BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's	)	Docket No. 080193-EQ
Petition for Approval of Renewable Energy	)	
Tariff and Standard Offer Contract	)	Filed: February 26, 2009

FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF

Florida Power & Light Company ("FPL" or the "Company") hereby files with the Florida Public Service Commission (the "PSC" or the "Commission") its Post-Hearing Brief in the above-referenced docket, and states as follows:

INTRODUCTION AND OVERVIEW

This case is Wheelabrator Technologies Inc.'s ("Wheelabrator's") protest of the Commission's Order No. PSC-08-0544-TRF-EQ in which the Commission, consistent with the recommendation of its Staff, approved FPL's Standard Offer Contract for the Purchase of Capacity and Energy from Renewable Energy Facility or a Qualifying Facility with a Design Capacity of 100 kW or less (2014 Avoided Unit) ("FPL's SOC"). FPL's SOC is a contract that it as well as other Investor Owned Utilities ("IOUs") is required to continuously offer as a means for purchasing capacity and energy from qualified facilities of 100 kW or less or renewable energy facilities as defined under Florida law pursuant to Commission-approved standard terms and conditions.

The heart of this case is that FPL's SOC is correctly based upon the economics and operating characteristics of FPL's Next Planned Generating Unit as set forth in its Ten Year Site Plan, as required by applicable Florida statutes and Commission regulations. In addition, the

record shows that the provisions contained in FPL's SOC, including those singled out for challenge by Wheelabrator, properly implement Florida law and the Commission's policy with respect to the use of standard offer contracts to encourage development and sales of renewable energy. FPL's SOC also reasonably balances the interests of FPL's customers -- who pay for all of the costs of capacity and energy provided under such contracts through the fuel and capacity clauses, without any mark-up or profit for FPL -- with those of prospective sellers of energy from qualified facilities or renewable generators, and should be approved.

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

Wheelabrator's claims in this proceeding fall essentially into two categories. The first category is where Wheelabrator claims that the Commission should order changes to FPL's SOC that Wheelabrator feels could then be more easily met by Wheelabrator's solid waste burning facilities, and which would result in higher costs (greater than FPL's full avoided cost) and/or lower reliability than FPL's customers would receive from FPL's NPGU. For example, Wheelabrator suggests that FPL's SOC's Equivalent Availability Factor -- how much a unit is expected to operate -- should be downgraded so it would be easier for a unit like Wheelabrator's to get higher capacity payments for providing less availability than FPL's NPGU. Similarly, Wheelabrator suggests that under some circumstances renewable generators should be paid

under FPL's SOC even when not generating, resulting in charges to customers that are higher then FPL's full avoided cost. Wheelabrator also claims that turbine safety and reliability testing standards should not be contained in FPL's SOC – despite the obvious decrease in system protection and reliability that would result for customers. All such claims should be rejected because they disregard the fundamental legal requirement that FPL's SOC pay no more than the avoided cost of FPL's NPGU and be based upon the operating characteristics of FPL's NPGU -- not the costs and operating characteristics of Wheelabrator's generating units.

The second category of claims is where Wheelabrator asks that the Commission change FPL's SOC provisions that simply implement well-established Commission rules and past decisions applicable to all Florida standard offer contracts. These claims should be rejected because they are contrary to established law, and in raising them, Wheelabrator is protesting the Commission's standard offer contract rules, not FPL's SOC. The record shows that Wheelabrator had a full and fair opportunity to participate, and actually did participate through its current counsel, in the Commission's extensive proceedings that resulted in the rules Wheelabrator is now protesting. However, a desire for different or revised rules is not a proper legal basis for claiming that FPL's SOC contract provisions are contrary to law or unreasonable, and such claims should be rejected.

Further, both categories of criticisms made by Wheelabrator are precisely the kind of points that can be and are raised in the give and take of negotiated renewable energy contracts, which contracts are encouraged by the Commission. Such negotiated contracts can and do take into account the specifics of the renewable generation being purchased.

However, Wheelabrator's considerations raised in this proceeding should not be incorporated into FPL's SOC which is required by law to be (i) based upon FPL's NPGU, (ii)

reasonably protective of FPL's customers, and (iii) continuously available to renewable generators of all types and sizes.

Accordingly, FPL requests that the Commission find based upon the record, that FPL's SOC is reasonable and complies with applicable Florida statutes and Commission rules. FPL requests that FPL's SOC be approved and that Wheelabrator's suggestions for changes be denied.

ISSUES AND POSITIONS

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

FPL: *Yes. During 2007 the Commission, after an extensive series of workshops and hearings conducted during 2005 and 2006, adopted standard offer contract rules to implement the requirements of Section 366.91, F.S. These rules strongly encourage the development of renewable resources in Florida, and provide a range of unilateral options to the renewable generator. FPL's SOC complies with all of these rules, and hence complies with Sections 366.91 and 366.92, F.S. and encourages the development of renewable generation in the State.*

FPL is a strong supporter of purchasing cost-effective renewable resources. For 2008, January through November, FPL purchased 1,145,999 MWH of renewable energy under firm capacity contracts with firm generating capacity of 157.6 MW. Additionally, through November 2008, FPL purchased approximately 341,039 MWH of renewable energy from As-Available producers with generating capacity of 126.05 MW. FPL is always interested in adding to these purchases of renewable energy upon terms and conditions beneficial to its customers and in compliance with applicable laws and regulations. Furthermore, FPL continues to encourage existing and potential renewable generators by facilitating dialogue with these entities and offering for negotiation contract terms that favor development of renewable resources. See, Tr. 186 (Dubin).

FPL's SOC encourages the development of renewable energy pursuant to Sections 366.91 and 366.92, F.S. for several reasons. Tr. 33, 44 (Dubin). First, FPL's SOC is consistent with the Commission's standard offer contract regulations, which are themselves replete with provisions that benefit renewable providers and FPL's customers. Tr. 33-34 (Dubin). Second, FPL on its own accord, has amended provisions of FPL's SOC so as to further benefit renewable providers while maintaining a reasonable balance between the interests of FPL's customers and renewable generators. Third, FPL's SOC has properly been used as a starting point for renewable contract negotiations focused on meeting special needs of individual renewable energy facilities. See, Tr. 44 (Dubin).

