's rules that promote renewable generation. They include:

- Removing the previous cap limiting Renewables to 80 MW or less.

- Requiring updated Standard Offer Contracts be filed by each utility each year by April 1.
- Requiring a separate Standard Offer Contract for each technology type identified in the utility's Ten Year Site Plan ("TYSP").
- Requiring that a Standard Offer Contract be continuously available to Renewables.
- Providing the Renewable the option to choose the term of the Standard Offer Contract between ten years and the economic life of the avoided unit.
- Allowing a portion of the energy payment under a Standard Offer Contract to be fixed.
- Removing subscription limits in the Standard Offer Contract.
- Requiring a provision in the Standard Offer Contract to reopen the contract in the event of changes in environmental and governmental regulations.
- Requiring that Renewable Energy Credits ("RECs") remain the exclusive property of the Renewable.
- Requiring prior approval by the Commission before equity adjustments for imputed debt can be made to a utility's avoided cost.
- Providing for dispute resolution between a Renewable and a utility.

Q. What changes did PEF make in its tariff to comply with the FPSC's 2006 rule revisions?

A. In order to comply with the rule changes and in response to comments received during recent contract negotiations with Renewables, numerous changes were made

to PEF's Standard Offer Contract. PEF's Standard Offer Contract now includes the following:

- The Standard Offer Contract is based on the next avoidable fossil fueled generating unit identified in PEF's TYSP, as required by Rule 25-17.250(1), F.A.C., which is the 2013 combined cycle unit.

- The Standard Offer Contract is available to both Renewables and QFs less than 100 kW, as provided by Rule 25-17.250(1), F.A.C.

- The Standard Offer Contract is offered on a continuous basis, as required by Section 366.91, F.S., and Rule 25-17.250(2), F.A.C.

- The Standard Offer Contract allows a Renewable or QF to choose any contract term from 10 years up to 25 years, which is the projected life of the avoided unit, as required by Section 366.91, F.S., and Rule 25-17.250(3), F.A.C.

- The Standard Offer Contract includes normal payments, early payments, levelized payments, and early levelized payments, as required by Rule 25-17.250(4) and (6), F.A.C.

- The Standard Offer Contract contains no preset subscription limits for the purchase of capacity and energy from Renewables, as required by Rule 25-17.260, F.A.C.

- The Standard Offer Contract contains a provision to reopen the contract based on changes resulting from new environmental or regulatory requirements that affect the utility's full avoided costs of the unit on which the contract is based, as required by Rule 25-17.270, F.A.C.

- The maximum number of capacity tests specified in the Standard Offer Contract is reduced from six times per year to two times per year.

Q. Other than the changes listed above, is the Standard Offer Contract substantially the same as previously-approved versions?

A. Yes. Although there were other changes made to PEF's Standard Offer Contract, in addition to those described above, including grammatical changes, capitalization of defined terms, renumbering of sections, and the like, the bulk of the Standard Offer Contract has remained unchanged since it was last reviewed and approved by the Commission in 2003.

Q. One of the requirements of Rule 25-17.250, F.A.C., is that the utility make separate Standard Offer Contracts available for each type fossil-fueled generating unit in that utility's TYSP. Has PEF done that?

A. Yes. PEF's 2007 TYSP contained five proposed generating units. Of those five units, Hines Energy Complex Unit #4 and the Bartow Repowering were already under construction, making them ineligible for a Standard Offer Contract. Another proposed generating unit is a nuclear facility, and it is also ineligible for a Standard Offer Contract. The remaining eligible generating units were a 2013 combined cycle unit and a 2014 combined cycle unit. In compliance with Commission rule, PEF's current Standard Offer Contract is based on the 2013 combined cycle unit.

Q. Has the FPSC approved PEF's TYSP on which the Standard Offer Contracts in this case are based?

A. Yes. PEF's TYSP was approved by the Commission on December 17, 2007.

III. SPECIFIC PROVISIONS OF THE STANDARD OFFER CONTRACT

A. Payments

Q. How are "avoided costs" derived for both energy and capacity payments in PEF's Standard Offer Contract?

A. The "avoided costs" for capacity are calculated using the data from the TYSP and in accordance with the formula in Rule 25-17.0832(6), F.A.C. The formula in Rule 25-17.0832(6), F.A.C., utilizes the value of deferral method to determine the capacity cost. Simply stated, the value of deferral method determines the savings produced by deferring the construction of generation.

The avoided energy cost is determined in accordance with Rule 25-17.0832(5), F.A.C., which states that the avoided energy cost is determined using the heat rate of the avoided unit when the avoided unit would have operated; and, when the avoided unit would not have operated, the avoided energy cost is equal to the as-available rate. For purposes of the Standard Offer Contract, it is assumed that the avoided unit would operate in any hour when the as-available rate is greater than the energy cost calculated using the heat rate of the avoided unit. Therefore, the energy payment rate is determined hourly by comparing the as-available rate to the energy cost using the avoided unit heat rate and then using the lower of those two values. This methodology to determine the hourly rate has been used in Standard Offer Contracts for a number of years.

The as-available energy cost is PEF's marginal cost of energy before the sale of interchange energy and is calculated in accordance with Rule 25-17.0825, F.A.C., and PEF's Rate Schedule COG-1.

Q. Does PEF's Standard Offer Contract include a provision requiring a renewable energy generator to maintain a 71% or greater capacity factor in order to qualify for a capacity payment and a 91% capacity factor or greater in order to qualify for the full capacity payment?

A. Yes.

Q. Why is it appropriate to require a renewable generator to maintain a 91% or greater capacity factor to qualify for the full capacity payment?

A. It is appropriate to require a Renewable to maintain a 91% capacity factor to qualify for the full capacity payment because 91% is the projected availability of the avoided unit. Under the Standard Offer Contract, the supplier has the right to deliver to PEF whenever it chooses. To ensure that PEF's customers receive the capacity that they are paying for and have contracted to receive, the Standard Offer Contract must require the supplier to deliver to PEF at the same capacity factor during the on-peak hours (91%) that the avoided unit would deliver. Said another way, the Standard Offer Contract requires the supplier to be available 91% of the on-peak hours.

Q. Why is the specified capacity factor included in PEF's Standard Offer Contract?

A. The specified capacity factor ensures that PEF's customers are receiving equivalent capacity compared to the avoided unit and are therefore receiving what they are paying for. In addition, the specified capacity factor ensures that PEF can count on the Standard Offer Contract to meet its capacity and reserve margin requirements.

B. Right of Inspection

Q. PEF's Standard Offer Contract includes a provision granting PEF a right to inspect a renewable generator's facility and books. Why is this provision included?

A. A right to inspection provision is included because it assures PEF has the ability to inspect a facility and/or its books to determine a supplier's compliance with the terms of the Standard Offer Contract, if PEF has reason to believe that the supplier may not be complying with the contract. For instance, if a renewable supplier has contracted to use biomass as its fuel to qualify as a renewable generator, but PEF has reason to believe that it may be using only natural gas, then an inspection and/or review of the facility and its books would verify the type of fuel that was being consumed. The intention of this provision is not for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, but for PEF to have the ability to inspect when necessary. This has been a requirement in previous versions of PEF's approved Standard Offer Contract.

C. Conditions Precedent

Q. Does PEF's Standard Offer Contract include a provision outlining conditions precedent for a renewable energy generator to meet?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. A provision regarding conditions precedent is included in the Standard Offer Contract to provide protection to PEF's customers. Most facilities that enter into a QF or renewable contract with PEF are new facilities. The conditions precedent section provides milestones that the supplier must meet to ensure that the project continues to move forward and that the facility will be on-line when expected. In other words, the conditions precedent section gives PEF assurances that a project will stay on course for successful completion, and it gives PEF advance notice that it may need to make other plans to secure replacement capacity to meet customer demand if a counterparty cannot comply with those conditions.

D. Renewable Energy Credits

Q. Does PEF's Standard Offer Contract include a provision specifying that PEF has the right of first refusal to purchase any RECs?

A. Yes, as have previous versions of PEF's approved Standard Offer Contract.

Q. Could a renewable generator negotiate a different arrangement regarding RECs?

A. Yes. As with most provisions of the Standard Offer Contract, the supplier has the right to negotiate different terms than those contained in the Standard Offer Contract. PEF has done so a number of times, most recently in its contracts with the Florida Biomass Group and Biomass Gas and Electric.

E. Use of Interruptible Standby Service for Start-up

Q. PEF's Standard Offer Contract includes a provision restricting the use of a renewable energy generator's ability to use interruptible stand-by service tariffs. Why is this provision included?

A. This provision is part of PEF's Standard Offer Contract to ensure that the supplier's generation is available when it is needed most. If the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. The standby service purchased must be firm stand-by service to assure there is power available to start the unit. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

F. Committed Capacity Test Results

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy generator demonstrate that it can deliver at least 100% of Committed Capacity?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. This provision is included simply to ensure that PEF's customers receive the capacity that they have contracted to purchase. If a contract is for 100 MW, but the facility can only reliably deliver 90 MW, then PEF's customers are being short-changed. This provision has been included in previously-approved versions of PEF's Standard Offer Contract.

G. Test Period

Q. Does PEF's Standard Offer Contract include a provision setting the test period to establish a facility's capacity?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included to ensure that PEF's customers receive all the capacity that they have contracted to purchase. Under the provisions of the Standard Offer Contract, the supplier selects a time when it will perform a Committed Capacity Test. During that period, the supplier is to run the facility consistent with industry standards without exceeding its design parameters, and supplying the normal station service load. The capacity of the facility is the minimum hourly net output of the facility. Although this has been a requirement in previously-approved versions of PEF's Standard Offer Contract, as I have previously explained, PEF has lowered the number of tests PEF can request in a year from six to two, in response to suggestions from Renewables.

H. Detailed Annual Plan

Q. PEF's Standard Offer Contract includes a provision requiring that a renewable energy facility prepare a detailed plan of the electricity to be generated and delivered to PEF. Why is this provision included?

A. The Standard Offer Contract requires the supplier to provide an estimate of its deliveries to PEF. These estimates are required so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

I. Total Electrical Output

Q. PEF's Standard Offer Contract includes a provision requiring a renewable energy facility to provide its "total electrical output" to PEF. Why is this provision included?

A. In the event the supplier is selling its output to PEF and another party, contract provisions to accommodate partial deliveries to both parties would need to be negotiated. These types of negotiations are unique to each facility, exist with multiple purchasers, and are outside of the scope of the Standard Offer Contract. Such provisions would be handled through a negotiated contract. This provision requiring "total electric output" has been included in previously-approved versions of PEF's Standard Offer Contract.

J. Operating Personnel

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy facility have operating personnel on duty 24 hours a day, seven days a week?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. The Standard Offer Contract is a firm contract, so the facility needs to have operating personnel on duty 24 hours a day, seven days a week to comply with the requests of PEF's generation dispatcher. Personnel must be available to respond to requests to reduce output or alter the power factor to maintain system reliability. In rare cases, the unit may need to be taken off-line to prevent overloads to the transmission system, or be brought on-line, if possible, to address local or system-wide reliability issues. A similar requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

K. Three Day Fuel Supply

Q. Does PEF's Standard Offer Contract include a provision requiring a three day supply of fuel?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included because it helps to ensure that during an extreme operating event, such as a cold snap or after a natural disaster such as a hurricane, the supplier will be able to continue operating for 72 hours. Just as with other generating plants, Renewables should be required to maintain a fuel inventory to assure availability of the unit if for some reason the fuel supply is interrupted. Accordingly, this requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

Q. What if a facility does not store its fuel on site, such as wind or solar power?

A. If a facility uses a fuel that cannot be stored, such as wind, then this provision obviously would not apply. If such a facility wished to utilize PEF's Standard Offer Contract with the exception of this provision, the simple solution would be to simply delete this section and enter into an otherwise identical negotiated contract with PEF.

L. Performance Security

Q. PEF's Standard Offer Contract includes a provision setting performance security. Why is this provision included?

A. Performance securities are typically found in all firm energy and capacity contracts and have been included in approved Standard Offer Contracts for many years. They are used to help ensure that if a supplier can no longer meet its obligations under the contract, then the purchaser has funds available to cover a portion of the replacement cost of energy. The performance security typically does not cover all the costs of the replacement energy, but it does offset some of the costs that are otherwise borne by

PEF's customers. These provisions are important to appropriately shift some of the risk of default away from PEF's customers and to the party that is not meeting its obligations under a purchase power contract.

M. Termination Fee and Insurance

Q. Does PEF's Standard Offer Contract include provisions setting a termination fee and requiring insurance?

A. Yes.

Q. Why are these provisions included in PEF's Standard Offer Contract?

A. Both of these provisions are required by Commission rule. The termination fee is required by Rule 25-17.0832(4)(e)10, F.A.C. The termination fee is designed to ensure the repayment of capacity payments to the extent that the capacity payments made to the supplier exceed the capacity that has been delivered. For example, early capacity payments, as defined in applicable rules, are capacity payments made before the in-service date of the avoided unit. In this example, those payments made before the avoided unit's in-service date must be secured to ensure that if the supplier does not operate for the term of the contract, PEF's customers are refunded the payments for the capacity that they did not receive. A termination fee has always been a part of the Standard Offer Contract. The insurance provision is required by Rule 25-17.087(5)(c), F.A.C., and helps to protect the utility and its customers from liability claims resulting from the operations of the supplier.

N. Default

Q. PEF's Standard Offer Contract includes a provision listing events of default. Can you explain the purpose of this provision?

A. Like all contracts for capacity and energy, the Standard Offer Contract contains a listing of events of default so that the parties know the circumstances under which the contract can be terminated for non-performance. These provisions are basic to any purchase power contract that I have ever seen and have been a requirement in previously-approved versions of PEF's Standard Offer Contract.

O. *Force Majeure*

Q. Does PEF's Standard Offer Contract include a provision setting forth *force majeure* terms?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. *Force Majeure* sections have always been included in PEF's Standard Offer Contracts and every other power purchase agreement that I have seen. These provisions define the responsibilities of the parties in the event that something outside the control of the parties makes one party unable to perform its obligations under the contract. The *force majeure* language is designed to limit damages for such an event outside the control of the parties but also to limit the financial exposure of PEF's customers.

P. Representations and Warranties

Q. Does PEF's Standard Offer Contract include a provision requiring the renewable energy generator make representations, warranties or covenants?

A. Yes.

Q. Why is this provision a part of PEF's Standard Offer Contract?

A. This provision is a standard contract term that helps ensure that the supplier entering into the Standard Offer Contract can do so legally, is responsible for its compliance with environmental laws, has any governmental approvals required, and so forth. These kinds of provisions have been contained in previously-approved versions of PEF's Standard Offer Contract.

Q. Assignment

Q. PEF's Standard Offer Contract includes a provision prohibiting assignment without approval from PEF. Why is this provision included?

A. A provision prohibiting assignment without approval is included because it is not uncommon for a contract to be sold and assigned, possibly numerous times. The requirement for PEF's approval of any such assignments ensures that PEF can assess the purchasing party's ability to perform under the contract. This, of course, allows PEF to mitigate some degree of risk that would otherwise be borne by its customers. This provision has been a part of previously-approved versions of PEF's Standard Offer Contract.

R. Record Retention

Q. Does PEF's Standard Offer Contract include a provision specifying that the renewable energy facility must retain its performance records for five years?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included so that in the event that a dispute arises regarding the operation of the supplier, the supplier's records will be available for five years. PEF retains these records for a minimum of five years as well. Record retention has been a requirement in previously-approved versions of PEF's Standard Offer Contract and has allowed PEF to successfully resolve would-be disputes with counterparties in the past.

IV. FINANCING

Q. Does PEF's Standard Offer Contract permit the financing of renewable energy projects?

A. Yes. Most renewable energy projects require financing, and PEF's current Standard Offer Contract does more than ever to help projects obtain financing. Typically, the issue with financing is the certainty of the payment stream to the power generator. To address this issue, the capacity payments in the current Standard Offer Contract can be front-end loaded to help with financing and a portion of the energy payment can be fixed as well.

Q. Have any generators signed a Standard Offer Contract with PEF in the past two years?

A. No, but this is not surprising. Given the fact that power producers almost always have unique projects, circumstances, and needs, some modifications, even if minor in nature, usually have to be made to PEF's Standard Offer Contract, which will result in a negotiated contract.

Q. Have any generators signed significant negotiated contracts with PEF in the past two years?

A. Yes. In 2006, PEF entered into a negotiated contract for 116.6 MW with the Florida Biomass Energy Group LLC and in 2007 PEF entered into two negotiated contracts with Biomass Gas & Electric for 75 MW each. These contracts show that while PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, negotiated contracts best address the unique concerns of renewable suppliers. Thus, the combination of PEF's Standard Offer Contract and the ability for energy producers to negotiate contracts against that Standard Offer Contract advances and promotes the use of renewable energy in PEF's service territory.

V. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

DWG-3

BRICKFIELD BURCHETTE
RITTS & STONE, PC

WASHINGTON, D.C.
AUSTIN, TEXAS

February 15, 2008

VIA FEDERAL EXPRESS

Ann Cole
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Case No. 070235-EQ, 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.

Dear Ms. Cole:

Enclosed please find for filing in the above-referenced case an original and fifteen (15) copies of the *Direct Testimony of Martin J. Marz on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs.*

Copies have also 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.

If you have any questions, please give me a call.

Very truly yours,

James W. Brew
F. Alvin Taylor
Attorneys for
PCS Phosphate – White Springs

CMP
COM 5
CTR 1
ECR
GCL 2
OPC
RCA
SCR
SGA
SEC
OTH

Enclosures: a/s

Cc: Active Parties

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Direct Testimony of Martin J. Marz, on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs, was served by U.S. mail this 15th day of February, 2008, to the following:

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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: February 18, 2008

DIRECT TESTIMONY OF MARTIN J. MARZ

J. POLLOCK

ON BEHALF OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS

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1. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

A. Martin J. Marz; 1525 Lakeville Drive, Suite 217, Kingwood, Texas 77345.

Q. What is your occupation and by who are you employed?

A. I am an Energy Advisor and Senior Consultant for J. Pollock Incorporated.

Q. What is your educational background?

A. I have a Bachelor of Arts in Political Science from the University of Akron, and a *Juris Doctor* from the University of Akron School of Law.

Q. Please describe your professional experience.

A. During my 27 years of experience in the energy industry, I have represented marketers and producers (both in gas and electric matters), pipelines, local distribution companies, and state regulatory agencies in contractual and regulatory matters. During my years in the industry, I have been involved in every major regulatory change that has occurred in the natural gas industry, beginning with Order No. 436 and its progeny and extending through Order No. 636.