1. FPL's SOC Complies Fully with the Commission's Standard Offer Contract Regulations, which Strongly Encourage Renewable Generation.

During 2007, the Commission, after giving careful consideration to the development of contractual terms to balance the needs of Renewable Energy Facilities ("REFs") and utility customers and an extensive series of workshops and hearings conducted during 2005 and 2006, adopted rules to implement the requirements of Section 366.91, F.S. These rules require the IOUs to make continuously available standard offer contracts based on a portfolio approach of utility fossil-fueled units; establish a methodology for calculating capacity payments using a value of deferral methodology based on the utility's full avoided costs and need for power; require IOUs to expand the capacity and energy payment options to facilitate the financing of renewable generation facilities; allow for reopening the contract in the event of future carbon taxes; clarify ownership of transferable renewable energy credits; provide for an expedited dispute resolution process; and require annual reporting from all utilities.

These rules, each of which is complied with by FPL's SOC, strongly encourage the development of renewable resources in Florida, and provide a range of valuable unilateral

options for prospective renewable generators. Tr. 28, 29, 34 (Dubin). More specifically, commission rules which strongly encourage renewable development include the following:

- Rule 25-17.260, F.A.C., requires that "[t]here shall be no preset subscription limits for the purchase of capacity and energy from [REFs]."
- Rule 25-17.250(1), F.A.C., requires that the standard offer contract(s) be made available to REFs, including those with a design capacity of greater than 80 MW, and "small qualifying facilities [("QF")] with a design capacity of 100 kW or less."
- Rule 25-17.250(1), F.A.C., requires IOUs to annually file standard offer contracts by April 1, which coincides with filing of IOUs Ten Year Site Plans ("TYSPs").
- Rule 25-17.250(1), F.A.C., requires IOUs to file a separate standard offer contract for each fossil fuel technology type identified in the utility's TYSP.
- Rule 25-17.250(2), F.A.C., requires that IOUs make their standard offer contracts continuously available to REFs.
- Section 366.91, F.S. and Rule 25-17.250(3), F.A.C., provide the REF the option to choose the term of the standard offer contract, ranging from "a minimum of 10 years from the in-service date of the avoided unit up to a maximum of the life of the avoided unit."
- Rule 25-17.250(6), F.A.C., "[i]n order to facilitate third-party financing of [REFs]" requires, at the request of the REF, each IOU to provide for fixed as-available and firm energy payments.
- Rule 25-17.280, F.A.C., requires that Tradable Renewable Energy Credits ("RECs") "remain the exclusive property of the [REF]."
- Rule 25-17.270, F.A.C., requires the IOUs to include a provision in the standard offer contract to reopen the contract in the event of changes in environmental and governmental regulations which affect the IOU's full avoided costs of the unit.
- Rule 25-17.290, F.A.C., requires prior approval by the Commission before equity adjustments for imputed debt can be made to a utility's avoided cost.
- Rule 25-17.310, F.A.C., provides for dispute resolution between an REF and an IOU.

See, Tr. 28, 29 (Dubin). Because FPL's SOC complies with all of these rules, and hence complies with Sections 366.91 and 366.92, F.S., the Commission should find that FPL's SOC properly encourages the development of renewable generation in the State. See, Tr. 34 (Dubin).

2. FPL's SOC Contains Voluntary New FPL Revisions Favorable to REFs.

The record shows that in addition to complying with applicable Commission rules, FPL's SOC also includes voluntary new revisions favorable to REFs. These revisions address considerations raised by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate White Springs ("PCS Phosphate") in Docket No. 070235-EQ with respect to Progress Energy Florida's ("PEF's") 2007 Renewable Standard Offer Contract docket. Even though that docket did not contest FPL's 2007 Renewable Standard Offer Contract, FPL reviewed PCS Phosphate's considerations and, without any legal requirement to do so, revised its own Standard Offer Contract in order to (i) grant the Qualified Seller "no less than 10 Business Days" notice when requiring the Qualified Seller to "validate the Committed Capacity of the facility by means of a subsequent Committed Capacity Test;" and (ii) revise the contract assignment language to be more mutual. Furthermore, as stated on page 2 of Order No. PSC-08-0544-TRF-EQ:

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

These revisions, voluntarily initiated by FPL, further support continued development of renewable energy in Florida.

3. FPL's SOC has Properly been Used as a Starting Point for Renewable Contract Negotiations.

Wheelabrator repeatedly asserted at the hearing that the absence of an executed standard offer contract shows that FPL's SOC is unreasonable. See, Tr. 43, 44, 58 (Dubin). Nothing is further from the case. In contrast, as FPL witness Dubin described, FPL has provided FPL's SOC on numerous occasions to parties as a starting point for negotiations. As Ms. Dubin explained, FPL is in the process of negotiating renewable contracts with several parties, including Wheelabrator. The fact that a prospective supplier would choose to try to tailor the agreement, which is the Commission's preferred approach for renewable contracts, in fact shows the robustness of the Commission's approach of requiring the utility to make available a standard offer contract while encouraging negotiations to better meet the needs of specific facilities. See, Tr. 44 (Dubin). Similarly, Wheelabrator failed to acknowledge the fact that FPL's Standard Offer Contracts in recent years have been subject to almost continual protest as a factor that would affect whether or not a renewable generator would be interested in FPL's SOC. See, Tr. 185 (Dubin). Accordingly, the assertion that FPL's SOC does not encourage renewable generation because FPL renewable providers have preferred negotiated contracts lacks merit, and should be disregarded.

REFs almost always have some unique aspects, circumstances, and business needs. Some modifications, even if minor in nature, are usually made to FPL's Standard Offer Contract, resulting in a negotiated contract, consistent with the Commission's preferred approach. See, Tr. 162 (Dubin). This is supported by the Commission statement in Order No. 12634 (page 7) in Docket No. 820406-EU that states "[a]t the outset, we wish to state that it is our preference that QFs and utilities negotiate individually tailored contracts. The rules we have adopted are

intended to both encourage negotiated contracts and provide a fall back remedy in the event a contract cannot be negotiated." This is also supported by Rule 25.17.240(1), which states:

> "Investor-owned utilities and renewable generating facilities are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security." Rule 25-17.240(1), F.A.C.

For all of the foregoing reasons, the Commission should find that FPL's SOC complies with applicable laws, is reasonable, encourages renewable development and should be approved.

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

FPL: *Yes. During 2007 the Commission, after an extensive series of workshops and hearings conducted during 2005 and 2006, adopted standard offer contract rules to implement the requirements of Section 366.91, F.S. These rules strongly encourage the development of renewable resources in Florida, and provide a range of unilateral options to the renewable generator. FPL's SOC complies with all of these rules, and hence complies with F.S. 366.92 and protects the economic viability of Florida's existing renewable energy facilities.*

As discussed with respect to Issue 1, the record shows that the Commission through an extensive series of workshops, hearings, and rulemaking recently adopted rules to implement the requirements of Section 366.91, F.S. These rules require the IOUs to continuously make available standard offer contracts based on a portfolio approach of utility fossil-fueled units; establish a methodology for calculating capacity payments using a value of deferral methodology based on the utility's full avoided costs and need for power; require IOUs to expand the capacity and energy payment options to facilitate the financing of renewable generation facilities; allow for reopening the contract in the event of future carbon taxes; clarify ownership of transferable renewable energy credits; provide for an expedited dispute resolution process; and require annual reporting from all utilities. See, Tr. 28 (Dubin). These are only a few of the renewable generation-friendly provisions contained in the Commission's rules implemented through FPL's

SOC. Every qualified renewable facility, whether existing or new, plainly benefits from having the option to enter into FPL's SOC or, as is more typical, negotiate a contract with FPL based on FPL's SOC. As such, FPL's SOC protects the economic viability of Florida's existing REFs, and provides a range of unilateral options to the renewable generator. FPL's SOC complies with all of these rules, and hence complies with F.S. 366.92 and protects the economic viability of Florida's existing REFs. See, Tr. 27-29 (Dubin).

Many of the points stated by FPL with respect to Issue 1 likewise show why FPL's SOC protects the economic viability of existing renewable facilities. These include each of the specific Commission rules cited; the fact that FPL amended its SOC to further benefit renewable developers; the fact that FPL has used FPL's SOC as a basis for renewable contract negotiations. FPL repeats and incorporates each of those points stated with respect to Issue 1 above as if fully set forth herein.

Wheelabrator asserted at the hearing that the absence of an executed standard offer contract since 2006 and the fact that no existing REF has executed a standard offer contract with FPL proves that FPL's SOC is unreasonable. See, Tr. 43, 44, 58 (Dubin). Again, nothing is further from the case. Please see Issue 1 for FPL's discussion regarding the proper use of FPL's SOC as a starting point for the negotiation of renewable contracts. Accordingly, Wheelabrator's assertion that FPL's SOC does not protect the economic viability of existing renewable facilities because FPL has not executed a standard offer contract lacks merit, and should be disregarded.

Further, as made evident by the record, Wheelabrator has four existing renewable energy contracts with FPL for the Broward South and Broward North facilities, a 1987 agreement for each of those and 1991 amendment for each of those. See, Tr. 45 (Dubin). Since those contracts were signed, FPL's customers have paid Wheelabrator more than $860 million for capacity and

energy. Tr. 36(Dubin); Depo Tr. 11(Dubin). As mentioned by FPL witness Dubin in her deposition and at the hearing, the four contracts that FPL has in place with Wheelabrator for the purchase of firm capacity and energy were in place prior to 2006 and have not yet expired. See, Tr. 44 (Dubin); See, Depo Tr. 11-13(Dubin). That being said, FPL is in the process of renegotiating its contracts with Wheelabrator. See, Tr. 169 (Dubin).

It should be emphasized that FPL's SOC is available to Wheelabrator at the time its existing contracts expire. The availability of FPL's SOC plainly provides the prospect of a substantial revenue stream to Wheelabrator and other existing renewable suppliers. Simply put, existing renewable suppliers have the unilateral legal right to "put" capacity and energy to FPL under the SOC-- plainly supporting the continued economic viability of existing renewable generators. If renewable generators seek an agreement more tailored to their specific generators, the process exists to negotiate such an agreement.

For all of the foregoing reasons, and the reasons set forth above with respect to Issue 1, the Commission should find that FPL's SOC complies with applicable laws, is reasonable, protects the economic viability of existing renewable facilities and should be approved.

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

FPL: *Yes. The source of this requirement is that FPL's NPGU, the 2014 Combined Cycle ("CC") unit in question, has a projected annual EAF of 97%. By setting the performance requirement to a 97% EAF in order for the Qualified Seller "QS" to receive full capacity payments, FPL is ensuring that its customers receive the same level of reliability that they would receive from the CC avoided unit. This complies with applicable statutes and regulations, and is reasonable.*

The requirement that generators achieve 97% availability to receive full capacity payments is reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C., for several reasons. First, 97% is the expected Equivalent Availability Factor ("EAF") of FPL's NPGU, a 2014 Class G CC unit. See, Tr. 30 (Dubin). Second, the expected EAF of FPL's NPGU is consistently used as a basis for the ACBF required for full capacity payments in FPL's Standard Offer Contracts and is fully consistent with Commission precedent. See, Tr. 171-172 (Dubin). Also, a 97% availability is consistent with the recent operation of FPL's most similar CC units, further supporting FPL's use of an expected EAF of 97% for its NPGU. See, Tr. 173 (Dubin).

First, it is uncontested that Florida law requires that a utility's standard offer contract be based on that utility's Next Planned Generating Unit. Specifically, Rule 25-17.0832(4)(e)8., F.A.C., expressly requires that the "performance standards [in the Standard Offer Contract] shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract." The source of this requirement in FPL's SOC is that FPL's NPGU has an expected EAF of 97% as shown on page 93, Schedule 9 of FPL's 2008 TYSP. See, Tr. 30 (Dubin). By setting the performance requirement to a 97% EAF in order for the QS to receive full capacity payments (see payment provision C of Appendix B in FPL's SOC), FPL is ensuring that its customers receive the same level of reliability that they would receive from the CC avoided unit. This complies with applicable statutes and regulations, and is reasonable. See, Tr. 30 (Dubin).