Before joining J. Pollock Incorporated in July 2007, I was employed by BP in Houston, Texas, where I worked for the natural gas and power trading and marketing operations as Senior Attorney, as a Trade Regulation Manager (compliance) and as a Director of State Regulatory Affairs. In my legal capacity, I was responsible for, and engaged in, the negotiation of numerous power and gas purchase and sales contracts, including financial agreements, and even producer agreements. Similarly prior to joining BP, I had been involved in contract

negotiations and drafting on behalf of energy marketers, pipelines and distribution companies.

Prior to BP, I was a member of the Staff of the Public Utilities Commission of Ohio (PUCO), participating in rate and regulatory matters before the PUCO as well as proceedings before the Ohio Supreme Court and the FERC. Prior to joining the PUCO Staff, I worked for the Ohio Office of Consumer's Counsel on cost of service, cost of equity and rate design matters involving gas local distribution companies, electric utilities, and pipeline companies.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate). PCS Phosphate is a manufacturer of fertilizer products with plants and operations in or near White Springs, Florida that are located in Progress Energy Florida's (PEF) electric service area. PCS Phosphate uses waste heat recovered from the manufacture of sulfuric acid to cogenerate electricity.

Q. What is the purpose of your testimony?

A. I was asked to review the PEF Standard Offer Contract for Renewable Energy Producers or Qualifying Facilities less than 100 KW. Based on that review, and consistent with the existing administrative rules, I am recommending changes to the contract in order to further the State of Florida's objective to encourage renewable energy generation. My testimony is not intended to provide an exhaustive review of each and every element of PEF's Standard Offer Contract,

but does provide an assessment of the most serious issues presented by the Standard Offer Contract.

2. SUMMARY

Q. Please summarize your conclusions and recommendations.

A. Florida has enacted a state policy to promote the development of renewable energy sources. Utility standard offer contracts are the basic vehicle for facilitating that development. The State's program aims to allow a renewable energy producer either to accept a standard offer contract or negotiate a project specific contract that satisfies the requirements of the Commission's rules. Both options should be viable choices. The problem is that PEF's Standard Offer Contract is not designed to be acceptable to any renewable energy producer. As I explain, the PEF contract contains provisions that are unreasonable, overly one-sided, not consistent with reasonable commercial practice, and are overly complex. Additionally, certain of the price terms require a level of performance well in excess of that achieved by PEF's existing combined cycle generating facilities and actually serve as a barrier to renewable energy development.

PEF maintains that it intends its Standard Offer Contract to be the starting point for negotiating a project specific arrangement. This approach, however, both defeats the basic purpose of a standard offer contract and forces an extended and unwarranted negotiation over the removal or modification of the one-sided standard offer terms and conditions. My testimony recommends basic revisions that are required for the Standard Offer Contract to serve its intended purpose.

These recommendations do not unduly burden PEF as they are consistent with standard industry practice and PEF's own practice in a non-standard offer context.

Q. Please summarize your conclusions and recommendations.

A. My conclusions and recommendations are as follows:

Price Terms

1. The required performance capacity factor of 71% (Section 4) is inconsistent with the avoided unit (estimated capacity factor of 62.9%) and with the operation of PEF's existing combined cycle units (which operate at a capacity factor of approximately 50%);
2. The proposed Availability Factor (Section 4) is mis-specified because it would require the renewable energy producer[1] to achieve a minimum 91% annual capacity factor rather than require the renewable energy producer to make capacity available 91% of the time to obtain a capacity payment.
3. As proposed by PEF, in order to receive the full capacity payment, a renewable energy producer must satisfy a 91% capacity factor, not just the minimum capacity factor of 71%. The 91% capacity factor is excessively high.
4. A renewable energy producer should be entitled to a full capacity payment if it is available for generation in a manner consistent with PEF's own units and achieves the same annual capacity factor as the avoided unit would have.

[1] I will refer to both renewable energy resources and small qualifying facilities of less than 100 Kw as renewable energy producers.

Non-price Terms

1. The imposition of a Right of First Refusal (ROFR) that PEF demands for Renewable Energy Credits owned by a renewable producer is not justified.
2. Capacity Testing –
   i. These provisions appear to be predicated upon a combined cycle unit, and ignore the distinctive features and requirements of most renewable energy producer facilities;
   ii. PEF should be required to provide written notice of the requested test, and to pay for test energy delivered during the test.
3. Creditworthiness Provisions –
   i. These provisions are one-sided and are not consistent with established commercial practice and thus must be revised to provide protection to both parties in the transaction.
   ii. The collateral requirements are onerous and do not appropriately reflect default risk for both parties.
4. PEF's inspection of the generation elements of a renewable energy producer should be subject to reasonable notice and a normal business hours requirement.
5. The default provisions of the Standard Offer Contract are one-sided and do not provide reciprocal rights to claim an event of default for such matters as non-payment, breach of representations and

warranties, failure to comply with obligations under the terms of the contract and creditworthiness.

6. A renewable energy producer should be provided a corresponding opportunity to examine the books and records of the buyer (who will be handling billing and payment). Also, PEF's inspection of books and records should be subject to a reasonable notice and a normal business hours requirement.

7. The contract's assignment limitation is one-sided and is not commercially reasonable. This provision needs to be revised to permit either party to assign with approval from the other party, or, in the event of certain corporate reorganizations, without the other party's approval.

8. Representations and warranties are one-sided and not commercially reasonable. This section needs to be revised so that PEF provides standard commercial representations and warranties.

9. The conditions precedent need to be revised to more accurately reflect the timing necessary to obtain the necessary approvals and to acknowledge that certain of the items are not within control of the renewable energy producer.

10. The force majeure provisions needs to be revised to reflect a balanced commercial approach to the concept.

11. Annual plan (i.e., renewable energy performance estimates) provisions (Section 10.1) must be more must be more reasonable and flexible.

They must recognize the nature of renewable production and should be predicated upon good faith estimates of energy to be delivered.

12. The insurance provisions in Section 17 need to be removed given that the provision is tied to the construction of the Facility's interconnection and not the Facility itself. This provision is more appropriate in the interconnection agreement.

13. The maintenance scheduling provisions of Section 10.2 should be removed because they are inappropriate for renewable energy producers, which tend to be much smaller in size than utility avoided generating facilities. It is reasonable to require renewable energy producers to provide planned maintenance information, including subsequent updates as they become known, and I have added provisions to that effect in Section 10.1.

14. The requirement that a renewable energy producer take firm standby service from PEF (Section 8.2) is not justified and should be deleted.

3. REASONABLENESS OF STANDARD OFFER CONTRACT AND LIKELIHOOD THAT THE STANDARD OFFER CONTRACT WILL BE USED BY RENEWABLE PRODUCERS.

Q. Does the Standard Offer Contract serve the purpose of being an agreement that anyone is likely to enter into without serious negotiations?

A. No. PEF witness David W. Gammon testifies that the Standard Offer Contract provides a "first draft" against which negotiated contracts are developed. Gammon Testimony at 2. Having reviewed the Standard Offer Contract, I

understand fully why he makes that statement. As I discuss, the Standard Offer Contract has numerous provisions that would discourage a renewable energy producer from accepting the Standard Offer Contract. The areas that are one-sided in favor of PEF extend across many aspects of the general terms and conditions. Given the nature of the Standard Offer Contract, I would not expect any renewable energy producer to enter into the agreement on an "as is" basis. Presenting an unbalanced standard offer contract of this nature defeats the intended purpose of such a contract.

Q. What should be the purpose of a Standard Offer Contract?

A. In my estimation, a standard contract is one that sets out the general terms and conditions of the agreement in a balanced manner and permits the parties to focus on items critical to each party that may require more extensive negotiations. Prime examples of such agreements include the Edison Electric Institute Master Power Purchase and Sale Agreement ("EEI Master Agreement"), the North American Energy Standards Board Base Contract for the Sale and Purchase of Natural Gas ("NAESB Agreement") and even the International Swaps and Derivatives Association's ISDA Master Agreement ("ISDA Master") covering swaps and derivative transactions. The above all fit into the category of "standardized agreements" that are comparable in purpose to the PEF Standard Offer Contract, that is, standardized commercial agreements that are susceptible to being entered into without major negotiations and redrafts of the general terms and conditions, such as creditworthiness, default, representations and warranties, assignment and audit provisions.

Q. Were those contracts designed to serve the same purpose as a Standard Offer Contract for the purchase of electricity and capacity from renewable energy producers?

A. In many respects, yes. Those contracts were designed to make it easier for a diverse group of parties, including regulated utilities, power marketers, independent power producers, and commodities traders to enter into a number of transactions providing for the sale, purchase and delivery of electricity and natural gas under standardized terms other than price. The agreements all share a similar objective, which is to provide commercially-reasonable protection to both sides while ensuring the quick consummation of transactions on a relatively uniform basis. A Standard Offer Contract for renewable energy producers should accomplish the same objective. It should not take extensive negotiations or substantial redrafting to achieve a workable agreement.

Q. Should the PEF Standard Offer Contract be revised in a manner that makes it more amenable to a less complex negotiation and drafting process?

A. Yes, and with that objective in mind, I have reviewed the Standard Offer Contract and set forth my proposed changes that I explain below in Exhibit MJM–1, a redlined version of PEF's Standard Offer Contract, dated May 22, 2007.[2] In this exhibit, I have only corrected the provisions in the contract itself, and have not

[2] Because an editable version of the Standard Offer Contract was not available, I converted the document available on PEF's website (http://www.progress-energy.com/aboutenergy/rates/tariffctstdoffer.pdf) to an editable format. Due to the lack of preciseness in such a conversion process, some transpositions are included in my exhibit.

edited the appendices included with the contract. PEF should incorporate corresponding changes to those appendices.

4. PRICE TERMS

Q. What is the PEF avoided cost unit?

A. According to the Standard Offer Contract, the avoided unit is a natural gas combined cycle plant with a capacity of 618 MW. This unit is scheduled to enter commercial operations in 2013. However, specific details regarding this unit, such as its location, are not specified in PEF's 2007 Ten Year Site Plan.

Q. What does PEF specify as the minimum availability factor to qualify for a capacity payment in the Standard Offer Contract?

A. The minimum availability factor required to qualify for a capacity payment is 71%. *See* Standard Offer Contract Original Sheet No. 9.415.

Q. Does a renewable energy producer that achieves an availability factor of 71% receive a full capacity payment?

A. No. To receive a full monthly capacity payment, the renewable energy unit must achieve an availability rate of 91% for the month.

Q. Please discuss the availability factor described in the Standard Offer Contract.

A. The calculation of the capacity payment in the Standard Offer Contract is not predicated upon the availability rate of a facility, as it should be, but rather upon a capacity factor. Appendix A to the Standard Offer Contract establishes the manner for calculating the capacity payment. It provides that "[i]n the event that

the [Annual Capacity Billing Factor ("ACBF")] is less than 71%, then no Monthly Capacity Payment shall be due." *See* Standard Offer Contract, Original Sheet 9.442. The ACBF is derived by dividing electric energy actually received by PEF from the renewable energy producer by the sum of the Committed Capacity and the hours in the period. *See* Standard Offer Contract, Original Sheet 9.443. This is the formula for the calculation of a capacity factor, which is quite distinct from an availability factor.[3]

It appears that PEF has confused the concept of availability factor with a capacity factor. The difference between the two factors is important to renewable energy producers. An availability factor defines a unit's availability to provide energy to the system, not how or when it actually generates the energy. A unit's availability factor is the sum of the service hours plus reserve stand-by hours divided by period hours times 100. *See* North American Electric Reliability Corporation, Generation Availability Data System, GADS Data Reporting Instruction, F-9. Service hours are those hours when the unit is synchronized with the transmission system, and reserve shut down hours are those hours where the unit is available to generate but is not synchronized with the system.[4]

In contrast, a capacity factor is the product of the MWs of generation during the period divided by the committed capacity times the period hours,

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[3] GADS indicates that a Net Capacity Factor is calculated as follows:
Net Actual Generation / (Period Hours*Net Maximum Capacity) * 100.
See GADS Data Reporting Instructions, Page F-10, 1/2008.

[4] There are other methods of calculating equivalent availability factors that take into account scheduled and unscheduled deratings, some of which are for maintenance derates. *See generally*, GADS Data Reporting Instructions.

expressed as a percentage. Thus, a capacity factor addresses the actual unit usage, whereas an availability factor addresses a unit's potential to produce energy.

Q. How does the "availability factor" in the Standard Offer Contract compare to the capacity factor of the avoided unit and PEF's existing combined cycle units?

A. According to PEF's Ten Year Site Plan, the capacity factor for the avoided unit, "uncommitted #1" is 62.9%, which is less than the "availability factor" required in the Standard Offer Contract for a renewable producer to qualify for any level of a capacity payment. Moreover, PEF's existing combined cycle units, the Hines Energy Facility and the Tiger Bay Facility, only achieved a weighted average capacity factor of 49.5% in 2006. *See* Exhibit MJM–2. Similarly, for the period 2004-2006, the average PEF combined cycle capacity factor averaged slightly above 47%. *Id.* The avoided unit's estimated capacity factor and the average capacity factor for PEF's existing combined cycle plants are well below the capacity factor that PEF expects a renewable energy producer to achieve in order to qualify for a capacity payment of less than 100%. To achieve a full capacity payment, the renewable facility must achieve a capacity factor of 91%. The requirement in the Standard Offer Contract that a renewable energy producer must achieve a 91% capacity factor to receive a full capacity payment is unreasonable in light of, and inconsistent with, the capacity factor of PEF's existing combined cycle units. This imposes upon renewable energy producers a standard that PEF does not achieve in its own operations. The high capacity

factor requirement serves to discourage renewable producers from entering into a Standard Offer Contract.

Q. What is your understanding of the purpose of a capacity payment?

A. A capacity payment is simply a payment made to reserve the right to call upon a particular asset to provide the payer with service when required.

Q. How should the appropriate capacity factor be determined for purposes of making a capacity payment to a renewable energy producer?

A. A renewable energy producer should receive a capacity payment equal to 100% of the avoided cost capacity amount calculated on PEF Appendix D as long as the renewable energy producer achieves an availability factor no less than the availability factor of the avoided unit.

Payments should be based on a correctly calculated unit availability factor. If payments, however, are based upon a capacity factor, as I explain above, PEF has established the capacity factor at an unreasonable level that even its own units do not achieve. In fact, if the capacity factor that PEF proposes to apply to renewable producers was applied to PEF's own facilities, the utility would not receive a capacity payment for any of its own combined cycle generation. If this method is followed rather than basing payments on availability, I recommend that the appropriate capacity factor should be the average of PEF's existing combined cycle units over a three year period.

5. NON-PRICE TERMS

Q. When you speak of non-price terms, what do you mean?

A. My references to the "general terms and conditions" of a contract include items of general applicability such as credit protection, default, audit of billing information, representations and warranties, assignment, planning (which in a number of contacts includes nominations and scheduling) and force majeure. In addition, I also address certain items that are non-price related, but are peculiar to renewable contracts, such as the right to retain the renewable energy credits, capacity testing and insurance.

Q. Please discuss PEF's request for a Right of First Refusal of a renewable producer's Renewable Energy Attributes.

A. The Standard Offer Contract at Section 6.2 provides PEF with the right of first refusal to purchase any Renewable Energy Attributes associated with the Facility, and also limits the price that the seller may otherwise obtain in the market to a price no less than the price at PEF has purchased such credits.

Q. Does PEF witness Gammon address the renewable energy attributes and the right of first refusal in his testimony?

A. Yes. At pages 4 and 5 of his testimony, he acknowledges that the Commission's rules provide that "Renewable Energy Credits ("RECs") remain the exclusive property of the Renewable [energy producer]." Gammon Testimony at 5. At page 11 of his testimony, Mr. Gammon explains that the right of first refusal option simply is a provision that PEF has included in previous Standard Offer

Contracts. That is the sum total of PEF's justification for the ROFR provision in the Standard Offer Contract. Mr. Gammon's testimony does not attempt to justify the price floor on the sale of RECs by a renewable energy producer.

Q. Is the PEF proposal a reasonable provision that should be permitted in the Standard Offer Contract?

A. No. The provision seeks something of value to PEF (i.e., the right of first refusal for the purchase of the RECs) that is totally unrelated to PEF's avoided costs and for which PEF provides no compensation to the renewable energy producer. PEF similarly has not justified the price floor at which a renewable energy producer could sell its RECs. There is no rationale for either provision. This can only be explained by the fact that PEF, as the entity drafting the Standard Offer Contract, was free to ask for something to which it is not entitled. This provision should be deleted.

Q. Turning next to the provisions governing capacity test periods and annual capacity testing once the Facility is running, do you have any comments regarding those provisions of the agreement?

A. Yes. In this instance, the provisions (Sections 7.4 and 8.2) do not recognize that facilities that produce renewable energy are not, by definition, natural gas-fired combined cycle units. Renewable production facilities should not be required to operate the same, in all respects, as a standard gas-fired combined cycle facility. Wind, solar, biomass and facilities which rely upon waste heat produced in the manufacturing process to produce steam and electricity, like PCS Phosphate's, all have different performance characteristics. To encourage the development of the

renewable energy technologies, the Standard Offer Contract needs to establish reasonable, technology-appropriate testing requirements. In fact, PEF has recognized that capacity testing period may need to be different depending upon the facility. For example, in Exhibit M of PEF's contract with Vandolah Power Company L.L.C. (Vandolah), PEF only requires the capacity test to be run for a period of four hours, or less if agreed to by the parties. *See* Exhibit MJM–3. Thus, the twenty-four hour test period set forth in the Standard Offer Contract needs to be revised to be responsive to the needs of renewable energy producers and consistent with the flexibility PEF has exhibited with Vandolah.

Q. Have you proposed changes to the capacity testing period?

A. Yes. The proposed changes are contained in Exhibit MJM–1 at Section 8.2. The proposed provision takes into account the specific nature of the renewable resource being used to provide the energy. I have not designated a specific uniform testing time period because I am not seeking to target any one type of resource. Rather the testing procedure should be one that is amenable to different types of resources. By doing so, it makes the Standard Offer Contract more user friendly and more likely to be utilized by renewable energy producers.

Q. Do you have any other comments with regard to the annual capacity testing provisions in the Standard Offer Contract?

A. Yes. I have concerns regarding the proposed Committed Capacity Test provisions found in Section 7.4. These are also inappropriately one-sided, and do not provide for a designated notice period or payment for the energy produced during testing. The buyer should be required to provide reasonable notice of the

requested test date, and also should be required to pay for the test energy. In turn, the seller should be responsible for all other costs associated with the initial test, and permit buyer's representative to be on-site if the buyer so requests. To the extent either party requests a second test during the year, it should be at the expense of the requesting party. My proposed changes, including a ten (10) Business Day notice requirement for scheduling a test, are reflected in Section 7.4 of Exhibit MJM–1.