Second, the use of the expected EAF of FPL's NPGU as a basis for the ACBF required for full capacity payments in FPL's SOC is fully consistent with Commission precedent and FPL practice. See, Tr. 171-172 (Dubin). In Order No. 12634 (pages 15 and 16) in Docket No.

820406-EU the Commission stated that "risk associated with the purchase of QF capacity should be explicitly recognized in the rate of payment so as to reduce the risk to the ratepayers." Further, the Commission specifically evaluated and approved FPL's pay-for-performance sliding scale methodology in calculating capacity payments as a contract provision that is beneficial to customers in Order No. 24989 (page 17) in Docket No. 910004-EU. In that Order, the Commission found that this methodology broadens the range of performance in which the QF can be paid for performance while also encouraging the QF to provide capacity during FPL's peak periods. The Commission, in its findings encourages the QF to provide capacity during peak periods and to provide the customers with the same level of reliability that they would receive from the avoided unit. See, Tr. 171-172 (Dubin).[1]

Consistent with this longstanding Commission approved pay-for-performance sliding scale methodology, FPL has used the EAF of its then Next Planned Generating Unit as a basis for the ACBF required for full capacity payments in FPL's recent standard offer contracts. See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract containing an EAF based on its Next Planned Generating Unit); See Order No. PSC-08-0544-TRF-EQ (approving FPL's SOC containing an EAF based on FPL's NPGU). Accordingly, the Commission has consistently approved FPL and other Florida IOU standard offer contracts with provisions which require the renewable generator to

[1] Wheelabrator's witness, a non-attorney, questioned the legal relevance of the aforementioned Commission rulings. See, Tr. 155 (Dalton). These decisions are precisely on point because the Commission rules at issue in those dockets were expressly adopted as applicable to the renewable generators under Rule 25-17.220, F.A.C., which states "[f]or purposes of these rules, a renewable generating facility shall be deemed a qualifying facility pursuant to subsection 25-17.080(1), F.A.C., and shall have all the rights, privileges, and responsibilities specified in Rules 25-17.082 through 25-17.091, F.A.C." Accordingly, Wheelabrator's suggestion that such prior decisions be overlooked should be rejected.

meet the Next Planned Generating Unit's expected EAF in order to receive full capacity payments.[2]

In contrast, Wheelabrator's witness has suggested that the ACBF required in FPL's SOC to receive full capacity payments should be decreased 89%, which is the EAF contained in PEF's 2008 Standard Offer Contract. See, Tr. 88, 104 (Dalton). However, this unit is not FPL's NPGU from FPL's 2008 TYSP and adopting Wheelabrator's suggestion would therefore violate the Commission's rules discussed above.

Wheelabrator's witness pointed to the EAFs contained in FPL's Generating Performance Incentive Factor ("GPIF") filing in support of his statement that "FPL seeks to hold other facilities to standards its own fleet does not meet." Tr. 105 (Dalton). This is an inappropriate comparison. See, Tr. 172 (Dubin). As Ms. Dubin explained, FPL's GPIF filing expressly excludes FPL's newest generating units, which are most like FPL's NPGU, as the GPIF filing requires three years of operating history for GPIF units. See, Tr. 172 (Dubin). Accordingly, FPL's use of 97% for the renewable facility to obtain full capacity payments is correct and Wheelabrator's suggestion should be rejected.

Also, a 97% availability is consistent with the recent operation of FPL's CC units. FPL's most recent Greenfield units at Turkey Point Unit 5, Martin Unit 8 and Manatee Unit 3 have an average to date EAF, without MOF, of 98.6%, 91.3% and 97.6% respectively. The lower Martin

[2] See Order No. PSC-08-0544-TRF-EQ (approving FPL's SOC based on FPL's NPGU); See, Order No. PSC-08-0547-TRF-EQ issued in Docket No. 080814-EQ on August 19, 2008 (approving Tampa Electric Company's ("TECO") 2008 Standard Offer Contract based on its Next Planned Generating Unit); See, Order No. PSC-08-0546-TRF-EQ issued in Docket No. 080194-EQ on August 19, 2008 (approving Gulf Power's ("Gulf") 2008 Standard Offer Contract based on its Next Planned Generating Unit); See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract based on FPL's NPGU); See, Order No. PSC-07-0493-TRF-EQ issued in Docket No. 070235-EQ on June 11, 2007 (approving Progress Energy Florida's ("PEF") 2007 Standard Offer Contract based on its Next Planned Generating Unit); See, Order No. PSC-07-0494-TRF-EQ issued in Docket No. 070236-EQ on June 11, 2007 (approving TECO's 2007 Standard Offer Contract based on its Next Planned Generating Unit); See, Order No. PSC-07-0491-TRF-EQ issued in Docket No. 070232-EQ on June 11, 2007 (approving Gulf's 2007 Standard Offer Contract based on its Next Planned Generating Unit).

Unit 8 EAF is due to a fuel gas heater outage which occurred shortly after placing the unit into commercial operation. Overall, taking into account the entire fleet of "F" technology combined cycle plants, which includes repowered facilities, the average EAF exceeds 94%. Tr. 173 (Dubin).

Wheelabrator's current contracts with FPL require lower ACBFs for capacity payments. However, the four contracts that Wheelabrator has with FPL are not based on FPL's current NPGU, but on a long-ago and different avoided unit. Also, FPL's SOC recognizes that renewable resources with lower ACBFs provide capacity value to the system, as it provides capacity payments to renewable resources that have an ACBF of only 80%. This is an extremely attractive provision for renewable resources, as it allows the renewable generators to be offline up to 73 days annually and still receive capacity payments. See, Tr. 53 (Dubin).

Furthermore, the provision requiring that the renewable generators must achieve availability of 97% to receive full capacity payments is subject to negotiation to fit the characteristics of individual facilities and technologies. See, Tr. 169-170 (Dubin). Of course, any change in avoided cost resulting from such negotiations would be reflected in contract pricing.

For all of the foregoing reasons, the Commission should find that the requirement in FPL's SOC that renewable generators must achieve availability of 97% to receive full capacity payments is reasonable and should be approved.

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

FPL: *Yes. The EAF in FPL's SOC is a performance standard which is expressly based on the performance characteristics of FPL's avoided unit. This is entirely consistent with Rule 25-

17.0832(4)(e)8., F.A.C., which expressly requires that the "performance standards [in the Standard Offer Contract] shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract."*

Yes. The requirement that the EAF in FPL's SOC be based on the expected EAF of FPL's NPGU is reasonable and entirely consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C., and Rules 25-17.200 through 25-17.310, F.A.C. First, this requirement is wholly consistent with Commission rules and Florida statutes. See, Tr. 30 (Dubin). Second, this requirement is consistent with Commission precedent. See, Tr. 160-161 (Dubin).

First, it is uncontested that Florida law requires that a utility's standard offer contract be based on that utility's Next Planned Generating Unit. Specifically, Rule 25-17.0832(4)(e)8., F.A.C., expressly requires that the "performance standards [in the standard offer contract] shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract."

The evidence in the record shows that the EAF in FPL's SOC clearly complies with the Commission's rule, as it is a performance standard expressly based on the expected performance characteristics of FPL's avoided unit. FPL's 2014 CC avoided unit, FPL's NPGU upon which FPL's SOC is based, has a projected annual Equivalent Availability of 97 % as shown on page 93 Schedule 9 of FPL's 2008 TYSP. See, Tr. 30 (Dubin).

Specifically, the EAF of 97% calculated in FPL's SOC is modeled after FPL's NPGU performance used in the recently approved Petition to determine need for West County Energy Center Unit 3. The unit is a 3-on-1 combined cycle unit which utilizes Mitsubishi Power Systems "G" technology advanced combustion turbines. The EAF of 96.8% is a project average value which consists of an average planned outage factor ("POF") of 2.1% and an average forced outage factor ("FOF") of 1.1%. The EAF does not include allowance for maintenance outages

("MOF") since maintenance outages are outages that would only be performed as system conditions permit. See, Tr. 173 (Dubin). In other words if necessary the generating capacity of FPL's CC avoided unit is available to contribute to FPL's system reliability 97% of the hours in a year. See, Tr. 30 (Dubin). By FPL setting FPL's SOC EAF to 97%, the Commission is ensuring that FPL's customers receive the same level of reliability that they would otherwise receive from the CC avoided unit. See, Tr. 30 (Dubin).

In contrast, Wheelabrator has (i) suggested that the EAF in FPL's SOC be changed to 89%, the EAF for PEF's avoided unit, which is contained in PEF's 2008 Standard Offer Contract; (ii) asserted that an REF would be unlikely to achieve an EAF of 97%; and (iii) asserted that the EAF exceeds the value of FPL's own units. See, Tr. 100, 104 (Dalton). Wheelabrator's suggested EAF is not based on FPL's NPGU and is not in FPL's TYSP. See, Tr. 171, 174 (Dubin). Suggesting that FPL's SOC should be based on another utility's Next Planned Generating Unit is contrary to law and demonstrates that Wheelabrator's issue is really with Commission rules and Commission precedent.

The EAF contained in FPL's SOC is reasonable and fully compliant with Florida's legal standard. As an attestation to the reasonableness of this requirement, and in stark contrast to the assertion by Wheelabrator that "a renewable facility is unlikely to be able to meet the standards FPL seeks to impose on it," Wheelabrator's Broward North facility has maintained a 97% twelve-month rolling ACBF since May of 2008. See, Tr. 51 (Dubin). As discussed with respect to Issue 2, a comparison of the expected EAF of FPL's NPGU to the GPIF units is inappropriate and the recent operation of FPL's CC units supports the reasonableness of the 97% EAF for FPL's NPGU.

Basing FPL's SOC EAF on the utility's Next Planned Generating Unit is also consistent with Commission precedent. The Commission has approved several standard offer contracts which contain the EAF of the utility's Next Planned Generating Unit. See, Tr. 160-161 (Dubin); See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract based on FPL's NPGU); See Order No. PSC-07-0493-TRF-EQ issued in Docket No. 070235-EQ on June 11, 2007 (approving PEF 2007 Standard Offer Contract based on its Next Planned Generating Unit); See Order No. PSC-07-0494-TRF-EQ issued in Docket No. 070236-EQ on June 11, 2007 (approving TECO's 2007 Standard Offer Contract based on its Planned Generating Unit); See Order No. PSC-07-0491-TRF-EQ issued in Docket No. 070232-EQ on June 11, 2007 (approving Gulf's 2007 Standard Offer Contract based on its Planned Generating Unit).

In addition, the provision requiring that the EAF in FPL's SOC be based on the expected EAF of FPL's NPGU is subject to negotiation to fit the characteristics of individual facilities and technologies. See, Tr. 169-170 (Dubin).

For all of the foregoing reasons, the Commission should find that the requirement in FPL's SOC that the EAF be based on the expected EAF of FPL's NPGU is required by law, reasonable and should be approved.

ISSUE 5: Is the requirement in FPL's standard offer contract that renewable generators have an Annual Capacity Billing Factor of at least 80% to receive capacity payments reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C.?

FPL: *Yes. Under Appendix B of FPL's SOC, FPL requires that the REF meet a minimum ACBF of 80% to receive any type of capacity payment. In Order No. 12634 (pages 15 and 16) in Docket No. 820406-EU the Commission stated that "risk associated with the purchase of QF capacity should be explicitly recognized in the rate of payment so as to reduce the risk to the ratepayers." This provision is reasonable and consistent with applicable rules and statutes.*

The requirement in FPL's SOC that the REF meet a minimum ACBF of 80% to receive any type of capacity payment is reasonable and entirely consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C., and Rules 25-17.200 through 25-17.310, F.A.C. The minimum ACBF requirement is not only reasonable and consistent with the applicable rules and statutes, but is an attractive feature for the REF. This requirement is also consistent with Commission precedent.