Q. Does the right of inspection contained within the Standard Offer Contract require revision?

A. Yes. The right of inspection contained in the Standard Offer Contract is not in any way limited. Under the terms of the Standard Offer Contract an inspection could literally occur at any time, day or night, of PEF's choosing. Limitations need to be placed upon the right to enter upon the renewable energy producer's site and inspect its facility. For example, such entry should also be upon reasonable notice. Again the proposed changes are found in Exhibit MJM–1.

Q. Why are such limitations necessary?

A. Entry of any third party personnel onto a facility such as PCS Phosphate's site raises numerous safety and liability issues. Notice must be provided so that the appropriate personnel can be available to escort the inspectors through the property to ensure adherence to all safety and other applicable on-site rules for third party visitors.

6. GENERAL TERMS AND CONDITIONS THAT ARE NORMALLY RECIPROCAL IN COMMERCIAL AGREEMENTS FOR THE PURCHASE AND SALE OF ENERGY PRODUCTS

Q. What will you be addressing in this section of your Testimony?

A. This section addresses general terms and conditions that should be reciprocal and are regularly found in standardized commercial agreements providing for the sale of energy and energy products (which would include financial and derivative products such as swaps and futures). Such items include credit and collateral requirements, default, contract assignment, representations and warranties, conditions precedent and force majeure.

Q. In reviewing the Standard Offer Contract what have you concluded with regard to the above mentioned general terms and conditions?

A. The provisions are one-sided, giving PEF a particular right without providing the renewable energy producer with the corresponding right, or imposing an obligation on the renewable energy producer without imposing a reciprocal obligation upon PEF. There are times where it is appropriate to provide one party with a right or obligation and not the other party, but in terms of the general terms of a commercial agreement, items such as credit and collateral requirements, default, assignment, representations and warranties, conditions precedent (I would note that there may be more conditions precedent applicable to one party versus the other) and force majeure should be reciprocal. The failure to include these provisions in a reciprocal format is not conducive to achieving the objective of the use of a Standard Offer Contract, nor is it commercially reasonable.

Q. Do typical energy purchase and sale agreements (power, gas and financial transactions) customarily include symmetrical provisions that address the items you have mentioned above?

A. Yes. As examples, the EEI Master Agreement, the NAESB Agreement and the ISDA Master all include provisions that address credit and collateral requirements, default, assignment, representations and warranties, conditions precedent and force majeure as they apply to both parties. Likewise, in reviewing the documents provided by PEF, its negotiated contracts also have included reciprocity with respect to the above mentioned provisions. One expects all commercial agreements for the purchase and sale of energy products (physical or financial) to include such provisions on a reciprocal basis.

Q. Are the credit provisions within the Standard Offer Contract what you would expect in a typical power purchase agreement?

A. No. Typical provisions that require each party to establish its creditworthiness are completely absent from the Standard Offer Contract. The Standard Offer Contract requires a renewable energy producer to post security upon execution of the Standard Offer Contract and maintain such security until well after completion of the renewable unit and the initial capacity test (Section 11). It also requires the renewable energy producer to provide security to cover a "termination fee" (Section 12). However, there are no provisions that require PEF to establish its creditworthiness, permit the seller to review PEF's credit status or permit the seller to request collateral if PEF's creditworthiness is not, or falls below, investment grade.

Q. Do you recommend that Commission require PEF to revise the Standard Offer Contract to incorporate reciprocal creditworthiness and collateral?

A. Yes, each party in a commercial agreement should be required to meet creditworthiness standards and be subject to a collateral posting requirement if the party's creditworthiness is insufficient to support unsecured credit in an amount exceeding the potential liability to the other party. Such provisions are customary and generally included in all electric and gas purchase and sale contracts. Further, in typical commercial contracts, the point at which collateral is required is tied to the creditworthiness of the entity. There is usually an established threshold amount set such that once an entity's exposure to the other party reaches a certain level, collateral is required to be posted if the exposure exceeds that level (the threshold amount). The stronger the creditworthiness of a company, usually measured by the company's rating by Moody's, Standard & Poor's or Fitch, the higher the threshold amount (the threshold amount being the amount of unsecured credit a company is given). Under this type of arrangement, each company's exposure would be the amount of any termination payment it would be owed upon an early termination of the agreement and all of the transactions under that agreement.

Q. What does the Standard Offer Contract require?

A. Section 11 requires a renewable energy producer, upon execution of the agreement, to post collateral referred to as performance collateral. The amount of such collateral is contained in a chart in the Standard Offer Contract. There is, however, no indication of how the level of required security is calculated or what

it is based upon. The calculation of performance security should always be directly related to the potential loss incurred by non-performance by each side. In this instance, it is impossible to know or understand the manner in which the level of performance security was determined. The performance security requirement must be associated with the expected level of loss.

Q. What are you proposing for the Standard Offer Contract?

A. In Exhibit MJM-1 after existing Section 11, I have incorporated creditworthiness provisions taken from an existing PEF power supply agreement with the City of Mount Dora, Florida. I have chosen that particular provision because it is one that was acceptable to PEF and employs a simpler form than the EEI Master Agreement. My objective is to simplify the Standard Offer Contract and make it fairer for renewable energy producers. The provisions I propose do not differentiate between credit standing once an entity achieves investment grade. Although I do not recommend it, a more complex formula could be used, which establishes a threshold level of unsecured credit which, if exposure exceeds the threshold amount, collateral is required to be posted. If there is a preference for such an approach, the EEI Master Agreement provides an excellent model.

Q. Does the Standard Offer Contract include default provisions?

A. Yes, it does, but once again the default provisions found in Section 14 of the Standard Offer Contract are one-sided and not reciprocal. The only party that can breach the agreement and be subject to termination for such a breach is the renewable energy producer. There are no provisions that permit a declaration of default by the renewable energy producer against the buyer, PEF.

Q. What types of circumstances may give rise to a default by either party to an electric or gas purchase and sale agreement?

A. In a typical agreement, the following are items which could give rise to an event of default by the buyer or the seller: 1) failure to make a payment when due, and such failure is not corrected within a specified period of time following notice of such failure; 2) any representation or warranty that is false or misleading in any material respect when made; 3) failure to perform any covenant or obligation under the agreement; 4) a party becomes bankrupt; 5) a party fails to satisfy the creditworthiness provisions; 6) a party merges or consolidates with another entity and such remaining entity does not assume all the obligations under the agreement; or 7) a guarantor breaches its guarantee, fails to make payment on its guarantee or the guarantor becomes bankrupt.

Q. Do you propose to revise the Standard Offer Contract to make the default provision reciprocal?

A. Yes. In Exhibit MJM–1 at Section 14, I have inserted default language based upon the language found in the EEI Master Agreement. In doing so, I have retained provisions found in the original Standard Offer Contract that are specifically applicable to renewable energy producers because there may be certain conditions of default that apply specifically to renewable generators and not to PEF. The addition of the reciprocal default provisions serves to make the contract more balanced, without denigrating the protections for PEF's customers.

Q. Do you propose other changes to the section governing default?

A. Yes. There are several provisions that are events of default that are sprinkled throughout the Standard Offer Contract. I have consolidated those provisions within the Section governing Default. From a contract drafting and implementation perspective, it is more efficient to locate all items giving rise to a claim of default in one central location. The provisions I moved are (i) Section 5(e), which deals with a renewable energy producer's ability to meet the initial capacity test date and the completion of the interconnection to the delivery point; (ii) Section 5(d); (iii) the last sentence of Section 7.7; and (iv) the last sentence of Section 3 of the Standard Offer Contract. All of these provisions addressed the obligation of a renewable energy producer to meet the avoided unit in-service date.

Q. Are there provisions contained within the default section dealing with calculating payments between the parties in the event of an early termination of the agreement?

A. Yes. There is a provision for a termination payment contained in the Standard Offer Contract. According to PEF witness Gammon, the Termination Fee is required by Rule 25-17.0832(4)(e)(10), and it is simply included pursuant to such section. Gammon Testimony at 17. The cited Rule permits the imposition of a provision to "ensure repayment of payments to the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the avoided unit specified in the contract in the event that the qualifying facility fails to perform pursuant to the terms and

conditions of the contract." However, the amount of the Termination Security that PEF may retain should be limited to its potential liability arising from any early capacity payments. Also, there is no provision for a termination fee should the buyer default. Should the buyer (PEF) default, the renewable energy provider should also be entitled to damages under the contract.

Q. Does the Standard Offer Contract provide for the right of inspection of books and records?

A. Yes, it does, but once again the provision is one-sided, permitting only PEF the right to inspect the books and records of the renewable energy producer.

Q. Should the renewable energy producer have the right of inspection for books and records, and right of audit?

A. Yes, the renewable energy producer must have a right of inspection and audit of books and records that allows it to inspect and audit records regarding delivery of the product and pertaining to billing and payment. Providing utility access to the customer's records also must be limited to regular business hours and undertaken only upon reasonable notice to avoid disturbing normal operations of the business. In short, such right of audit should be predicated upon reasonable notice, occur during normal business hours and at the expense of the party seeking to undertake the audit.

Q. Why are the above modifications appropriate?

A. A renewable energy producer relies upon PEF to calculate the payment amounts for capacity and energy. As such, the right to inspect and audit those calculations

is important to the seller. Second, from a commercial perspective, having reciprocal rights to inspect and audit the payment and receipts is standard commercial practice. Third, in the case of an inspection or audit of the books and records, the party undertaking the inspection or audit is required to pay for the cost of inspection or audit.

Q. Are the proposed assignment provisions found in Section 20.4 reciprocal and reasonable?

A. No. This is another example of a one-sided provision that solely benefits PEF. Restrictions on any party's ability to assign an agreement may be reasonable, but such restriction should be reciprocal.

Q. Have you proposed revisions to the assignment language?

A. Yes. The proposed language is found in Exhibit MJM–1 at Section 20.4. The suggested language permits assignment by either party with prior written consent, which consent is at the sole discretion of the consenting party and also specifies certain exceptions as identified above.

Q. Are the representations and warranties section of the Standard Offer Contract reciprocal?

A. No. the representations and warranties section of the Standard Offer Contract requires only the renewable energy producer to provide representations and warranties. A number of the representations and warranties are included in the earlier referenced standardized form agreements, but unlike the PEF Standard Offer Contract, such representations and warranties are given by each party to the

other party to the contract. Specifically, it should be expected that each party is able to represent and warrant that (i) it is an organization in good standing and qualified to do business in Florida, (ii) that the contract is duly authorized, and that there are no approvals required or if so, that such approvals have been obtained, (iii) that there are no defaults that prohibit performance under the agreement, (iv) that the party is in compliance with all applicable laws, (v) that no suits are pending that would have a material adverse affect on the party's ability to perform and (vi) that all government approvals have or will be obtained and remain in force and effect. These representations and warranties are contained in existing PEF agreements that were provided to PCS Phosphate in this proceeding. I have proposed conforming changes in the representations and warranties section of Exhibit MJM–1 to make certain of them reciprocal.

Q. Do you have any comments on the provision governing force majeure?

A. Yes. The Standard Offer Contact language is one-sided and does not correspond to what is found in the existing master agreements. Specifically, the Standard Offer's provision requires that a renewable energy producer "conclusively demonstrate" to PEF's satisfaction that an event was not due to negligence or foreseeable. This language places a difficult burden on the renewable energy producer and grants PEF with a substantial amount of discretion. Likewise, the force majeure right is one that PEF may exercise, but it is not required to meet the same standard as the renewable energy producer in terms of establishing its claim of force majeure.

Further, there are certain provisions that have become standard in force majeure clauses that are missing in this particular provision. For example, typically, it is not an event of force majeure if the buyer suffers a loss of market or is unable to economically resell the power, or if the seller loses supply or has the opportunity to resell the product at a higher price. Neither is it an event of force majeure if delivery is interrupted due to transmission curtailment, unless the party claiming force majeure due to a transmission curtailment had obtained firm transmission service and curtailment is due to force majeure or uncontrollable force.

Q. Do you have any suggested revisions to the Standard Offer Contract in this regard?

A. Yes, consistent with the discussion above, I have provided changes to the force majeure language found in Section 18 of Exhibit MJM–1. I have removed the obligation to "conclusively demonstrate" that the event is not caused by the negligence of the party making the claim, nor is the event foreseeable. In its place, parties are required to "reasonably demonstrate" the nature of the event Additionally, I have provided language to exclude from the definition of Force Majeure the loss of market or supply, or price differences from the purchase or sales price.

Q. Do you have any concerns regarding the Conditions Precedent in the Standard Offer Contract?

A. Yes. Again these provisions only provide conditions precedent for one party, the renewable energy provider. Generally, there are also frequently conditions precedent that apply to both parties. An example in the Standard Offer Agreement is Section 5(a)(vi) requiring originally only the renewable energy producer to produce corporate constitutional documents, approvals and the like to PEF. I have made this item reciprocal. Additionally, certain of the items contained within this section of the Standard Offer Contract are not conditions precedent, such as Section 5(d), which requires the capacity delivery date to occur prior to the avoided unit's in-service date. This item actually should be in the Default provisions, because unexcused failure to achieve the capacity delivery date prior to the avoided unit's in-service date is an event of default. Likewise, Section 5(e) is another item that more appropriately belongs as an event of default.

Q. Turning to Section 10.1, the provision governing the Annual Plan, what does the section require of a renewable energy producer?

A. It requires that 60 days prior to the Capacity Delivery Date, and also prior to October 1 of each year thereafter, that the renewable energy producer submit "in writing a detailed plan of the amount of electricity to be generated . . . and delivered to PEF for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance periods) or reductions in capacity." Standard Offer Contract, Original Sheet No. 9.421. PEF

witness Gammon describes the provision as simply requiring an estimate of deliveries to be made so that PEF can coordinate planned outages with outages at its own and other contracted providers of capacity. Gammon Testimony at 14. However, the contractual language requires a detailed monthly plan of energy delivered.

Q. Is it reasonable to expect that renewable energy producers are able to meet the detailed plan requirements set out in Section 10.1?

A. No. Renewable energy producers relying on wind, solar power or excess waste heat from a manufacturing process cannot predict weather or plant operations with precision for up to fifteen months in advance. If, as PEF asserts, the intended purpose of this provision is to assist in planning functions, adjustments to the contract are needed. I have proposed these changes on Exhibit MJM–1. With the changes proposed, I recommend that renewable producers provide PEF with a schedule describing when the renewable energy producer plans to take its facility down for maintenance during the year. Additionally, for information purposes only, the renewable energy producer would also be required to submit a good faith estimate of capacity and energy to be delivered to PEF. Deviations from these estimates should not be the basis for contract default. This approach would provide PEF with sufficient information concerning expected renewable energy production without imposing an unreasonable burden on renewable energy producers.

Q. Section 17 addresses the insurance requirement for a renewable energy producer. According to PEF, why is the provision included in the Standard Offer Contract?

A. According to PEF witness Gammon, insurance is required by Rule 25-17-087(5)(c). Gammon Testimony at 17. However, that particular rule governs the interconnection process, not the Standard Offer Contract. In my estimation, the insurance provisions that specifically apply to interconnection should be included in the interconnection agreement and not in the Standard Offer Contract. I have removed this provision from the Standard Offer Contract.

Q. Does the limitation restricting scheduled maintenance to fifteen days per year have the potential to cause a problem for the renewable energy producer?

A. Yes, Section 10.2, the section dealing with this issue, is unnecessary and unduly restrictive. This is another element that fails to acknowledge the distinctive nature of different renewable energy technologies. In its current form, the Standard Offer Contract allows PEF to object to a renewable energy producer's proposed maintenance schedule and gives the utility substantial control over the timing of the renewable energy producer's maintenance outages with no obligation to consider how that change affects the renewable energy facility or any associated commercial/ manufacturing facility. While scheduled maintenance of large utility scale generators normally aims to avoid peak periods, renewable energy producers' facilities are often sufficiently small that they should not materially affect PEF's planned operation of its own units. Except for very large (over 50 MW) facilities for which scheduling maintenance could be a legitimate

planning concern, it should be sufficient for an renewable energy producer to provide a good faith estimate of its maintenance plans, with an obligation to update that information as changes become known.

Q. Please discuss PEF's scheduled maintenance requirements for combined cycle units?

A. First, it is difficult to determine what PEF envisions as the expected scheduled maintenance requirements of the avoided unit as PEF has provided no evidence on this subject. However, an examination of PEF's tolling agreement with Vandolah provides insight as to the nature of the maintenance of these natural gas-fired units. In Section 4.3(1)(b) of the tolling agreement, PEF "acknowledges that Seller must perform Routine Maintenance Outages and Planned Maintenance Outages at the Facility" and that "[s]uch Planned Maintenance Outages and/or Routine Maintenance Outages include, but are not limited to, the Unit manufacturer's recommended and required maintenance, . . ."[5] *See* Exhibit MJM–3. In addition, unlike its apparent treatment of scheduled maintenance days for renewable energy producers, PEF agreed that "[t]he Facility and/or a Unit shall not be considered unavailable during Planned Maintenance Outages for purposes of calculating Monthly Capacity Payment." *Id.* at Section 4.3(1)(a).

Thus, because PEF has failed to address the nature of renewable energy generators or even act consistent with its treatment of combined cycle units, I recommend that Section 10.2 be deleted in its entirety, and I have revised Section

[5] The precise number of scheduled maintenance days PEF grants Vandolah cannot be determined since PEF redacted that information from the document provided to PCS Phosphate, even though PEF has not requested confidential treatment of that document in this proceeding.

10.1 to include more planned maintenance estimates and updates as discussed above.

Q. Is PEF's requirement that a renewable energy producer utilize firm standby service for start up service reasonable?

A. No. PEF offers both firm and interruptible standby service (rate schedules SS-1 and SS-2). Under each Rate Schedule, facilities with on-site generation are eligible for service. PEF offers no valid reason for denying renewable energy producers access to SS-2 service. This contractual limitation serves only to increase the cost of standby service for a renewable energy producer. Section 6.3 of the Standard Offer Contract provides no significant benefit to the system, while increasing a renewable energy producer's cost of purchasing power from PEF.

Q. Please briefly summarize any other changes you have made to the Standard Offer Contract.

A. In Section 8.2, in addition to changing the test period to reflect the generator manufacturer's testing recommendations, I have also inserted the requirement that the Committed Capacity Test results be adjusted to reference environmental conditions. This adjustment is needed to reflect how test results are impacted by ambient weather conditions. A similar provision was apparently accepted by PEF in its agreement with Vandolah.

In Section 9.1.3, I deleted the provision that no billing arrangement can result in a renewable energy producer selling more than the Facility's net output because no such restriction is contained in the applicable Commission rule (FPSC

Rule 25-17.082). Also, the term "net output" is undefined and could thus cause unnecessary confusion.

I deleted Section 10.5.6, which required a renewable energy producer to have a three day fuel supply on-site. Such a requirement is not applicable to most renewable generators and thus should not be included in a standard offer contract.