Rule 25-17.0832(4)(e)8., F.A.C., expressly requires that the "performance standards [in the standard offer contract] shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract." The source of this requirement is that FPL's SOC be based on FPL's NPGU. By setting the minimum performance requirement to an ACBF of 80% in order for the QS to receive any capacity payments, FPL is ensuring that its customers receive reliability no worse than the lowest expected EAF for FPL's NPGU. If the EAF is less than 80%, then the renewable supplier is not available to provide the capacity necessary to avoid the utility's Next Planned Generating Unit and therefore should not receive a capacity payment associated with the Next Planned Generating Unit. Furthermore, this is an extremely attractive provision for renewable resources, as it recognizes that renewable resources with lower ACBFs provide capacity value to the system by allowing the renewable resource to be offline up to 73 days annually and still receive capacity payments. See, Tr. 53 (Dubin).

In contrast, Wheelabrator's witness has suggested that the minimum ACBF required in FPL's SOC to receive any capacity payments be equal to an availability of 69%, which is the lowest expected EAF for PEF's avoided unit contained in PEF's 2008 Standard Offer Contract. See, Tr. 88, 104 (Dalton). This unit is not FPL's NPGU from FPL's 2008 TYSP and is therefore

contrary to the legal standard in Florida. Rather, the minimum ACBF required in FPL's SOC to receive any capacity payment is reasonable and fully compliant with Florida's legal standard.

Second, the minimum ACBF requirement is consistent with Commission precedent. The Commission has consistently approved standard offer contracts with provisions which require the renewable generator to meet an ACBF based on the lowest expected EAF of the Next Planned Generating Unit in order to receive any capacity payment. The Commission specifically evaluated and approved FPL's pay for performance sliding scale methodology in calculating capacity payments as a contract provision that is beneficial to customers. In Order No.24989 Docket No. 910004-EU dated August 29, 1991 the Commission stated that FPL's proposed adjustment to the monthly capacity payment made to cogenerators that exponentially reduces the QF's capacity payment in a month is reasonable when the twelve-month rolling average of the on peak capacity factor is below the avoided unit minimum. The Commission added that this adjustment broadens the range of performance in which the QF can be paid for performance while also encouraging the QF to provide capacity during FPL's peak periods. The Commission, in its findings encourages the QF to provide capacity during peak periods and provides the customers with the same level of reliability that they would receive from the avoided unit. See, Tr. 30-31 (Dubin). In addition, the minimum ACBF requirement is subject to negotiation to fit the characteristics of individual facilities and technologies. See, Tr. 169-170 (Dubin).

For all of the foregoing reasons, the Commission should find that the requirement in FPL's standard offer contract that renewable generators have an ACBF of at least 80% to receive capacity payments is reasonable and should be approved.

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

FPL: *Yes. These two contract provisions are almost verbatim provided for under applicable Commission rules and past regulatory decisions. In addition, it is important to remember the concept that FPL's SOC is modeled upon what customers would receive from FPL's NPGU. FPL would itself reduce output or curtail production from its NPGU if necessary for safety or reliability reasons, or due to availability of generation from a more cost-effective generating unit (or purchased power). *

Sections 8.4.6 and 8.4.8 of FPL's SOC, that permit FPL to reduce output or not accept energy from renewable generators are reasonable and entirely consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C., and Rules 25-17.200 through 25-17.310, F.A.C. First, Sections 8.4.6 and 8.4.8 are wholly consistent with Commission rules and Florida statutes. See, Tr. 164 (Dubin). Second, Sections 8.4.6 and 8.4.8 are consistent with Commission precedent. See, Tr. 164 (Dubin).

These two contract provisions are almost verbatim provided for under applicable Commission rules and past regulatory decisions. In addition, it is important to remember the underlying philosophy of FPL's SOC is to provide for standard offer contract service consistent with economic and operating characteristics of FPL's NPGU. See, Tr. 57-58 (Dubin). See, Tr. 164 (Dubin). FPL would itself reduce output or curtail production from its NPGU if necessary for safety reasons, reliability reasons, or due to availability of generation from a more cost-effective generating unit (or purchased power). Tr. 57 (Dubin).

Under Section 8.4.6 of FPL's SOC, "FPL shall not be required to accept or purchase energy from the QS during any period in which, due to operational circumstances, acceptance or purchase of such energy would result in FPL's incurring costs greater than those which it would incur if it did not make such purchases." Section 8.4.6 is taken almost verbatim from

Commission Rule 25-17.086, F.A.C., which reads "[w]here purchases from a qualifying facility will impair the utility's ability to give adequate service to the rest of its customers or, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, or otherwise place an undue burden on the utility, the utility shall be relieved of its obligation under Rule 25-17.082, F.A.C., to purchase electricity from a qualifying facility." See, Tr. 165 (Dubin).

Wheelabrator asserted that Section 8.4.6 is too broad and gives FPL an "open-ended right to not purchase power from the renewable energy generator." See, Tr. 123 (Dalton). However, nothing is further from the case. Section 8.4.6 stems from a Commission rule that was carefully crafted so as to provide a protective measure for the utility's customers, the party paying for the purchase power agreements. See, Tr. 165, 166 (Dubin). The striking similarity of the language contained in Section 8.4.6 and Rule 25-17.086, F.A.C., was admitted to by Wheelabrator's witness during both his deposition and at the hearing when pointed out by FPL's counsel and the Commission. See, Tr. 134 (Dalton); See, Depo Tr. 11 (Dalton); See, Tr. 149 (McMurrian). Further, FPL carefully crafted Section 8.4.6 so as to only be a narrow subset of Rule 25-17.086, F.A.C., as is discussed below, rather than stand as an open-ended provision.