Q. Does this conclude your testimony?

A. Yes, it does.

Exhibit MJM-1

to the

DIRECT TESTIMONY OF
MARTIN J. MARZ

ON BEHALF OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS

Proposed Changes to PEF's Standard Offer Contract

Docket No. 070235-EQ
Filed: February 18, 2008

STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY FROM A RENEW ABLE ENERGY PRODUCER OR QUALIFYING FACILITY LESS THAN 100 KW

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STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY FROM A RENEW ABLE ENERGY PRODUCER OR QUALIFYING FACILITY LESS THAN 100 KW

between

_____

and

PROGRESS ENERGY FLORIDA

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STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY FROM A RENEWABLE ENERGY PRODUCER OR QUALIFYING FACILITY LESS THAN 100 KW

THIS STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY (hereinafter referred to as the "Contract") is made and entered this _____ day of _____, ____ (hereinafter referred to as the "Execution Date"), by and between _____ (hereinafter the Renewable Energy Provider/Qualifying Facility ("RF/QF"), and Florida Power Corporation d/b/a Progress Energy Florida (hereinafter "PEF"), a private utility corporation organized and existing under the laws of the State of Florida. The RF/QF and PEF shall be individually be identified herein as the "Party" and collectively as the "Parties". This Contract contains five Appendices which are incorporated into and made part of this Contract: Appendix A: Monthly Capacity Payment Calculation; Appendix B: Termination Fee; Appendix C: Detailed Project Information; Appendix D: Rate Schedule COG-2; Appendix E: Agreed Upon Payment Schedules; and Appendix F: Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.310, F.A.C.

WITNESSETH:

WHEREAS, the RF/QF desires to sell, and PEF desires to purchase electricity to be generated by the RF/QF consistent with Florida Statutes 366.91 (2006) and FPSC Rules 25-17.080 through 25-17.310 F.A.C.; and

WHEREAS, the RF/QF has acquired an interconnection/transmission service agreement with the utility in whose service territory the Facility is to be located, pursuant to which the RF/QF assumes contractual responsibility to make any and all transmission-related arrangements (including ancillary services) between the RF/QF and the Transmission Provider for delivery of the Facility's firm capacity and energy to PEF. The Parties recognize that the Transmission Provider may be PEF and that the transmission service will be provided under a separate agreement; and

WHEREAS, the FPSC has approved this Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer; and

WHEREAS, the RF/QF guarantees that the Facility is capable of delivering firm capacity and energy to PEF for the term of this Contract in a manner consistent with the provision of this Contract;

NOW, THEREFORE, for mutual consideration the Parties agree as follows:

1. Definitions

"AFR" means the Facility's annual fuel requirement.

"AFTR" means the Facility's annual fuel transportation requirement

"Annual Capacity Billing Factor" or "ACBF" means 12 month rolling average of the Monthly Availability Factor as further defined and explained in Appendix A.

"Appendices" shall mean the schedules, exhibits, and attachments which are appended hereto and are hereby incorporated by reference and made a part of this Contract. Such Appendices include:

"Appendix A" sets forth the Monthly Capacity Payment Calculation.
"Appendix B" sets forth the Termination Fee.
"Appendix C" sets forth the Detailed Project Information.
"Appendix D" sets forth Rate Schedule COG-2.
"Appendix E" sets forth the Agreed Upon Payment Schedules and Other Mutual Agreements
"Appendix F" sets forth Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.310, F.A.C.

"As-Available Energy Rate" means the rate calculated by PEF in accordance with FPSC Rule 25-17.0825, F.A.C., and PEF's Rate Schedule COG-I, as they may each be amended from time to time

"Authorization to Construct" means authorization issued by any appropriate Government Agency to construct or reconstruct the Facility granted to RF/QF in accordance with the laws of the State of Florida and any relevant federal law.

"Avoided Unit" means the electrical generating unit described in Section 4 upon which this Contract is based.

"Avoided Unit Energy Cost" has the meaning assigned to it in Appendix D.

"Avoided Unit Fuel Cost" has the meaning assigned to it in Appendix D.

"Avoided Unit Heat Rate" means the average annual heat rate of the Avoided Unit as defined in Section 4.

"Avoided Unit In-Service Date" means the date upon which the Avoided Unit would have started commercial operation as specified in Section 4.

"Avoided Unit Life" means the economic life of the Avoided Unit.

"Avoided Unit Variable O&M" means the Avoided Unit variable operation and maintenance expenses as defined in Section 4. This rate will escalate annually based upon CPI-U The annual escalation will begin in the payment for January deliveries.

"Base Capacity Payment" or "BCP" means capacity payment rates defined in Appendix D and further defined by the selection of Option A,B,C or D in Section 9.2.

"Base Performance Security Amount" means the dollar amount per MW listed in the Table 2 in Section 11 for years 1-5 associated with the applicable credit class of the Party.

"Base Year" means the year that this Contract was approved by the FPSC.

"Business Day" means any day except a day upon which banks licensed to operate in the State of Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a public holiday in the State of Florida.

"CAMD" means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes).

"Capacity" means the minimum average hourly net capacity (generator output minus auxiliary load) measured over the Committed Capacity Test Period.

"Capacity Delivery Date" means the first calendar day immediately following the date of the Facility's successful completion of the first Committed Capacity Test.

"Capacity Payment" means the payment defined in Section 9.2 and Appendix A.

"Committed Capacity" or "CC" means the capacity in MW that the RF/QF commits to sell to PEF, the amount of which shall be determined in accordance with Section 7 and Appendix D.

"Committed Capacity Test" means the testing of the capacity of the Facility performed in accordance with the procedures set forth in Section 8.

"Committed Capacity Test Period" means a test period of twenty-four (24) consecutive hours.

"Completed Permits Date" means the date by which the RF/QF must complete licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility. This date is specified in Section 4.

"Completion/Performance Security" means the security described in Section 11.

"Conditions Precedent" shall have the meaning assigned to it in Section 5.

"Contract" means this standard offer contract for the purchase of Firm Capacity and Energy from a Renewable Energy Producer or Qualifying Facility with a nameplate capacity of less than 100 kW.

"CPI-U" means the revised monthly consumer price index for All Urban Consumers, U.S. City Average (CPI-U) (All Items 1982-84 = 100) promulgated by the Bureau of Labor Statistics of

the United States Department of Labor.

"Creditworthy" with respect to a Party or its credit support provider, as applicable, means a party is rated by at least two (2) of the three (3) following rating agencies Standard & Poor's (S&P), Moody's Investor Services (Moody's) and Fitch Rating Services (Fitch). Rating shall be the unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement). Both ratings (if company is only rated by 2 of the 3 agencies) or at least two (2) of the three (3) (if company is rated by all three agencies) must be (i) BBB- or greater from S&P (ii) Baa3 or greater from Moody's (iii) BBB- or greater from Fitch.

"Demonstration Period" means a sixty-hour period in which the Committed Capacity Test must be completed.

"Distribution System" means the distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

"Dispute" shall have the meaning assigned to it in Section 20.9.

"Drop Dead Date" means the ~~date which is twelve (12) months following the Execution Date~~ _____ 200_.

"Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the Unites States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

"Effective Date" has the meaning assigned to it in Section 5.

"Electrical Interconnection Point" means the physical point at which the Facility is connected with the Transmission System or, ifRF/QF interconnects with a Transmission System other than PEF's, PEF's interconnection with the Transmission Provider's Transmission System, or such other physical point on which RF/QF and PEF may agree.

"Eligible Collateral" means (i) a Letter of Credit from a Qualified Institution or (ii) cash deposited into a PEF Security Account by RF/QF or RF/QF Security Account by PEF, as the case may be, or (iii) RF/QF Guarantee or PEF Guarantee or a combination of (i) , (ii) and/or (iii) as outlined in Section 11.

"Energy" means megawatt-hours generated by the Facility of the character commonly known as three-phase, sixty hertz electric energy that is delivered at a nominal voltage at the Electrical Interconnection Point.

"Environmental Attributes" means all attributes of an environmental or other nature that are created or otherwise arise from the Facility's generation of electricity from a renewable energy source in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include, without limitation, any and all environmental air quality credits, green credits, renewable energy credits ("RECs"), carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy from or by the Facility, or otherwise attributable to the Facility during the Term. Environmental Attributes include, without limitation, those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described in this Contract under any governmental, regulatory or voluntary program, including, but not limited to, the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency ("CAMD") or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes,).

"Event of Default" has the meaning assigned to it in Section 14.

"Execution Date" has the meaning assigned to it in the opening paragraph of this Contract.

"Exemplary Early Capacity Payment Date" means the exemplary date used to calculate Capacity Payments for Option Band D. This date is specified in Section 4. The actual Capacity Payments for Option Band D will be calculated based upon the Capacity Delivery Date.

"Standard Offer Expiration Date" means the final date upon which this Contract can be executed. This date is specified in Section 4.

"Facility" means all equipment, as described in this Contract, used to produce electric energy and, and all equipment that is owned or controlled by the RF/QF required for parallel operation with the Transmission System. In the case of a cogenerator the Facility includes all equipment that is owned or controlled by the RF/QF to produce useful thermal energy through the sequential use of energy.

"Financial Closing" means the fulfillment of each of the following conditions:

(a) the execution and delivery of the Financing Documents; and

(b) all Conditions Precedent to the initial availability for disbursement of funds under the Financing Documents (other than relating to the effectiveness of this Contract) are satisfied or waived.

"Financing Documents" shall mean documentation with respect to any private equity investment in RF/QF, any loan agreements (including agreements for any subordinated debt), notes, bonds, indentures, guarantees, security agreements and hedging agreements relating to the financing or refinancing of the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility or any guarantee by any Financing Party of the repayment of all or any portion of such financing or refinancing.

"Financing Party" means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of RF/QF for the design, development, construction, testing, commissioning, operation and maintenance of the Facility (whether limited recourse, or with or without recourse).

"Firm Capacity and Energy" has the meaning assigned to it in Appendix D.

"Firm Capacity Rate" has the meaning assigned to it in Appendix D.

"Firm Energy Rate" has the meaning assigned to it in Appendix D.

"Force Majeure" has the meaning given to it in Section 18.

"FPSC" means the Florida Public Service Commission or its successor.

"Government Agency" means the United States of America, or any state or any other political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Government Agency relating to the construction, development, ownership, occupation, start-up, Testing, operation or maintenance of the Facility or to the execution, delivery or performance of this Contract as any of the foregoing are in effect as of the date of this Contract.

"Gross Domestic Price Implicit Price Deflator" or "GDPIPD" has the meaning assigned to it in Section 11.

"IEEE" means the Institute of Electrical and Electronics Engineers, Inc.

"Indemnified Party" has the meaning assigned to it in Section 16.

"Indemnifying Party" has the meaning assigned to it in Section 16.

"Initial Reduction Value" has the meaning assigned to it in Appendix B.

~~"Insurance Services Office" has the meaning assigned to it in Section 17.~~

"KVA" means one or more kilovolts-amperes of electricity, as the context requires.

"kW" means one or more kilowatts of electricity, as the context requires.

"kWh" means one or more kilowatt-hours of electricity, as the context requires.

"Letter of Credit" means a stand-by letter of credit from a Qualified Institution that is acceptable to PEF whose approval may not be unreasonably withheld.

"LOI" means a letter of intent for fuel supply.

"Material Adverse Change" means as to PEF, that PEF or PEF Guarantor, if applicable, or, as to RF/QF, that RF/QF or RF/QF Guarantor, if applicable, any of the following events; (a) such party is no longer Creditworthy or (b) the party of Party's guarantor, if applicable, defaults on an aggregate of fifty million dollars ($50,000,000) or five percent (5%) of equity, whichever is less.

"MCPC" means the Monthly Capacity Payment for Option A.

"Monthly Billing Period" means the period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m., on the Capacity Delivery Date and ending with the last calendar day of such month.

"Monthly Availability Factor" or "MAP" means the total energy received during the Monthly Billing Period for which the calculation is made, divided by the product of Committed Capacity times the total hours during the Monthly Billing Period.

"Monthly Capacity Payment" or "MCP" means the payment for Capacity calculated in accordance with Appendix A.

"MW" means one or more megawatts of electricity, as the context requires.

"MWh" means one or more megawatt-hours of electricity, as the context requires.

"Option A" means normal Capacity Payments as described in Appendix D.

"Option B" means early Capacity Payments as described in Appendix D.

"Option C" means levelized Capacity Payments as described in Appendix D.

"Option D" means early levelized Capacity Payments as described in Appendix D.

"Party" or "Parties" has the meaning assigned to it in the opening paragraph of this Contract.

"PEF" has the meaning assigned to it in the opening paragraph of this Contract.

"PEF Entities" has the meaning assigned to it in Section 16.

"PEF Guarantee" means a guarantee provided by PEF Guarantor that is acceptable to RF/QF whose approval may not be unreasonably withheld.

"PEF Guarantor" means a party that, at the time of execution and delivery of its PEF Guarantee is a direct or indirect owner of PEF and is (a) Creditworthy or is (b) reasonably acceptable to RF/QF as having verifiable Creditworthiness and a net worth sufficient to secure PEF's obligations.

"PEF Security Account" means an account designated by PEF for the benefit of PEF free and clear of all liens (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant to a control agreement in a form and substance acceptable to PEF whose cost is to be borne by the RF/QF.

"Person" means any individual, partnership, corporation, association, joint stock company trust, joint venture, unincorporated organization, or Governmental Agency (or any department, agency, or political subdivision thereof).

"Project Consents" mean the following Consents, each of which is necessary to RF/QF for the fulfillment of RF/QF's obligations hereunder:

(a) the Authorization to Construct;

(b) planning permission and consents in respect of the Facility, and any electricity substation located at the Facility site, including but not limited to, a prevention of significant deterioration permit, a noise, proximity and visual impact permit, and any required zoning permit; and

(c) any integrated pollution control license.

"Project Contracts" means this Contract, and any other contract required to construct, operate and maintain the Facility. The Project Contracts may include, but are not limited to, the turnkey engineering, procurement and construction contract, the electrical interconnection and operating agreement, the fuel supply agreement, the facility site lease, and the operation and maintenance agreement.

"Prudent Utility Practices" means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants of technology, complexity and size similar to the Facility in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts in each case taking into account the Facility as an independent power project.

"Qualifying Facility" or "QF" means a cogenerator, small power producer, or non-utility generator that has been certified or self-certified by the FERC as meeting certain ownership, operating and efficiency criteria established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"), the criteria for which are currently set forth in 18 C.F.R. § 292, *et seq.* (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796 *et seq.* (2006), and Section 1253 of EPAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of Florida.

"Qualified Institution" means the domestic office of a United States commercial bank or trust company or a foreign bank with a United States branch with total assets of at least ten billion dollars ($10,000,000,000) (which is not an affiliate of either party) having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor's Ratings Group), A3 or higher (as rated by Moody's Investor Services) or A- or higher (as rated by Fitch Ratings).

"Rate Schedule COG-1" means PEF's Agreement for Purchase of As-Available Energy and/or Parallel Operation with a Qualifying Facility as approved by the FPSC and as may be amended from time to time.

"REC" means renewable energy credits, green tags, green tickets, renewable certificates, tradable renewable energy credits ("T -REC") or any tradable certificate that is produced by a renewable generator in addition to and in proportion to the production of electrical energy.

"Reduction Value" has the meaning assigned to it in Appendix B.

"Renewable Facility" or "RF/QF" means an electrical generating unit or group of units at a single site, interconnected for synchronous operation and delivery of electricity to an electric utility, where the primary energy in British Thermal Units used for the production of electricity is from one or more of the following sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power or waste heat from a commercial or industrial manufacturing process.

"RF/QF Entities" has the meaning assigned to it in Section 16.

"RF/QF Guarantee" means a guarantee provided by RF/QF Guarantor that is acceptable to PEF whose approval may not be unreasonably withheld.

"RF/QF Guarantor" means a party that, at the time of execution and delivery of its RF/QF Guarantee is a direct or indirect owner of RF/QF and is (a) Creditworthy or is (b) reasonably acceptable to PEF as having verifiable Creditworthiness and a net worth sufficient to secure RF/QF's obligations.

~~"RF/QF Insurance" has the meaning assigned to it in Section 17.~~

"RF/QF Performance Security" has the meaning assigned in Section 11.

"RF/QF Security Account" means an account designated by the RF/QF for the benefit of the RF/QF free and clear of all liens (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant to a control agreement in a form and substance acceptable to RF/QF whose cost is to be borne by PEF.

"Security Documentation" has the meaning assigned to it in Section 12.

"Supplemental Eligible Collateral" means additional collateral in the form of Letter of Credit or cash to augment the RF/QF Performance Security in the event of a Material Adverse Change.

"Term" has the meaning assigned to it in Section 3.

"Termination Date" means the date upon which this Contract terminates unless terminated earlier in accordance with the provisions hereof. This date is specified in Section 4.

"Termination Fee" means the fee described in Appendix B as it applies to any Capacity Payments made under Option B, C or D.

"Termination Security" has the meaning assigned to it in Section 12.

"Transmission Provider" means the operator(s) of the Transmission System(s) or any successor thereof or any other entity or entities authorized to transmit Energy on behalf of RF/QF from the Electrical Interconnection Point.

"Transmission System" means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection owned by the Transmission Provider or PEF, but shall in no event include any lines which the Transmission Provider has specified to be part of the Distribution System except for any distribution facilities required to accept capacity and energy from the Facility.

2. Facility; Renewable Facility or Qualifying Facility Status

The Facility's location and generation capabilities are as described in Table 1 below.

TABLE 1

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location: Specific legal description (e.g., metes and bounds or other legal description with street address required)	City: County:
Generator Type (Induction or Synchronous)	
Technology	
Fuel Type and Source	
Generator Rating (KVA)	
Maximum Capability (kW)	
Net Output (kW)	
Power Factor (%)	
Operating Voltage (kV) \	
Peak Internal Load kW	

The RF/QF's failure to complete Table 1 in its entirety shall render this Contract null and void and of no further effect.

~~The RF/QF shall use the same fuel or energy source and maintain the status as a Renewable Facility or a Qualifying Facility throughout the term of this Contract. RF/QF shall at all times keep PEF informed of any material changes in its business which affects its Renewable Facility or Qualifying Facility status. PEF shall have the right at all times to inspect the Facility and to examine any books, records, or other documents of the RF/QF that PEF deems necessary to verify the Facility's Renewable Facility or Qualifying Facility status. On or before March 31 of each year during the term of this Contract, the RF/QF shall provide to PEF a certificate signed by an officer of the RF/QF certifying that the RF/QF continuously maintained its status as a~~

~~Renewable Facility or a Qualifying Facility during the prior calendar year.~~

3. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties and shall end at 12:01 a.m. on the Termination Date, (the "Term") unless terminated earlier in accordance with the provisions hereof. ~~Notwithstanding the foregoing, if the Capacity Delivery Date of the Facility is not accomplished by the RF/QF before the Avoided Unit In-Service Date (or such later date as may be permitted by PEF pursuant to Section 7), this Contract shall be rendered null and void and PEF's shall have no obligations under this Contract.~~

4. Minimum Specifications and Milestones

As required by FPSC Rule 25-17.0832(4)(e), the minimum specifications pertaining to this Contract and milestone dates are as follows:

Avoided Unit	Natural Gas Combined Cycle
Avoided Unit Capacity	618 MW
Avoided Unit In-Service Date	June 1, 2013
Avoided Unit Heat Rate	7,442 BTU/kWh
Avoided Unit Variable O&M	$0.194 per kWh in mid-2013 dollars escalating annually at 2.25%
Avoided Unit Life	25 years
Capacity Payments begin	Avoided Unit In-Service Date unless Option B, C, or D is selected
Termination Date	May 31, 2023 (10 years)
Minimum Performance Standards – On Peak Availability Factor*	~~91~~ %
Minimum Performance Standards – Off Peak Availability Factor	~~91~~ %
Minimum Availability Factor Required to qualify for a Capacity payment	~~71~~ %
Expiration Date	April 1, 2008
Completed Permits Date	June 1, 2012
Exemplary Early Capacity Payment Date	January 1, 2008

*RF/QF performance shall be measured and/or described in Appendix A.

5. Conditions Precedent

(a) Unless otherwise waived in writing by the other Party~~PEF~~, on or before the Drop Dead Date, each Party~~RF/QF~~ shall satisfy the following Conditions Precedent, as applicable:

(i) RF/QF shall have obtained firm transmission service necessary to deliver Capacity and energy from the Facility to the Electrical Interconnection Point, in a form and substance satisfactory to RF/QF in its sole discretion;

(ii) RF/QF shall have obtained the Project Consents and any other Consents for which it is responsible under the terms hereof, in a form and substance satisfactory to RF/QF in its sole discretion;

(iii) RF/QF shall have entered into Financing Documents relative to the construction of the Facility and have achieved Financial Closing, in a form and substance satisfactory to RF/QF in its sole discretion;

(iv) RF/QF shall have entered into the Project Contracts, in a form and substance satisfactory to RF/QF in its sole discretion;

(v) ~~RF/QF shall have obtained insurance policies or coverage in compliance with Section 17;~~

(vi) ~~RF/QF~~Each Party shall have delivered to ~~PEF~~ the other Party (i) a copy of its constitutional documents (certified by its corporate secretary as true, complete and up-to-date) and (ii) a copy of a corporate resolution approving the terms of this Contract and the transactions contemplated hereby and authorizing one or more individuals to execute this Contract on its behalf (such copy to have been certified by its corporate representative as true, complete and up-to-date);

(vii) ~~in the event the RF/QF is a Qualifying Facility, RF/QF obtaining Qualifying Facility status from either the FPSC or FERC.~~

(b) Promptly upon satisfaction (or waiver ~~by PEF~~ in writing) of the Conditions Precedent ~~to be satisfied by RF/QF, PEF~~the Party having satisfied same shall deliver to ~~RF/QF~~the other Party a certificate evidencing such satisfaction. Subject to there being no Event of Default which has occurred and/or is continuing as of the date upon which the last of such certificates is delivered, the date of such last certificate shall constitute the effective date of this Contract (the "Effective Date").

(c) If one Party does not satisfy ~~Unless~~ all applicable Conditions Precedent ~~are satisfied by RF/QF~~ on or before the Drop Dead Date or such Conditions Precedent are not waived in writing by the other Party~~PEF~~, the other Party may, in its sole discretion, terminate this Contract upon no less than five (5) days written notice ~~shall terminated on such date~~ and neither Party shall have any further liability to the other Party hereunder.

(d) ~~RF/QF shall achieve the Capacity Delivery Date on or before the Avoided Unit In-Service Date.~~

~~(e) RF/QF shall ensure that before the initial Committed Capacity Test:~~

~~(a) the Facility shall have been constructed so that the Committed Capacity Test may be duly and properly undertaken in accordance with Section 7; and~~

~~(b) an operable physical connection from the Facility to the Transmission System shall have been effected in accordance with the electrical interconnection and operating agreement required by the Transmission Provider, provided, however, that such physical connection shall be made consistent with the terms hereof.~~

6. ~~Sale of Electricity by the RF/QF~~ Scheduling

~~6.1 Consistent with the terms hereof, the RF/QF shall sell to PEF and PEF shall purchase from the RF/QF electric power generated by the Facility. The purchase and sale of electricity pursuant to this Contract shall be a ( ) net billing arrangement or ( ) simultaneous purchase and sale arrangement; provided, however, that no such arrangement shall cause the RF/QF to sell more than the Facility's net output. The billing methodology may be changed at the option of the RF/QF, subject to the provisions of Appendix D.~~ [Moved to Section 9.1.3]

~~6.2 Ownership and Offering For Sale Of Renewable Energy Attributes.~~

~~The RF /QF shall retain any and all rights to own and to sell any and all Environmental Attributes associated with the electric generation of the Facility; provided that: (i) PEF shall have a right of first refusal with respect to any and all bona fide offers to purchase any Environmental Attributes; and (ii) the RF/QF shall not sell Environmental Attributes to any party at a price less than that charged by PEF. PEF must respond to an offer by a bona fide offer within thirty (30) days of notification by the RF/QF.~~

~~6.3 The RF/QF shall not rely on interruptible standby service for the start up requirements (initial or otherwise) of the Facility.~~

~~6.4~~ The RF /QF shall be responsible for the scheduling of required transmission and for all costs, expenses, taxes, fees and charges associated with the delivery of energy to PEF. The RF/QF shall enter into a transmission service agreement with the Transmission Provider in whose service territory the Facility is to be located and the RF/QF shall make any and all transmission-related arrangements (including ancillary services) between the RF/QF and the Transmission Provider for delivery of the Facility's firm Capacity and energy to PEF. The Capacity and energy amounts paid to the RF/QF hereunder do not include transmission losses. The RF/QF shall be responsible for transmission losses that occur prior to the point at which the RF/QF's energy is delivered to PEF. The Parties recognize that the Transmission Provider may be PEF and that if PEF is the Transmission Provider, that the transmission service will be provided under a separate agreement.

7. Committed Capacity/Capacity Delivery Date

7.1 In the event that the RF/QF elects to make no commitment as to the quantity or timing of its deliveries to PEF, then its Committed Capacity as defined in the following Section 7.2 shall be zero (0) MW. If the Committed Capacity is zero (0) MW, Sections 7.2 though Section 7.7 and all of Section 8 shall not apply.

7.2 If the RF/QF commits to sell capacity to PEF, the amount of which shall be determined in accordance with this Section 7 and Appendix D. Subject to Section 7.4, the Committed Capacity is set at kW, with an expected Capacity Delivery Date on or before the Avoided Unit In-Service Date.

7.3 Capacity testing of the Facility (each such test a Committed Capacity Test) shall be performed in accordance with the procedures set forth in Section 8. The Demonstration Period for the first Committed Capacity Test shall commence no earlier than ninety (90) days before the expected Capacity Delivery Date and testing must be completed before the Avoided Unit In-Service Date. The first Committed Capacity Test shall not be successfully completed unless the Facility demonstrates a Capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 7.2. Subject to Section 8.1, the RF/QF may schedule and perform up to three (3) Committed Capacity Tests to satisfy the requirements of the Contract with respect to the first Committed Capacity Test.

7.4 In addition to the first Committed Capacity Test, PEF shall have the right to require the RF/QF, after notice no less than 10 Business Days prior to such proposed test, to validate the Committed Capacity by means of a Committed Capacity Test ~~at any time, up to two (2) times~~once per year, the results of which shall be provided to PEF within seven (7) calendar days of the conclusion of such test. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity as set forth in Section 7.2. PEF shall pay for test energy generated during such Committed Capacity Test and RF/QF shall be responsible for other costs of such test. To the extent a second Committed Capacity Test is sought during the year, the Party requesting such test shall be responsible for the costs of such second test.

7.5 Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the amount set forth in Section 7.2 without the consent of PEF, which consent shall be granted in PEFs sole discretion.

7.6 Unless Option B, C, or D as contained in Appendix D is chosen by RF/QF, ~~In no event shall~~ PEF shall make no Capacity Payments to the RF/QF prior to the Capacity Delivery Date.

7.7 The RF/QF shall be entitled to receive Capacity Payments beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs before the Avoided Unit In-Service Date (or such later date permitted by PEF). If the Capacity Delivery Date does not occur before the Avoided Unit In-Service Date,

PEF shall immediately be entitled to draw down the Completion/Performance Security in full.

8. Testing Procedures

8.1 The Committed Capacity Test must be completed successfully within the Demonstration Period, which period, including the approximate start time of the Committed Capacity Test, shall be selected and scheduled by the RF/QF by means of a written notice to PEF delivered at least thirty (30) calendar days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test ordered by PEF under any of the provisions of this Contract. PEF shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract.

8.2 The Committed Capacity Test results shall be based on the manufacturer's recommendations for testing the Facility or such other procedures as agreed upon by the Parties and adjusted to Reference Conditions ~~on a test period of twenty-four (24) consecutive hours (the "Committed Capacity Test Period") at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility.~~ The Committed Capacity Test Period shall commence at the time designated by the RF/QF pursuant to Section 8.1 or at such time requested by PEF pursuant to Section 7.4; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that PEF is notified of, and consents to, such earlier time.

8.3 Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by law, shall be in service during the Committed Capacity Test Period.

8.4 The Capacity of the Facility shall be the minimum average hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period.

8.5 The Committed Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of the RF/QF.

8.6 The results of any Committed Capacity Test, including all data related to Facility operation and performance during testing, shall be submitted to PEF by the RF/QF within seven (7) calendar days of the conclusion of the Committed Capacity Test. The RF/QF shall certify that all such data is accurate and complete.

9. Payment for Electricity Produced by the Facility

9.1 Energy

9.1.1 PEF agrees to pay the RF/QF for energy produced by the Facility and delivered to PEF in accordance with the rates and procedures contained in PEF's approved Rate Schedule COG-1 if the Committed Capacity pursuant to Section 7.2 is set to zero. If the Committed Capacity is greater than zero MW, then PEF agrees to pay the RF/QF for energy produced by the Facility and delivered to PEF in accordance with the rates and procedures contained in Appendix D, as it may be amended from time to time. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule COG-1 or Appendix D whichever applies as approved and on file with the FPSC.

9.1.2 PEF may, at its option, limit deliveries under this Contract to 110% of the Committed Capacity as set forth in Section 7. In the event that PEF chooses to limit deliveries, any energy in excess of 110% of the Committed Capacity will be paid for at the rates defined in Rate Schedule COG-1 and shall not be included in the calculations in Appendix A hereto.

9.1.3 Consistent with the terms hereof, the RF/QF shall sell to PEF and PEF shall purchase from the RF/QF electric power generated by the Facility. The purchase and sale of electricity pursuant to this Contract shall be a ( ) net billing arrangement or ( ) simultaneous purchase and sale arrangement; ~~provided, however, that no such arrangement shall cause the RF/QF to sell more than the Facility's net output.~~ The billing methodology may be changed at the option of the RF/QF, subject to the provisions of FPSC Rule 25-17.082~~Appendix D~~. [Moved from Section 6.1]

9.2 Capacity

PEF agrees to pay the RF/QF for the Capacity described in Section 7 in accordance with the rates and procedures contained in Appendix D, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of Option _____ of Appendix D. The RF/QF understands and agrees that Capacity Payments will only be made if the Capacity Delivery Date occurs before the Avoided Unit In-Service Date and the Facility is delivering firm Capacity and Energy to PEF. Once so selected, this Option, the Firm Capacity Rate and/or the Firm Energy Rate cannot be changed for the term of this Contract.

9.3 Payments for Energy and Capacity

9.3.1 Payments due the RF/QF will be made monthly, and normally by the twentieth Business Day following the end of the billing period. The kilowatt-hours sold by the RF/QF and the applicable avoided energy rate

at which payments are being made shall accompany the payment to the RF/QF.

9.3.2 Payments to be made under this Contract shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties.

10. Estimated Electricity Production and Plant Maintenance Schedule

10.1 No later than sixty (60) calendar days prior to the Capacity Delivery Date, and prior to October 1 of each calendar year thereafter during the term of this Contract, the RF/QF shall submit to PEF in writing a good-faith estimate~~detailed plan~~ of the amount of electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in Capacity. An RF/QF agrees to provide updates to its planned maintenance periods as they become known. The Parties agree to discuss coordinating scheduled maintenance of electric production equipment.

~~**10.2** By October 31 of each calendar year, PEF shall notify the RF/QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If PEF does not accept any of the requested scheduled maintenance periods, PEF shall advise the RF/QF of the time period closest to the requested period(s) when the outage(s) can be scheduled. The RF/QF shall only schedule outages during periods approved by PEF, and such approval shall not be unreasonably withheld. Once the schedule for the detailed plan has been established and approved, either Party requesting a subsequent change in such schedule, except when such change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to fifteen (15) days per calendar year in accordance with manufacturer's specifications. In no event shall maintenance periods be scheduled during the following periods: June 1 through September 15 and December 1 through and including the last day of February.~~

10.3 The RF/QF shall comply with reasonable requests by PEF regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

10.4 The Parties recognize that the intent of the availability factor in Section 4 of this Contract includes an allowance for scheduled outages, forced outages and forced reductions in the output of the Facility. Therefore, the RF/QF shall provide PEF with notification of any forced outage or reduction in output which shall include the time and date at which the forced outage or reduction occurred, a brief description of the cause of the outage or reduction and the time and date when the forced outage or reduction ceased and the Facility was able to return to normal

operation. This notice shall be provided to PEF within seventy-two (72) hours of the end of the forced outage or reduction.

The RF/QF is required to provide the total electrical output to PEF except (i) during a period that was scheduled in Section 10.2, (ii) during a period in which notification of a forced outage or reduction was provided, (iii) during an event of Force Majeure or (iv) during a curtailment period as described in Section 10.5.5. In the event that the RF/QF does not deliver its full electrical output to PEF during an hour not excluded in the previous sentence then the RF/QF shall be charged a rate equal to the PEF's Rate Schedule COG-1 times the difference between the Committed Capacity and the actual energy received by PEF in that hour. If, in PEF's sole judgment, it is determined that the normal operation of the RF/QF requires it to cease operation or reduce its output, the charges in this Section 10.4 may be waived.

10.5 Dispatch and Control

10.5.1 Power supplied by the RF/QF hereunder shall be in the form of threephase 60 hertz alternating current, at a nominal operating voltage of _____ volts (_____ kV) and power factor dispatchable and controllable in the range of 90% lagging to 90% leading as measured at the interconnection point to maintain system operating parameters, including power factor, as specified from time to time by PEF.

10.5.2 The RF/QF shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, PEP's system, except for normal testing and repair in accordance with good engineering and operating practices as agreed by the Parties. The RF/QF shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. All RF/QF facilities shall meet IEEE and industry standards. The RF/QF shall have independent, third party qualified personnel test, calibrate and certify in writing all protective equipment at least once every twelve (12) months in accordance with good engineering and operating practices. A unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers and results provided to PEF in writing prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with good engineering and operating practices as agreed by the Parties.

10.5.3 If the Facility is separated from the PEF system for any reason, under no circumstances shall the RF/QF reconnect the Facility to PEF's system without first obtaining PEF'S specific approval.

10.5.4 During the term of this Contract, the RF/QF shall employ qualified personnel for

managing, operating and maintaining the Facility and for coordinating such with PEF. The RF/QF shall ensure that operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) calendar days a week. Additionally, during the term of this Contract, the RF/QF shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Prudent Utility Practices.

10.5.5 PEF shall not be obligated to purchase, and may require curtailed or reduced deliveries of energy to the extent allowed under FPSC Rule 2517.086 and under any curtailment plan which PEF may have on file with the FPSC from time to time.

~~**10.5.6** During the term of this Contract, the RF/QF shall maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two (72) hour period. At PEF's request, the *RF/QF* shall demonstrate this capability to PEF's reasonable satisfaction. During the term of this Contract, the *RF/QF's* output shall remain within a band of plus or minus ten percent (10%) of the daily output level or levels specified by the plant operator, in ninety percent (90%) of all operating hours under normal operating conditions. This calculation will be adjusted to exclude forced outage periods and periods during which the *RF/QF's* output is affected by a Force Maj eure event.~~

11. Completion/Performance Security

11.1 ~~Simultaneous with the execution of this agreement~~ Upon satisfaction of the Conditions Precedent, RF/QF shall deliver to PEF Eligible Collateral in an amount according to Table 2. RF/QF's Performance Security shall be maintained ~~throughout the Term although~~until completion of the Facility and demonstration that the Facility can deliver the amount of capacity and energy specified in the Contract. ~~the amount of Eligible Collateral shall be adjusted from time to time in accordance with Table 2 and Section 11.4.~~ The listed amounts are considered the initial amounts and use 2006 as the Base Year, with all amounts expressed in US Dollars. [Adjusted to conform to rule 25-17.0832(4)(f)(1).]

Note: The amounts in the following Table are for 2006 and are subject to change based on utility cost estimates for any year subsequent to the Base Year.

TABLE 2

Credit Class	Amount per MW	Amount per MW
	Years 1 – 5	Years 6 - 10
A- And Above	$45,000	$30,000
BBB+ to BBB	$65,000	$55,000
BBB -	$90,000	$80,000
Below BBB-	$135,000	$90,000

11.2 In the event that a Material Adverse Change occurs in respect of RF/QF, then within two (2) Business Day(s) RF/QF shall deliver to PEF Supplemental Eligible

Collateral equal to 50 percent of the current Eligible Collateral amount, provided however, that in the PEF' s sole discretion, based on a review of the overall circumstances of RF/QF's Material Adverse Change, the total of the Eligible Collateral and the Supplemental Eligible Collateral may be reduced but in no event shall the amount be less than the Base Performance Security Amount.

11.4 Performance Security Annual Adjustments - The RF/QF Performance Security shall be adjusted on an annual basis beginning January 1, 2007 and each year of during the term of the Agreement. The values in Table 2 will be adjusted using the change in the Gross Domestic Price Implicit Price Deflator (GDPIPD) between the Base Year and each year during the term as reported in the Survey of Current Business published in January each year and revised thereafter, by the Bureau of Economic Analysis, United States Department of commerce, Washington, D.C. using the following formula: Current Performance Security amount (CPSA) multiplied by one plus the change in the GDPIPD, (CPSA X (1 + i1GDPIPD)

11.5 Replacement Collateral, Release of Collateral - Upon any reduction of the amount of RF/QF Performance Security pursuant to Section 11.2 or 11.3 the beneficiary thereof shall upon two (2) Business Days written request by the other Party release any Eligible or Supplemental Eligible Collateral that is no longer required. The choice of the type of Eligible Collateral by a Party may be selected from time to time by such Party and upon receipt of substitute Eligible Collateral, the holder of the Eligible Collateral for which the substitution is being made shall promptly release such Eligible Collateral. Following any termination of this agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement which such period shall not exceed 90 days from such termination date unless extended by mutual agreement between the Parties. After such settlement, any remaining Eligible Collateral posted by a Party that has not been drawn upon by the other Party pursuant to its rights under this Contract shall be returned to such Party. Any dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 20.9.