Wheelabrator has suggested that Sections 8.4.6 and 8.4.8 either be removed or revised so as to compensate the "REF developers when they are constrained off or down by FPL" to "make [REFs] whole so that they have an opportunity to realize the full avoided cost of the next planned generating unit." See, Tr. 119 (Dalton); See, Tr. 136 (Dalton). However, paying an REF for energy it does not produce does not comport with the legally required avoided cost methodology. See, Tr. 214 (Dubin). As stated by Wheelabrator's witness in response to a question from Commissioner Argenziano, paying an REF when it is not generating due to system constraints

would be "problematic in terms of we're going to pay them for doing nothing." See, Tr. 146(Dalton). Wheelabrator's position is clearly contrary to law and would increase costs to FPL's customers above avoided costs while providing no additional benefit to customers. See, Tr. 214 (Dubin).

In the dispatch and control section of FPL's SOC, for facilities less than 75MW, Section 8.4.8 allows FPL to "reduce [the renewable generator's] output to a level below the Committed Capacity but not lower than the Facility's Minimum Load." Under Section 8.4.8, FPL can curtail production for a maximum of four hours 18 times per year. This makes for a maximum of 72 hours, or three days, annually that FPL can curtail the production of the renewable generator. It is important to note that the EAF of 97% for FPL's NPGU has a FOF of 1.1%. Even if FPL were to curtail production for the maximum time allowable, this would only represent .8% of the renewable generator's FOF. As such, the renewable generator could comply fully with the maximum number of possible Section 8.4.8 curtailments and still have an EAF greater than 97% (and receive full capacity payments). Further, the record shows that in any event, FPL has not once requested Wheelabrator to curtail its facility. See, Tr. 196 (Dubin). Furthermore, this language is actually more favorable to a renewable generator than imposing dispatchability requirements, which FPL has over all of its own units and would have over FPL's NPGU.

Second, Sections 8.4.6 and 8.4.8 are consistent with Commission precedent. See, Tr. 164 (Dubin). The Commission has found these provisions to be reasonable and that they should be included in standard offer contracts. See, Tr. 165-166 (Dubin). For example, in Order No. 12634 (page 23) in Docket No. 820406-EU the Commission provided clarification to Rule 25-17.086, F.A.C., "to make clear that a utility is not required to purchase from QF when to do so

would result in costs greater than those which the utility would incur if it did not make such purchases." See, Tr. 165 (Dubin). The Commission included 25-17.086, F.A.C., to protect customers by ensuring that customers do not pay more when the utility purchases from a QF than if the utility did not make the purchase. See, Tr. 165-166 (Dubin).

Finally, as with many other standard offer contract provisions, Sections 8.4.6 and 8.4.8 of FPL's SOC are subject to negotiation to fit the characteristics of individual facilities and technologies. See, Tr. 169-170 (Dubin).

For all of the foregoing reasons, the Commission should find that the Sections 8.4.6 and 8.4.8 of FPL's SOC, that permit FPL to reduce output or not accept energy from renewable generators are reasonable and should be approved.

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

FPL: * Yes. Under Section 6.2 of FPL's SOC, FPL requires the REF to base its committed Capacity Test on a test period of 24 hours. This provision is consistent with the committed Capacity Testing requirements that are characteristic of FPL's NPGU, which is a modern combined cycle base load unit capable of operating reliably 24 hours per day, 7 days per week. As such, this provision is reasonable and consistent with applicable rules and statutes.*

Yes. Section 6.2 of FPL's SOC, which requires the REF to base its committed Capacity Test on a test period of 24 hours, is reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. First, this provision is wholly consistent with Commission rules and Florida law. Second, this provision is consistent with Commission precedent.

Rule 25-17.250, F.A.C., specifically requires that each utility's standard offer contract be based on its Next Planned Generating Unit. The 24 hour committed capacity testing provision in

FPL's SOC is consistent with the committed Capacity Testing requirements that are characteristic of FPL's NPGU, which is a modern combined cycle base load unit capable of operating reliably 24 hours per day, 7 days per week. In fact, the committed capacity testing requirements contained in FPL's SOC are actually less stringent than the reliability testing that would be required of the avoided unit. The amount of money paid to a facility owner under a standard offer contract is designed to purchase capacity and energy delivered on a reliability basis comparable to such a unit, consistent with the Commission's basic approach for standard offer contracts. See, Tr. 167(Dubin).

In contrast to FPL's 24 hour test consistent with a base load Next Planned Generating Unit, Wheelabrator claims that the Committed Capacity Test should be reduced to a four hour test period for biomass facilities, as it "better consider[s] the intermittent operating profiles of REFs." See, Tr. 119 (Dalton). Thus, Wheelabrator's suggested test is not based on FPL's NPGU and should be rejected. Wheelabrator's suggestion would have FPL and the Commission abandon a touchstone of base load Next Planned Generating Unit reliability in favor of a lower standard of reliability. In short customers would get less (and should pay less, all other things being equal), from a facility that is not as reliable as the Next Planned Generating Unit. Tr. 167 (Dubin).

Second, FPL's Commitment Capacity Test provision is consistent with Commission precedent. The Commission has consistently approved standard offer contracts which contain Commited Capacity Tests based on the utility's Next Planned Generating Unit. See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract based on FPL's NPGU); See, Order No. PSC-07-0493-TRF-EQ issued in Docket No. 070235-EQ on June 11, 2007 (approving PEF 2007 Standard Offer

Contract based on its Next Planned Generating Unit); See, Order No. PSC-07-0494-TRF-EQ issued in Docket No. 070236-EQ on June 11, 2007 (approving TECO's 2007 Standard Offer Contract based on its Next Planned Generating Unit).

In addition, it is important to note that FPL's SOC has to be open to all potential counterparties and generation types, and contract provisions like this Capacity Test provision are needed to help ensure reliable service to FPL's customers. See, Tr. 168, 198 (Dubin). The specific recommendation that Wheelabrator makes is more suited to a negotiated contract, not the standard offer contract. This is supported by the Commission statement in Order No. 12634 (page 7) in Docket No. 820406-EU that states "[a]t the outset, we wish to state that it is our preference that QFs and utilities negotiate individually tailored contracts. The rules we have adopted are intended to both encourage negotiated contracts and provide a fall back remedy in the event a contract cannot be negotiated."