11.6 Draws, Replenishment - A Non-Defaulting Party may draw upon Eligible Collateral or Supplemental Eligible Collateral provided by the other Party following the occurrence of an Event of Default by such other Party or pursuant to the other provisions of this Agreement in order to recover any damages to which such Non-Defaulting Party is entitled to under this Contract. In the event of such a draw then, except in the circumstance when this Contract otherwise terminates, the Defaulting Party shall within two (2) Business Days replenish the Eligible Collateral or Supplemental Eligible Collateral to the full amounts required by Table 2.

11.7 Reporting - RF/QF shall promptly notify PEF of any circumstance that results in RF/QF's failure to be in compliance with the RF/QF Performance Security Requirements of Section 11. From time to time, at PEF's written request, RF/QF

shall provide PEF with such evidence as PEF may reasonably request, that RF/QF and any RF/QF Guarantor RF/QF Guarantee, Letter of Credit or Security Account is in Full Compliance with this agreement.

xx. Creditworthiness

xx.1 The Parties shall at all times each maintain acceptable creditworthiness or shall provide performance assurance to the non-affected Party. To maintain acceptable creditworthiness, the Parties shall not be in default of any payment obligations set out in this Agreement, and:

(i) each Party shall maintain either a credit rating (i.e. the rating assigned to its unsecured senior long-term debt obligations or underlying rating if there is no secured senior long-term debt) by Standard & Poor's of at least BBB- and/or a Long Term Issuer or Underlying Rating, if there is no Long Term Issuer Rating from Moody's Investor Services of at least Ba3; or

(ii) If a Party does not have commercial credit ratings set out in subsection (i), the Party shall provide three (3) years of its most recent financial statements to the other Party which will be evaluated in a commercially reasonable manner to demonstrate to the other Party's reasonable satisfaction that the Party meets standards that are at least equivalent to the standards underlying the credit ratings set out in subsection (i).

xx.2 Performance assurance shall mean one of the following: (a) as to either Party, an unconditional and irrevocable letter of credit or cash deposit equal to the amount that the Parties estimate that the Party providing performance assurance would owe to the non-defaulting Party.

xx.3 If a Party that originally demonstrates acceptable creditworthiness subsequently fails to maintain acceptable creditworthiness or suffers a material adverse change, then the non-affected Party may notify the other Party that it no longer meets the creditworthiness standards and may request performance assurance from the affected Party. Such assurances shall be provided within five (5) days of the written request for such performance assurances.

12. Termination Fee

12.1 In the event that the RF/QF receives Capacity Payments pursuant to Option B, Option C, or Option D of Appendix D or any Capacity Payment schedule in Appendix E that differs from a Normal Capacity Payment Rate as calculated in FPSC Rule 25-17.0832(6)(a), then upon the termination of this Contract, the RF/QF shall owe and be liable to PEF for the Termination Fee. The RF/QF's obligation to pay the Termination Fee shall survive the termination of this Contract. PEF shall provide the RF/QF, on a monthly basis, a calculation of the Termination Fee.

12.1.1 The Termination Fee shall be secured by the RF/QF by: (i) an

unconditional, irrevocable, direct pay letter(s) of credit issued by a financial institution(s) with an investment grade credit rating in form and substance acceptable to PEF (including provisions (a) permitting partial and full draws and (b) permitting PEF to draw upon such Letter of Credit, in full, if such Letter of Credit is not renewed or replaced at least ten (10) Business Days prior to its expiration date); (ii) a bond issued by a financially sound company in form and substance acceptable to PEF; or (iii) a cash deposit with PEF (any of (i), (ii), or (iii), the "Termination Security"). The specific security instrument selected by the RF/QF for purposes of this Contract is:

() Unconditional, irrevocable, direct pay letter(s) of credit.
() Bond.
() Cash deposit(s) with PEF.

12.1.2 PEF shall have the right and the RF/QF shall be required to monitor the financial condition of (i) the issuer(s) in the case of any Letter of Credit and (ii) the insurer(s), in the case of any bond. In the event the senior debt rating of any issuer(s) or insurer(s) has deteriorated to a level below investment grade, PEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable. In the event that PEF notifies the RF/QF that it requires such a replacement, the replacement letter(s) of credit or bond, as applicable, must be issued by a financial institution(s) or insurer(s) with an investment grade credit rating, and meet the requirements of Section 12.1.1 within thirty (30) calendar days following such notification. Failure by the RF/QF to comply with the requirements of this Section 12.1.2 shall be grounds for PEF to draw in full on any existing Letter of Credit or bond and to exercise any other remedies it may have hereunder.

12.1.3 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, upon PEF's issuance of the Termination Fee calculation as described in Section 12.1, the RF/QF must provide PEF, within ten calendar (10) days, written assurance and documentation (the "Security Documentation"), in form and substance acceptable to PEF, that the amount of the Termination Security is sufficient to cover the balance of the Termination Fee. In addition to the foregoing, at any time during the term of this Contract, PEF shall have the right to request and the RF/QF shall be obligated to deliver within five (5) calendar days of such request, such Security Documentation. Failure by the RF/QF to comply with the requirements of this Section 12.1.3 shall be grounds for PEF to draw in full on any existing Letter of Credit or bond or to retain any cash deposit, and to exercise any other remedies it may have hereunder.

12.1.4 Upon any termination of this Contract following the Capacity Delivery Date arising from an Event of Default of the RF/QF, PEF shall be entitled to receive (and in the case of the letter(s) of credit or bond, draw upon such letter(s) of credit or bond) and retain ~~one hundred percent (100%)~~such portion of the Termination Security sufficient to cover any liability arising from early payments under Options B, C, or D of Appendix D.

13. Performance Factor

PEF desires to provide an incentive to the RF/QF to operate the Facility during on-peak and off-peak periods in a manner that approximates the projected performance of the Avoided Unit. A formula to achieve this objective is attached as Appendix A.

14. Default

14.1 Events of Default

With respect to each Party, the occurrence of any of the following shall constitute an Event of Default:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section ___ hereof;

(f) with respect to such Party's Guaranator, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied with three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the

satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

14.2 Event of Default with respect to RF/QF

Notwithstanding the occurrence of any Force Majeure as described in Section 18, each of the following shall constitute an Event of Default:

(a) the RF/QF changes or modifies the Facility from that provided in Section 2 with respect to its type, location, technology or fuel source, without the prior written approval of PEF;

(b) after the Capacity Delivery Date unless otherwise excused by Force Majeure or waiver, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix A, ~~of at least seventy one percent (71 %)~~;

(c) ~~the RF/QF fails to satisfy its obligations to maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two (72) hour period under Section 10.5.6 hereof~~;

(d) ~~the RF/QF fails to provide the Completion/Performance Security and the Termination Fee and to comply with any of the provisions of Sections 11 and 12 hereof~~ [covered as an Event of Default in 14.1]

(e) ~~the RF/QF, or the entity which owns or controls the RF/QF, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against the RF/QF or the entity which owns or controls the RF/QF; or if a receiver shall be appointed for the RF/QF or any of its assets or properties, or for the entity which owns or controls the RF/QF; or if any part of the RF/QF's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof; or if the RF/QF shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;~~ [covered as an Event of Default in 14.1]

(f) ~~the RF/QF fails to give proper assurance of adequate performance as specified under this Contract within thirty (30) calendar days after PEF, with reasonable grounds for insecurity, has requested in writing such assurance;~~ [covered as an Event of Default in 15.1]

(g) ~~the RF/QF fails to achieve licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility by no later than the Completed Permits Date;~~

(h) the RF/QF fails to comply with the provisions of Section 20.3 hereof;

(i) ~~any of the representations or warranties made by the RF/QF in this Contract is false or misleading in any material respect as of the time made;~~ [covered as an Event of Default in 14.1]

(j) if, at any time after the Capacity Delivery Date, the RF/QF reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 7.2 (as such level may be reduced by Section 7.4) within twelve (12) months following the occurrence of such event of Force Majeure; or

(k) ~~the RF/QF breaches any material provision of this Contract not specifically mentioned in this Section 14.~~ [covered as an Event of Default in 14.1]

15. ~~PEF's~~ Rights in the Event of Default

15.1 Upon the occurrence of any of the Events of Default in Section 14, ~~PEF~~ the non-defaulting Party may, at its option:

15.11 immediately terminate this Contract, without penalty ~~or further obligation~~, except as set forth in Section 15.2 by written notice to the ~~RF/QF~~other Party, and offset against any payment(s) due ~~from~~to ~~PEF to the RF/QF~~ the defaulting Party, any monies otherwise due from the ~~RF/QF to PEF~~the defaulting Party.

15.12 enforce the provisions of the Termination Security requirement pursuant to Section 12 hereof; and

15.13 exercise any other remedy(ies) which may be available to ~~PEF~~ such Party at law or in equity.

15.2 Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from any breach of this Contract.

16. Indemnification

16.1 PEF and the RF/QF shall each be responsible for its own facilities. PEF and the RF/QF shall each be responsible for ensuring adequate safeguards for other PEF customers, PEF's and the RF/QF's personnel and equipment, and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the

extent permitted by applicable law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "PEF Entities" and "RF/QF Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

(a) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;

(b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system;

(c) any defect in, failure of, or fault related to, the Indemnifying Party's generation system;

(d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or

(e) any other event or act that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees related to the Contract or the Parties' performance thereunder.

16.1 Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under Section 16. No Indemnified Party under Section 16 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have no obligations under Section 16 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 16 shall survive termination of this Agreement.

~~17. Insurance~~

~~17.1 The RF/QF shall procure or cause to be procured and shall maintain throughout the entire Term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable to PEF on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "RF/QF Insurance"). An original certificate of insurance shall be delivered to PEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the RF/QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract and the Interconnection Agreement, or (ii) caused by operation of the Facility or any of the RF/QF's equipment or by the RF/QF's failure to maintain the Facility or the RF/QF's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with PEF's system, the RF/QF Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to PEF. Any premium assessment or deductible shall be for the account of the RF/QF and not PEF.~~

~~17.2 The RF/QF Insurance shall have a minimum limit of one million dollars ($1,000,000.00) per occurrence, combined single limit, for bodily injury (including death) or property damage.~~

~~17.3 To the extent that the RF/QF Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the Effective Date of this Contract or such other date as may be agreed upon to protect the interests of the PEF Entities and the RF/QF Entities. Furthermore, to the extent the RF/QF Insurance is on a "claims made" basis, the RF/QF's duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the RF/QF Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the RF/QF during the term of this Contract.~~

~~17.4 The RF/QF Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to PEF. The RF/QF shall provide PEF with a copy of any material communication or notice related to the RF/QF Insurance within ten (10) Business Days of the RF/QF's receipt or issuance thereof.~~

~~17.5 The RF/QF shall be designated as the named insured and PEF shall be designated as an additional named insured under the RF/QF Insurance. The RF/QF Insurance shall be endorsed to be primary to any coverage maintained by PEF.~~

18. Force Majeure

18.1 "Force Majeure" is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its contractors or suppliers and ~~adversely affects~~prevents one Party from ~~the performance by that Party of~~performing its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement). Force Majeure shall not be based on (i) the loss of PEF's markets; (ii) PEF's inability economically to use or resell the capacity and energy purchased hereunder; or (iii) RF/QF's ability to sell the capacity at a price greater than the price herein. ~~RF/QF e~~Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the ~~Facility~~control of a Party, or Party's ~~a RF/QF~~ failure to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered an event of Force Majeure, unless ~~the RF/QF~~such Party can reasonably~~conclusively~~ demonstrate, to the reasonable satisfaction of the non-claiming Party~~PEF,~~ that the event was not reasonably foreseeable, was beyond the ~~RF/QF's~~Party's reasonable control and was not caused by the negligence or lack of due diligence of the ~~RF/QF~~the Party claiming Force Majeure, or its agents, contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this agreement.

18.2 Except as otherwise provided in this Contract, each Party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of Force Majeure.

18.3 In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party claiming Force Majeure shall notify the other Party in writing within five (5) Business Days of the occurrence of the event of Force Majeure, of the nature cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A Party claiming Force Majeure shall not be entitled to any relief therefore unless and until conforming notice is provided. The Party claiming Force Majeure shall notify the other Party of the cessation of the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force Majeure in either case within two (2) Business Days thereof.

18.4 The Party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.

18.5 If the RF/QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the RF/QF may, upon notice to PEF temporarily adjust the Committed Capacity as provided in Sections 18.5 and 18.6. Such adjustment shall be effective the first calendar day immediately following PEF's receipt of the notice or such later date as may be specified by the RF/QF. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.

18.6 If the Facility is rendered completely inoperative as a result of Force Majeure, the RF/QF shall temporarily set the Committed Capacity equal to 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 kW, PEF shall have no obligation to make Capacity Payments hereunder.

18.7 If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the RF/QF shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.

18.8 Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cessation or cure, PEF shall have right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this Section 18.8. Any such Committed Capacity Test required by PEF shall be additional to any Committed Capacity Test under Section 7.4.

18.9 During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 18.4 all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the ~~pay-for-performance~~ provisions in Appendix A.

18.10 The RF/QF agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with PEF's system if the same is (are) rendered inoperable due to actions of the RF/QF, its agents, or Force Majeure events affecting the RF/QF, the Facility or the interconnection with PEF. PEF agrees to reactivate, at is own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by PEF or its agents.

19. Representations, Warranties, and Covenants ~~of RF/QF~~

~~The RF/QF~~Each Party hereto represents and warrants that as of the Effective Date:

19.1 Organization, Standing and Qualification

~~The RF/QF~~It is a _____ (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of _____ and has all necessary power and authority to carry on its business as presently conducted to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The ~~RF/QF~~Party is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on ~~PEF~~the other Party.

19.2 Due Authorization, No Approvals, No Defaults

Each of the execution, delivery and performance ~~by the RF/QF~~ of this Contract has been duly authorized by all necessary action on the part of ~~the RF/QF~~such Party, does not require any approval, except as has been heretofore obtained, of the _____ (shareholders, partners, or others, as applicable) of ~~the RF/QF~~such Party or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of ~~the RF/QF~~such Party, except for such as have been duly obtained, and does not contravene or constitute a default under any law, ~~the~~ _____ (articles of incorporation, bylaws, or other ~~as~~ applicable governing document) of ~~the RF/QF~~such Party, or any agreement, judgment, injunction, order, decree or other instrument binding upon ~~the RF/QF~~such Party, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

19.3 Compliance with Laws

~~The RF/QF~~Each Party has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. ~~The RF/QF~~Each Party is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on ~~the RF/QF or PEF~~such Party.

19.4 Governmental Approvals

Except as expressly contemplated herein, neither the execution and delivery by ~~the RF/QF~~each Party of this Contract, nor the consummation by ~~the RF/QF~~each Party of any of the transaction contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action with respect to governmental authority, except with respect to permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the RF/QF has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

19.5 No Suits, Proceedings

There are no actions, suits, proceedings or investigations pending or, to the knowledge of ~~the RF/QF~~each Party, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on ~~the RF/QF's~~each Party's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. ~~The RF/QF~~Each Party has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment.

19.6 Environmental Matters

To the best of its knowledge after diligent inquiry, ~~the RF/QF~~each Party knows of no (a) existing violations of any environmental laws at the Facility, including those governing hazardous materials or (b) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by governmental authorities or other third parties alleging violations of any environmental law or permit which would materially and adversely affect the operation of the Facility as contemplated by this Contract.

20. General Provisions

20.1 Project Viability

To assist PEF in assessing the RF/QF's financial and technical viability, the RF/QF shall provide the information and documents requested in Appendix C or substantially similar documents, to the extent the documents apply to the type of Facility covered by this Contract and to the extent the documents are available. All documents to be considered by PEF must be submitted at the time this Contract is presented to PEF. Failure to provide the following such documents may result in a determination of non-viability by PEF.

20.2 Permits

The RF/QF hereby agrees to obtain and maintain any and all permits, certifications, licenses, consents or approvals of any governmental authority which the RF/QF is required to obtain as a prerequisite to engaging in the activities specified in this Contract.

20.3 Project Management

If requested by PEF, the RF/QF shall submit to PEF its integrated project schedule for PEF's review within sixty (60) calendar days from the execution of this Contract, and a start-up and test schedule for the Facility at least sixty (60) calendar days prior to start-up and testing of the Facility. These schedules shall identify key licensing, permitting, construction and operating milestone dates and activities. If requested by PEF, the RF /QF shall submit progress reports in a form satisfactory to PEF every calendar month until the Capacity Delivery Date and shall notify PEF of any changes in such schedules within ten (10) calendar days after such changes are determined. PEF shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. PEF's technical review and inspections of the Facility and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility.

The RF/QF shall provide PEF with the final designer's/manufacturer's generator capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams, and alternating current and direct elementary diagrams for review and inspection at PEF no later than one hundred eighty (180) calendar days prior to the initial synchronization date.

20.4 Assignment

~~The RF/QF may not assign this Contract, without PEF's prior written approval, which approval may be withheld at PEF's sole discretion.~~

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurances as the non-transferring Party may reasonably request.

20.5 Disclaimer

In executing this Contract, PEF does not, nor should it be construed, to extend its credit or financial support for benefit of any third parties lending money to or having other transactions with the RF/QF or any assigns of this Contract.

20.6 Notification

All formal notices relating to this Contract shall be deemed duly given when delivered in person, or sent by registered or certified mail, or sent by fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated below. The Parties designate the following individuals to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions to contact another individual:

For the RF/QF:

_____
_____
_____
_____

For PEF:

Progress Energy Florida
Cogeneration Manager PEF 155
299 First Avenue North
St. Petersburg, FL 33701

Contracts and related documents may be mailed to the address below or delivered during normal business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:

Florida Power Corporation
d/b/a Progress Energy Florida, Inc.
299 First Avenue North
St. Petersburg, FL 33701

Attention: Cogeneration Manager PEF 155

20.7 Applicable Law

This Contract shall be construed in accordance with and governed by the laws of the State of Florida, and the rights of the parties shall be construed in accordance with the laws of the State of Florida.

20.8 Taxation

In the event that PEF becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Services determination, through audit, ruling or other authority, that PEF's payments to the RF/QF for Capacity under Options B, C, or D of the Appendix D are not fully deductible when paid (additional tax liability), PEF may bill the RF/QF monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these Capacity Payments are not currently deductible for federal and/or state income tax purposes. PEF, at its option, may offset or recoup these costs against amounts due the RF/QF hereunder. These costs would be calculated so as to place PEF in the same economic position in which it would have been if the entire Capacity Payments had been deductible in the period in which the payments were made. If PEF decides to appeal the Internal Revenue Service's determination, the decision as to whether the appeal should be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive and procedural), shall rest exclusively with PEF.

20.9 Resolution of Disputes

20.9.1 Notice of Dispute

In the event that any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or validity thereof should arise between the Parties (a "Dispute"), the Party may declare a Dispute by delivering to the other Party a written notice identifying the disputed issue

20.9.2 Resolution by Parties

Upon receipt of a written notice claiming a Dispute, executives of both Parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. No confidential information exchanged in such meetings for the purpose of resolving a Dispute may be used by a Party in litigation against the other party. If the matter has not been resolved within thirty (30) Days of the disputing Party's notice having been issued, or if the

Parties fail to meet within ten (10) Business Days as required above, either Party may initiate binding arbitration in St. Petersburg, Florida, conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures.

20.10 Limitation of Liability

IN NO EVENT SHALL PEF, ITS PARENT CORPORATION, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES RESULTING FROM ANY CLAIM OR CAUSE OF ACTION, WHETHER BROUGHT IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER LEGAL THEORY.

20.11 Severability

If any part of this Contract, for any reason, is declared invalid or unenforceable by a public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.

20.12 Complete Agreement and Amendments

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties. This Contract constitutes the entire agreement between the Parties.

20.13 Survival of Contract

Subject to the requirements of Section 20.4, this Contract, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.

20.14 Record Retention

~~The RF/QF~~ Each Party shall maintain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder~~ and to cause all RF/QF Entities to retain for the same period all such records~~.

20.15 Audit and Facility Inspection

Each Party has the right, upon reasonable notice of not less than seven (7) Business Days, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made pursuant to this Agreement.

Except in the case of an electrical emergency at or in proximity to RF/QF's site that is impacting PEF's system, PEF shall have the right upon no less than ten (10) business days prior written notice to inspect the Facility during normal business hours. In the case of an emergency as described above, PEF shall make reasonable efforts to contact the Facility and make arrangements for an emergency inspection. Such contact may be by phone call or e-mail.

20.15 No Waiver

No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

20.16 Set-Off

PEF may at any time, but shall be under no obligation to, set off or recoup any and all sums due from the RF /QF against sums due to the RF /QF hereunder without undergoing any legal process.

20.17 Change in Environmental Law or Other Regulatory Requirements

(a) As used herein, "Change(s) in Environmental Law or Other Regulatory Requirements" means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any statute, rule, regulation, permit, license, judgment, order or approval by a governmental entity that specifically addresses environmental or regulatory issues and that takes effect after the Effective Date.

(b) The Parties acknowledge that Change(s) in Environmental Law or Other Regulatory Requirements could significantly affect the cost of the Avoided Unit ("Avoided Unit Cost Changes") and agree that, if any such change(s) should affect the cost of the Avoided Unit more than the Threshold defined in Section 20.17(c) below, the Party affected by such

change(s) may avail itself of the remedy set forth in Section 20.17(d) below as its sole and exclusive remedy.

(c) The Parties recognize and agree that certain Change(s) in Environmental Law or Other Regulatory Requirements may occur that do not rise to a level that the Parties desire to impact this Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, such change(s) will not be deemed to have occurred unless the change in Avoided Cost resulting from such change(s) exceed a mutually agreed upon amount. This mutually agreed upon amount is attached to this Contract in Appendix E.

(d) If an Avoided Unit Cost Change meets the threshold set forth in Section 20.17(c) above, the affected Party may request the avoided cost payments under this Contract be recalculated and that the avoided cost payments for the remaining term of the Contract be adjusted based on the recalculation. Any dispute regarding the application of this Section 20.17 shall be resolved in accordance with Section 20.9.

IN WITNESS WHEREOF, the RF/QF and PEF executed this Contract on the later of the dates set forth below.

RF/QF	FLORIDA POWER CORPORATION d/b/a **PROGRESS ENERGY FLORIDA, INC.**
Signature	Signature
Print Name	Print Name
Title	Title
Date	Date

Exhibit MJM-2

to the

DIRECT TESTIMONY OF
MARTIN J. MARZ

ON BEHALF OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS

Capacity Factor of PEF's Combined Cycle Units

Docket No. 070235-EQ
Filed: February 18, 2008

PROGRESS ENERGY FLORIDA, INC.

Progress Energy Florida Combined Cycle Plants 2004 - 2006

Line		2004 (1)	2005 (2)	2006 (3)	Average (4)
1	**Annual MWhs**	5,885,806	6,956,112	8,173,754	7,005,224
2	**Operating Capacity**	1,334	1,916	1,885	1,712
3	**Weighted Heat Rates (1)**	7,476	7,305	7,272	7,351
4	**Weighted Capacity Factors (1)**	50.40	41.49	49.52	47.14

Source: SNL Financial
(1) Weighted by annual MWhs

Exhibit MJM-3

to the

DIRECT TESTIMONY OF
MARTIN J. MARZ

ON BEHALF OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS

Excerpts from
Vandolah Power and PEF Tolling Agreement

Docket No. 070235-EQ
Filed: February 18, 2008

REDACTED

TOLLING AGREEMENT

Between

VANDOLAH POWER COMPANY L.L.C.

And

FLORIDA POWER CORPORATION,

d/b/a

PROGRESS ENERGY FLORIDA, INC.

August 29, 2007

TABLE OF CONTENTS

EXHIBITS

TOLLING AGREEMENT

THIS TOLLING AGREEMENT (this "Agreement") entered into as of the 29th Day of August, 2007, (the "Agreement Date"), by and between Vandolah Power Company L.L.C. ("Seller"), a Delaware limited liability company, and Florida Power Corporation, d/b/a Progress Energy Florida, Inc. ("Buyer"). Seller and Buyer may be individually referred to herein as a "Party" and, collectively, as the "Parties."

RECITALS:

(A) Seller owns the Vandolah electric generating facility located in Hardee County, Florida as more particularly described in Exhibit A;

(B) Seller and Buyer desire to enter into a tolling arrangement whereby Buyer will deliver Fuel to Seller's Vandolah electric generating facility and Seller will convert such Fuel into Energy and/or Ancillary Services when scheduled by Buyer; and

(C) The Parties desire to enter into this Agreement to set forth their respective rights and obligations in connection with this tolling arrangement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Defined Terms.

The following terms shall have the meanings set forth below.

(1) "Acceptable Credit Rating" means, with respect to any Person, Party or any entity a credit rating, on any date of determination, the respective ratings then assigned to such Party's or entity's unsecured, senior long-term debt (not supported by third party credit enhancement) of at least BBB- by S&P or Baa3 by Moody's. If there is no senior long term debt then the long term issuer rating for Moody's and the credit rating for S&P will be substituted. In the event of any inconsistency in ratings by the two rating agencies (a "split rating"), the lowest assigned rating shall control.

(2) "Acceptable Guarantor" means a Person that has an Acceptable Credit Rating and that is acceptable, as determined in a commercially reasonable manner, to the Secured Party.

(3) "Affiliate" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

(4) "AGC" means automatic generation control, which is the capability to make automatic adjustments to generation output in response to system changes through the use of a digital computer. This control is based on such factors as load, frequency, cost, and tie line flows.

the Operational Limitations herein provided. Buyer hereby acknowledges Seller's obligation and agrees to dispatch the Facility and to perform its duties and responsibilities under this Agreement consistent with Seller's obligation in this Section 4.2.

4.3 Maintenance Outages.

(1) Schedule of Planned Maintenance Outages.

(a) Seller shall not be obligated to deliver Energy and/or Ancillary Services pursuant to this Agreement during Planned Maintenance Outages. The Facility and/or a Unit shall not be considered unavailable during Planned Maintenance Outages for the purposes of calculating the Monthly Capacity Payment. Notwithstanding anything in this Section 4.3 or in any other provision of this Agreement, the duration of the Planned Maintenance Outages during any calendar year shall be limited as provided in Section 4.3(2) below, and the duration of any Planned Maintenance Outages which exceed the durations specified in Section 4.3(2), shall be deemed a Forced Outage, unless otherwise excused as an Excusable Event, as herein provided.

(b) Buyer acknowledges and agrees that Seller must perform Routine Maintenance Outages and Planned Maintenance Outages at the Facility in an effort to reduce and prevent Forced Derates and/or Forced Outages and to maintain the efficiency, performance, reliability and availability of the Units. Such Planned Maintenance Outages and/or Routine Maintenance Outages include, but are not limited to, the Unit manufacturer's recommended and required maintenance, Compressor Washes and any preventive maintenance that maintains or improves or that is reasonably anticipated to maintain or improve the efficiency, performance, reliability and availability of the Facility, or any Unit thereof. The Planned Maintenance Outage schedule (intervals and duration) shall be based on (i) the Unit manufacturer's equivalent start and run time guidelines, (ii) Prudent Industry Practice, (iii) any long-term service agreements and/or major maintenance agreements for the Units, (iv) the actual dispatch of the Units, (v) the Unit's point in the maintenance cycle and the potential impacts to the Unit and costs if the maintenance schedule is changed, (vi) technical bulletins and/or technical information letters from the Unit manufacturer, and (vii) all testing of the Units as herein specified or as otherwise necessary, in the reasonable discretion of Seller, for the efficiency, performance, reliability and availability of the Units (with items (i) through (vii) inclusive being collectively defined as "Guidelines For Planned Maintenance"). On or before March 31, 2011 and on or before each March 31st thereafter during the Contract Term, based on the foregoing Guidelines for Planned Maintenance, Seller shall provide to Buyer, in writing, its proposed schedule of Planned Maintenance Outages for the next calendar year and the reason for such Planned Maintenance Outages, and the expected duration thereof. Seller shall not schedule Planned Maintenance Outages during the Peak Months without Buyer's prior written consent. Notwithstanding the foregoing, Seller shall have the right to perform Routine Maintenance Outages at any time, subject to the prior consent of Buyer, at its sole discretion. The Parties shall have the right to mutually agree on reasonable adjustments to the Planned Maintenance Outage schedules at least forty-five (45) Days in advance of each Planned Maintenance Outage. No such 45-Day notice requirement shall be applicable in the case of the discovery of Emergent Work, as herein provided.

(c) Notwithstanding the provisions of 4.3(1)(b), if, based on a new technical bulletin and/or a new technical information letter, or other written notice from any original equipment manufacturer, including the Unit manufacturer, such original equipment manufacturer recommends that one or more Units (or any material component thereof) undergo an immediate and an unanticipated or unscheduled outage or derate, then Seller shall notify Buyer of the circumstances surrounding such maintenance and Seller will work together with Buyer to schedule the Planned Maintenance Outage notwithstanding the short notice involved. Subject to any mutual, written agreement regarding such maintenance, including the scope and duration of such maintenance, the Planned Maintenance Outage schedule for such year may be amended by mutual agreement to include the mutually agreed duration of such outage under the terms of Section 4.3(2) below. To the extent that the Parties do not mutually agree to add the duration of such work to the agreed durations of the Planned Maintenance Outages as specified in Section 4.3(2) below, then such work shall be treated as Emergent Work under the terms specified in Section 4.3(2) below. Notwithstanding the provisions of 4.3(1)(b), in no event shall Seller be required to keep a Unit in service after the manufacturer's recommended service interval for maintenance, and if a Unit reaches its service interval limit at any time, Seller may schedule a Planned Maintenance Outage, without Buyer's prior written consent. In any such case, once the maintenance is complete, the Seller's obligation to obtain Buyer's consent of any such Planned Maintenance Outages, as herein provided, shall resume.

(d) While in no event shall Seller schedule any Planned Maintenance Outages during the Peak Months as provided in Section 4.3(1)(b) above, to the extent the Facility or a Unit experiences a Forced Outage during a Peak Month and the anticipated duration of the Forced Outage is sufficient to allow for certain maintenance to be performed (that was otherwise scheduled as a future Planned Maintenance Outage), and if such maintenance will not extend the duration of the Forced Outage, then Seller, at its election, may perform such planned maintenance during the Forced Outage, with Buyer's prior written consent, not to be unreasonably withheld, and Seller shall have the right to treat such Forced Outage Days as Planned Maintenance Outage Days.

(2) **Duration of Planned Maintenance Outages**. Based on the Guidelines for Planned Maintenance, and unless otherwise agreed to by Buyer, Planned Maintenance Outages shall be limited to [redacted] If a Combustion Inspection and a Hot Gas Path Inspection are to be performed on a Unit during the same calendar year, the limits in Section 4.3(2)(iii) shall apply. If a Combustion Inspection and/or a Hot Gas Path Inspection are to be performed on a Unit during the same calendar year as a Major Inspection, the limits in Section 4.3(2)(iv) shall apply. Seller shall use commercially reasonable efforts to complete or cause to be completed any Planned Maintenance Outage within the schedule and time period agreed with the Unit manufacturer or otherwise agreed in the schedule of Planned Maintenance Outages. During each Planned Maintenance Outage, Seller shall keep Buyer apprised of the status and the expected duration of the Planned Maintenance Outage, and shall notify Buyer of the discovery of any Emergent Work, as applicable. To the extent that Seller utilizes less than the

maximum number of Days permitted for Planned Maintenance Outages during a calendar year, or in the event that during a calendar year the planned maintenance is accelerated such that permitted Days of Planned Maintenance Outage remain in a calendar year, then Seller may utilize the balance of such Days to perform such Emergent Work, upon prior written notice to Buyer. [redacted]

(3) **Compressor Wash**. If the maintenance schedule from the Unit manufacturer requires Seller to perform a Compressor Wash during a Peak Month, then Seller shall schedule each such Compressor Wash during the Non-Peak Hours of such Peak Month.

(4) **Maintenance-Related Charges**. If Seller is required to start and operate a Unit for maintenance purposes, then Buyer commits to work with Seller (both Parties exercising commercially reasonable efforts) so that such maintenance related start and operation can be completed when the Energy and/or Ancillary Services from the Facility are being dispatched by the Buyer for economic reasons, to the extent possible. Buyer shall provide, at its expense, all Fuel required for the start and operation of the Unit and schedule the quantity of Energy and/or Ancillary Services produced during such operation in a commercially reasonable manner. Buyer shall be entitled to all revenues associated with the sale of Energy and/or Ancillary Services from the Facility during the period of time the Unit is being operated for maintenance purposes, as herein provided. If, notwithstanding the Parties' commercially reasonable efforts, the Parties are unable to complete the maintenance related start and operation during a time when the Buyer has dispatched the Facility for economic reasons, then Seller shall provide reasonable notice to Buyer of the date of the maintenance related start and operation, and Buyer shall nevertheless issue a Dispatch Notice accordingly. [redacted]

[redacted]

4.4 **Station Load.**

Seller shall be responsible for Station Load at all times including during all Planned Maintenance Outages, Forced Derates, and Forced Outages, and during start up and shut down of a Unit, and any periods when the Facility has not been dispatched. The Parties further agree that Seller will net Station Load from the maximum capacity of the Facility to determine the Demonstrated Capacity of the Facility as provided in Exhibit M.

4.5 **Demonstrated Capacity and Heat Rate Tests.**

(1) In [redacted] of the Delivery Term thereafter, or any date as mutually agreed by the Parties, Seller shall conduct a performance test of the Facility to calculate the Demonstrated Capacity and the Heat Rate of the Facility. The Demonstrated Capacity Test and the Heat Rate Test will be performed in accordance with the requirements of the Test Procedures in Exhibit M, and Buyer, its representatives and designees shall be permitted to attend each Demonstrated Capacity Test and/or Heat Rate Test, at Buyer's sole cost, and provided no such tests shall be postponed or rescheduled on account of the inability of Buyer, its representatives and designees to attend, after Buyer receiving not less than ten (10) Days prior notice of such tests. The Compliance/Relative Accuracy Test Audits (RATA) test and any other tests which may be necessary to satisfy operational, vendor warranty, or Permit requirements such as Continuous Emissions Monitoring Systems (CEMS) tests, and all of the tests described in this Section 4.5, shall be known collectively as the "Facility Tests" and each as a "Facility Test". The Parties acknowledge and agree that it is the stated purpose and goal of the Parties to schedule the Facility Tests simultaneously and in the background of the dispatched operation of the Facility, at a time when the full output of the Facility would reasonably be expected to be dispatched by Buyer (for economic reasons) to serve load for the hours of the test. To the extent that the full output of the Facility cannot be dispatched by Buyer for economic reasons as herein contemplated, then Seller shall cooperate with Buyer to have the Units tested sequentially, as herein provided. If the Facility is not dispatched by Buyer for its economic purposes during a Facility Test (with Buyer being obligated to issue a Dispatch Notice to cover such Facility Test, as requested by Seller, even if such dispatch is un-economic to Buyer, to allow for the tagging and scheduling of the Energy produced during such Facility Test), then Seller shall reimburse Buyer as provided in Section 4.3(4) above.

(2) Buyer will have the right to request during the Delivery Term, upon not less than ten (10) Days prior written notice to Seller, that Seller conduct up to two (2) additional re-tests of the Heat Rate Test and/or the Demonstrated Capacity Test within 12 months of the last Facility Test, all in accordance with the requirements of Test Procedures. Buyer, its representatives and designees shall be permitted to attend each such re-test, to the extent herein provided. If Buyer requests that Seller conduct an additional Demonstrated Capacity Test and/or an additional Heat Rate Test, then the date of any such re-test properly requested by Buyer shall be established by the mutual agreement of the Seller and the Buyer, provided such test shall be at least ten (10) Days after Buyer's written request and not more than thirty (30) Days after Buyer's request. At

EXHIBIT M

TEST PROCEDURES

EXHIBIT M

1. General.

All tests pursuant to the Agreement shall be conducted by Seller. Seller shall give Buyer reasonable notice of the time and scope of all such tests, and Buyer and/or its designee shall have the right to be present and observe all test procedures and results, as further provided in Section 4.5(1) of the Agreement to which this Exhibit M is attached. To the extent that Buyer is permitted to request a re-test as provided in Section 4.5(2) of the Agreement, then the timing of such re-test will be determined as provided in Section 4.5(2) of the Agreement.

The Parties agree that, if possible, the Demonstrated Capacity Test and Heat Rate Test will be performed with all four Units operating simultaneously. However, to the extent that there are constraints that prevent this, including for example electricity transmission constraints, or, in the absence of constraints, to the extent that the Parties mutually agree, the Demonstrated Capacity Test and Heat Rate Test may be performed in a staggered fashion (including the possibilities that a Unit is tested alone, or simultaneously with one or two other Units) but with all four Units ultimately being tested. In this event, the results of each of the tests performed will be combined as described below to determine the Demonstrated Capacity and Tested Heat Rate (as herein defined) for the entire Facility as if all four Units had been tested simultaneously.

The Buyer agrees to issue a Dispatch Notice for all Energy produced during the Demonstrated Capacity Test and Heat Rate Test, and to the extent that no Dispatch Notice is issued, Buyer shall nevertheless take the Energy generated during the Facilities Tests, and Seller shall reimburse the Buyer for a portion of the costs as more particularly provided in Section 4.3(4) of the Agreement.

During the performance of all tests conducted pursuant to the Agreement, the Facility and equipment shall be operated as follows:

a. Utilizing the normal Facility operating and maintenance staff, except that additional personnel may be used for data collection, if required,

b. Utilizing permanent Facility equipment,

c. Within equipment design limits and in a manner consistent with equipment operating manuals,

d. In compliance with all applicable laws and Permit requirements,

e. Utilizing normal plant operating procedures and equipment configurations,

f. The Facility shall be tested on Gas only with all equipment in the normal operating condition, including the evaporative coolers and Gas heaters. To assure a proper test on the evaporative coolers, the Facility shall be tested when the ambient temperature is greater than or equal to 75°F, barometric pressure shall be assumed to be standard (14.7 psia).

g. Seller's instruments that measure the following conditions will be calibrated, if possible, prior to testing:
   - ambient temperature
   - relative humidity

h. Each Unit must be at full 100% load, with internal heat saturation demonstrated such that wheel space temperature shall not have changed by more than 5°F between successive fifteen (15) minute periods.

i. Data will be recorded by the plant historian electronically.

j. The electric grid must be in a stable condition. Abnormal conditions, such as the need for unusually high volt-amperes reactive (VAR) support, which may arise during the performance of any test will need to be evaluated by both Parties and may require the invalidation of the test. Such invalidation if required will not count as one of the limited re-tests for either Buyer or Seller.

k. All Facility systems must reach a steady state before the start of each test. Systems designed to operate intermittently shall be deemed to be in steady state of operation as long as the conditions which start and stop the operation of the system are not exceeded during the test period and the system is available for operation as designed.

Buyer and Seller shall mutually agree when situations arise during the conduct of any test that may warrant deviations from approved test procedures. Agreements reached during these consultations (such as whether to discard erroneous data) shall be recorded, acknowledged in writing, and shall be binding for all Parties.

2. Demonstrated Capacity Test.

The Demonstrated Capacity Test shall be conducted for the purpose of determining the Facility's net capacity at Reference Conditions.

To be completed, the Demonstrated Capacity Test shall be conducted on a Facility basis (although as described below it is possible that all four Units may not be tested simultaneously). The Facility's net electrical output shall be determined using the Energy Meters, as more specifically provided in Section 5.9.

The procedure to be used for the performance of the Demonstrated Capacity Test will depend on whether (A) all four Units are tested simultaneously, or (B) less than four Units are tested simultaneously.

Upon completion of the Demonstrated Capacity Test, Seller shall perform all calculations necessary to determine Demonstrated Capacity, and shall provide Buyer with the data used to perform such calculations, the source of such data, the resulting calculations, and the Demonstrated Capacity.

A. During the Demonstrated Capacity Test of all four Units simultaneously:

The Facility shall be started on Gas and all Units loaded to one hundred percent (100%) load. When the Units are operating at steady state, the test shall be initiated and shall run for a period of four (4) hours (or less, if mutually agreed by Buyer and Seller). Readings will be taken by the Historian from the Energy Meters and Gas Meter(s) at the beginning of each hour during the test period, and at the end of the final hour. Simultaneously with the data collection intervals above the plant Historian will record the ambient temperature and relative humidity. The Historian will provide these readings on an hourly average basis.

The Demonstrated Capacity shall be determined as follows. The average total net electrical output as measured by the Energy Meters during each hour shall be corrected from average ambient conditions during that hour to the Reference Conditions using the correction curves agreed to by Seller and Buyer and shown in Curve C1 in this Exhibit. The hourly readings will then be averaged over the total hours included in the test period to determine the Demonstrated Capacity of the Facility.

B. During a staggered test of the four Units to determine Demonstrated Capacity, the following additional criterion will be used:

The parasitic loads attributable to the non-running Units, as shown in Table T1, will be added to the Electrical Interconnect Meter readings prior to corrections for Demonstrated Capacity.

The Demonstrated Capacity of the Unit(s) tested will then be calculated as shown in the sample analysis sheet provided in Table T2. At the completion of the testing of all four Units, the corrected results from each test will be summed to determine the final Demonstrated Capacity of the Facility.

C. The dispatch of any additional Unit(s) during a Demonstrated Capacity Test:

If, during any portion of the Demonstrated Capacity Test, an additional Unit(s) is dispatched by Buyer, that portion of the Demonstrated Capacity Test will be voided, irrespective of whether it was being performed in conjunction with or absent a dispatch by Buyer. If that portion of the Demonstrated Capacity Test was being performed absent a dispatch by Buyer, any costs incurred by Seller for Gas or for a Start Charge, will be refunded by Buyer. The voided test will not count as a portion of a retest for either Party.

3. Heat Rate Test.

The Heat Rate Test shall be conducted for the purpose of determining the Facility's net heat rate at Reference Conditions (the "Tested Heat Rate" or "THR"). To the extent possible, the Heat Rate Test shall be conducted concurrently with the Demonstrated Capacity Test, even if the testing of Units is staggered. The Heat Rate Test shall be conducted solely on Gas.

The procedure used for the performance of the Heat Rate Test will depend on whether (A) all four Units are tested simultaneously, or (B) less than four Units are tested simultaneously.

Upon completion of the Heat Rate Test, Seller shall perform all calculations necessary to determine the Tested Heat Rate, and shall provide Buyer with the data used to perform such calculations, the source of such data, the resulting calculations, and the Tested Heat Rate.

A. During a Heat Rate Test of all four Units simultaneously, the THR will be determined as follows:

The total Gas use (in MMBtu on a HHV basis) measured each hour during the test period shall be divided by the total net electrical output (in MWh), during that hour. The resultant value shall be shall be corrected from average ambient conditions during that hour to the Reference Conditions using the correction curve shown as C2 in this Exhibit. The corrected hourly readings shall be averaged to determine the Tested Heat Rate.

B. During a staggered test of the four Units to determine Demonstrated Capacity, the following additional criterion will be used to determine the Tested Heat Rate:

The parasitic loads attributable to the non-running Units, as shown in Table T1, will be added to the Electrical Interconnect Meter readings prior to making the corrections to Reference Conditions for Tested Heat Rate.

The Heat Rate of the Unit(s) tested will then be calculated as shown in the sample analysis sheet provided in Table T2. At the completion of the testing of all four Units, the corrected results will be averaged to determine the Tested Heat Rate.

C. The dispatch of any additional Unit(s) during a Demonstrated Capacity Test:

If, during any portion of the Heat Rate Test, an additional Unit(s) is dispatched by Buyer, the test will be voided, irrespective of whether the test was being performed in conjunction with or absent a dispatch by Buyer. If the test was being performed absent a dispatch by Buyer, any costs incurred by Seller for Gas or Start Charges will be refunded by Buyer. The voided test will not count as a retest for either Party.

Exhibit M Attachments:

Table T1	Parasitic Loads
Table T2	Sample Analysis Report
Curve C1	553HA3298 Sheet 2 Effect of Ambient Temperature and Humidity on Output
Curve C2	553HA3298 Sheet 3 Effect of Ambient Temperature and Humidity on Heat Rate.

Equipment parasitic load data:

		KW load by Units not in operation			
Equipment:	Area	Load in KW: (per component)	3	2	1
Aux Lube Oil Pump	Unit Specific	105	315	210	105
Aux Hydraulic Pump	Unit Specific	63.06	189.18	126.12	63.06
Mist Eliminator	Unit Specific	5.5	16.5	11	5.5
L/O Skid Cooling Fan	Unit Specific	12.2	36.6	24.4	12.2
Turning Gear Motor	Unit Specific	11.15	33.45	22.3	11.15
Potable Water Pump	Commons	6	4.5	3	1.5
Jockey pump	Commons	3.8	2.85	1.9	0.95
Air Compressor	Commons	73.3	54.9	36.6	18.3
UPS	Commons	20	15	10	5
Admin Building / CB / HVAC	Commons	120	90	60	30
Service water pump	Commons	22.8	17.1	11.4	5.7
Miscellaneous	Commons	125	93.75	62.5	31.25
		Assumed Parasitic Load	868.83	579.22	289.61
TBD based on transformer loading and respective losses, not applicable to unit(s) in operation.					
GSU	Unit Specific	86	258	172	86
Aux Transformer	Unit Specific	15	45	30	15
		Transformer Losses	303	202	101
TBD based on equip running during test based on actual run time.					
Well water Pump	Commons	485.5			
Evap Pump	Unit Specific	13.8			
Glycol pump	Unit Specific	379.6			
Glycol Fans	Unit Specific	191.25			
Exciter	Unit Specific	700			
Comp Vent Fans	Unit Specific	6.6			
Exhaust Frame Blowers	Unit Specific	65			
#2 Bearing Area Blower	Unit Specific	7.2			
		Total Additional Parasitic load	1171.830	781.220	390.610

Table T2 (Sample Only)

Vandolah Power Plant Dedicated Capacity/Tested Heat Rate Test Staggered Operation

SAMPLE ONLY

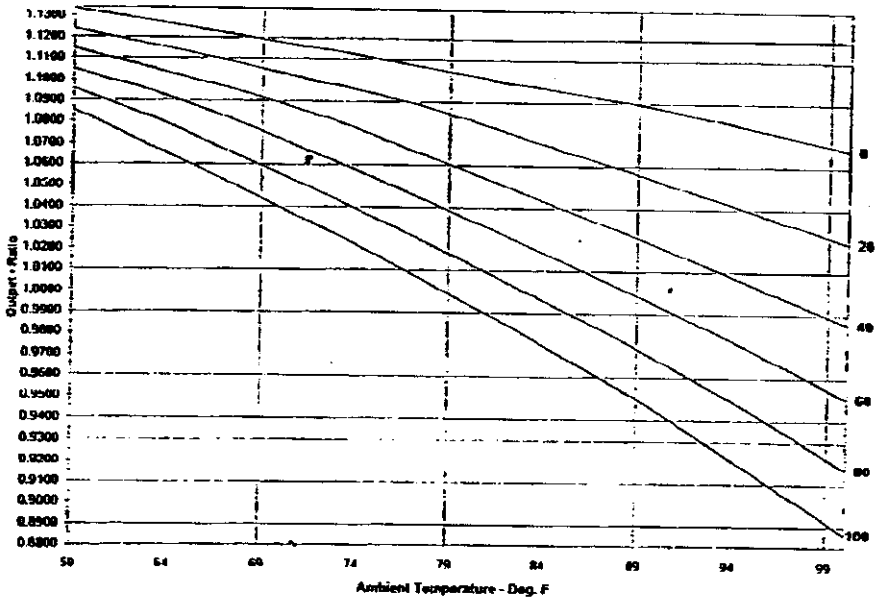
UNIT(s) Tested: 1 Date: June 5, 2012

						Weather Data				Results	
	Net Energy	Parasitic Load BOP	Net Tested Energy	Fuel Gas	Measured Heat Rate	Ambient Air temp	Ambient Humidity	Effect of Ambient Temperature and humidity on Output	Effect of Ambient Temperature and humidity on Heat Rate	Dependable Capacity	Tested Heat Rate (THR)
	a	b	c	d	e	f	g	h	i	j	k
	MW from Interconnect Meter	Table T1	a+b	MMbtu from Interconnect Meters	MMbtu/MW (d/c)	From Plant Weather Station		Curve C1	Curve C2	MW (c/h)	MMbtu/MW (eA)
9:00 AM	161.38	1.18	162.56	1707.90	10.51	86.97	50.34	102.0%	99.6%	159.37	10.55
10:00 AM	161.50	1.18	162.68	1707.90	10.50	88.36	50.78	101.4%	99.7%	160.43	10.53
11:00 AM	160.00	1.18	161.18	1693.67	10.51	88.79	50.83	101.1%	99.7%	159.42	10.54
12:00 PM	160.38	1.18	161.56	1692.66	10.48	89.53	48.03	101.3%	99.7%	159.48	10.51
										159.68	10.53

Curve C1
553HA3293 Sheet 2
Effect of Ambient Temperature and Humidity on Output

General Electric Model PG7241(FA) Gas Turbine
VANDOLAH GR0682

E n P erfor nce
Effect of Ambient Temperature and Humidity on Output
Design Values Referenced on 553HA3298 Rev
Fuel: Natural Gas
Mode: Base



Ambient Temperature - Deg. F

Relative Humidity - Percent	59.0	63.6	68.1	72.7	77.2	81.8	86.33	90.89	95.44	100.00
0	1.133609	1.127161	1.120622	1.113991	1.107321	1.100452	1.093481	1.086471	1.077429	1.068463
20	1.123963	1.115783	1.107287	1.098287	1.089932	2.076801	1.063985	1.050916	1.037559	1.023922
40	1.114379	1.104589	1.093978	1.081398	1.066509	1.051204	1.035441	1.019241	1.002373	0.985408
60	1.104999	1.093360	1.078954	1.062429	1.045369	1.027744	1.009571	0.990826	0.971436	0.950563
80	1.095547	1.080679	1.062983	1.044667	1.025708	1.006120	0.985952	0.964612	0.941998	0.917277
100	1.085602	1.067878	1.047687	1.027944	1.007336	0.986101	0.963552	0.939675	0.913355	0.886419

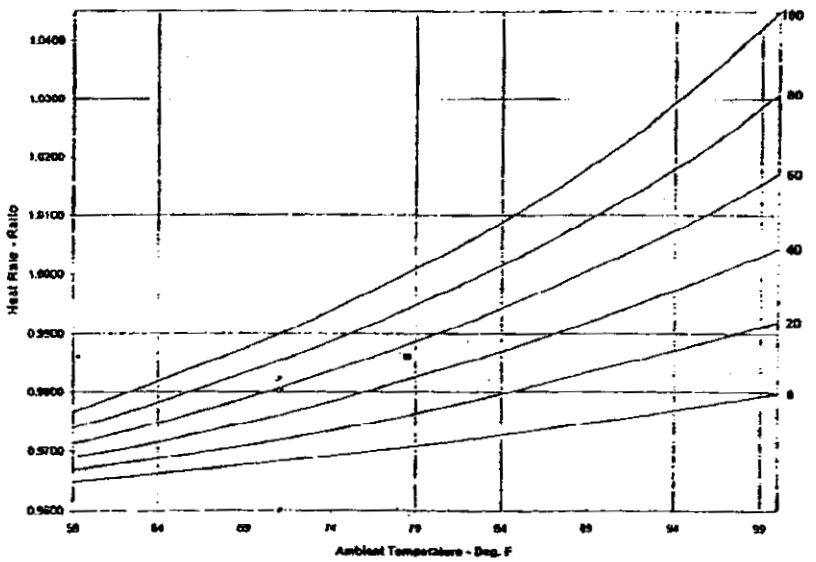
F. Mendez
02/06/02

553HA3298 Rev -
Sheet 2

Curve C2
553HA3298 Sheet 3
Effect of Ambient Temperature and Humidity on Heat Rate

General Electric Model PG7241(FA) Gas Turbine
VANDOLAH GR0682

Estimated Performance
Effect of Ambient Temperature and Humidity on Heat Rate
Design Values Referenced on 553HA3298 Rev
Fuel: Natural Gas
Mode: Base



Ambient Temperature - Deg. F

Relative Humidity - Percent	59.0	63.6	68.1	72.7	77.2	81.8	86.33	90.89	95.44	100.00
0	0.964776	0.965952	0.967243	0.968649	0.970146	0.971806	0.973592	0.975432	0.977542	0.979682
20	0.966730	0.968439	0.970490	0.972862	0.975162	0.978116	0.981306	0.984892	0.988296	0.992122
40	0.968910	0.971212	0.974010	0.977238	0.980946	0.984947	0.989273	0.993828	0.998954	1.004352
60	0.971242	0.974335	0.978007	0.982260	0.986768	0.991744	0.997151	1.003028	1.008475	1.017045
80	0.973858	0.977715	0.982215	0.987159	0.992559	0.998472	1.004896	1.012263	1.020673	1.030885
100	0.976815	0.981276	0.986417	0.992082	0.998303	1.005046	1.012934	1.021894	1.032940	1.044968

F. Mendez
02/06/02

553HA3298 Rev -
Sheet 3

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March 10, 2008

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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.

Sincerely,

Lisa C. Scoles

Lisa C. Scoles

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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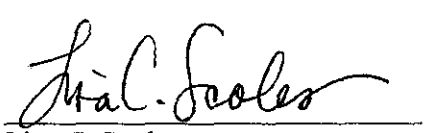

Lisa C. Scoles

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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I. INTRODUCTION

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

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

Q. Did you file direct testimony in this case?

A. Yes, I did.

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

A. Yes, I have.

Q. Did you agree with Mr. Marz's testimony?

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

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

II. PURPOSE OF STANDARD OFFER CONTRACT

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

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

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

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

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

nothing more than a "red herring" that has no impact on the proper application of PEF's Standard Offer Contract.

III. PRICE TERMS

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

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

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

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

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

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

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

IV. NON-PRICE TERMS

A. Renewable Energy Credits ("RECs")

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

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

B. Capacity Test Periods

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

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

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

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

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

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

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

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

C. Right of Inspection

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

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

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

IV. GENERAL TERMS AND CONDITIONS

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

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

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

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

A. Performance Security

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

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

Q. Please explain what would happen if, as PCS Phosphate suggests, the performance security was "associated with the expected level of loss."

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

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

B. Creditworthiness, Default, Representations and Warranties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Assignment

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

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

D. *Force Majeure*

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

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

E. Conditions Precedent

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

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

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

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

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

- Section 5(c) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary. PEF does not object to the suggested change to allow termination of the contract with proper notice.
- Sections 5(d) and (e) – The provisions Mr. Marz suggests moving are properly considered conditions precedent and therefore should be included in that section. It is understood that failure to meet the conditions would amount to a default, so there is some logic to his suggestions. However, it would seem the provisions are appropriately placed in the current contract.

F. Annual Plan and Electricity Production and Plant Maintenance Schedule

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

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

Q. What is your response to Mr. Marz's suggested revisions in Section 10.1 to change "detailed plan" to "good faith estimate"?

A. Conceptually, I do not oppose changing "detailed plan" to "good faith estimate" in Section 10.1. A "good faith estimate" would include a maintenance schedule with anticipated output levels during the maintenance periods.

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

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

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

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

G. Insurance

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

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

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

H. Use of Interruptible Standby Service for Start-up

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

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

I. Energy

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

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

V. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.