For all of the foregoing reasons, the Commission should find that the capacity testing provision contained in FPL's SOC is reasonable and should be approved.

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

FPL: *Yes. FPL's maintenance requirements are based on those of FPL's NPGU. This provision is also supported by the Commission's statement in Order No. 24989 (page 19) in Docket No. 910004-EU that: "FPL must have the ultimate ability to reject a QF's maintenance schedule to prevent planned outages when FPL needs the capacity." This provision is reasonable and consistent with the applicable rules and statutes.*

The maintenance requirements contained in Section 8.2 of FPL's SOC are reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. First, the maintenance requirements are wholly consistent with

Commission rules and Florida law. Second, the maintenance requirements are consistent with Commission precedent.

First, it is uncontested that Florida law requires that a utility's standard offer contract be based on that utility's Next Planned Generating Unit. See, Rule 25-17.250(1), F.A.C. FPL's maintenance requirements are based on those of FPL's NPGU, which in turn are based upon and consistent with manufacturers' recommendations and FPL's operating and maintenance practices. See, Tr. 172 (Dubin).

In contrast, Wheelabrator has suggested that the maintenance requirements in FPL's SOC instead be (i) based on the REF; (ii) spread throughout the year; and (iii) crafted such that the renewable generator retain the ability to set and maintain an outage schedule according to the requirements of the equipment and its solid waste customer base. See, Prehearing Order, at 14-15. Even though FPL's maintenance requirements are based on FPL's NPGU, Section 8.2 is very flexible in that it allows for an additional 21 days of maintenance outages if the REF's manufacturer's recommendations exceed the seven day period. However, Wheelabrator's suggested maintenance requirements are not based on FPL's NPGU, do not take into consideration the needs of FPL's customers, and therefore should be rejected. Further, the majority of the months during which FPL's SOC precludes an REF from scheduling maintenance outages are during Florida's Hurricane Season, a time when the maximum amount of generation is likely to be needed and when FPL simply cannot permit an REF to unilaterally schedule maintenance outages in order to maintain system reliability. During the summer months especially, FPL wants units available to provide service. See, Tr. 62 (Dubin). Scheduled maintenance outages should only be performed as system conditions permit. See, Tr. 173 (Dubin).

Second, basing the standard offer contract maintenance requirements on the utility's Next Planned Generating Unit is entirely consistent with Commission precedent. The Commission has consistently approved standard offer contracts which contain maintenance requirements based on the utility's Next Planned Generating Unit. In fact, in 2007 the Commission approved this very same provision in FPL's 2007 Standard Offer Contract. See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract containing maintenance requirements based on FPL's NPGU). Further, a majority of the utility standard offer contracts approved by the Commission in 2007 contained the same or substantially similar maintenance requirements as FPL's 2007 Standard Offer Contract. See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract containing maintenance requirements based on its Next Planned Generating Unit); See, Order No. PSC-07-0493-TRF-EQ issued in Docket No. 070235-EQ on June 11, 2007 (approving PEF 2007 Standard Offer Contract based on its Next Planned Generating Unit); See, Order No. PSC-07-0494-TRF-EQ issued in Docket No. 070236-EQ on June 11, 2007 (approving TECO's 2007 Standard Offer Contract based on its Next Planned Generating Unit). Furthermore, the maintenance requirements are also supported by the Commission's statement in Order No. 24989 (page 19) in Docket No. 910004-EU that: "FPL must have the ultimate ability to reject a QF's maintenance schedule to prevent planned outages when FPL needs the capacity."

In addition, it is important to note that FPL's SOC has to be open to all potential counterparties and generation types, and contract provisions like these maintenance requirements are needed to help ensure reliable service to FPL's customers. See, Depo Tr. 21 (Dubin). A different maintenance schedule based on the characteristics of a renewable supplier's specific

technology may be negotiated, but should not be required in FPL's SOC. See, Depo Tr. 21 (Dubin).

For all of the foregoing reasons, the Commission should find that the maintenance requirements contained in FPL's SOC are reasonable and should be approved.

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

FPL: *Yes. These requirements are consistent with manufacturers' recommendations and FPL's operating and maintenance practices for combined cycle units like FPL's NPGU, which is the basis of FPL's SOC as required by the referenced Commission rules. As such, this provision is reasonable and consistent with the applicable rules and statutes.*

The trip test requirements contained in Section 8.4.2 of FPL's SOC Contract are reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. First, the trip test requirements are wholly consistent with Commission rules and Florida law. Second, the trip test requirements are consistent with Commission precedent.

First, it is uncontested that Florida law requires that a utility's standard offer contract be based on that utility's Next Planned Generating Unit. See, Rule 25-17.250(1), F.A.C. Section 8.4.2 of FPL's SOC states "[a] unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers and the results shall be provided to FPL prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with good engineering and operating practices." Ex. 16. FPL's trip test requirements are based on those of FPL's NPGU, which in turn are based upon and consistent with manufacturers' recommendations and FPL's operating and maintenance practices. See, Tr. 68, 172 (Dubin). Further, as stated in Section 8.4.2, these trip tests are only applicable to Facilities which contain

turbines, generators, or boilers and in turn are flexible to the extent that a Facility's test is consistent with good engineering and operating practices.

Wheelabrator has offered no evidence suggesting that the trip test requirements contained in FPL's SOC are not based on FPL's NPGU. Rather, Wheelabrator has only suggested that the trip test requirements in FPL's SOC "discourage renewable generation because they fail to take into account the nature of such facilities." Prehearing Order, at 15. During FPL witness Dubin's deposition and at hearing, Wheelabrator claimed that there is no need for trip test requirements in FPL's SOC because there have been no problems stemming from FPL's 1987 contracts with Wheelabrator, which do not contain trip testing requirements. See, Tr. 68 (Dubin); See, Depo Tr. 21-22 (Dubin).

However, FPL's SOC must be available to all potential counterparties and generation types, and contract provisions like these trip test requirements are needed to help ensure reliable service to FPL's customers. See, Tr. 68 (Dubin); See, Depo Tr. 23 (Dubin). Whether or not Wheelabrator performs safety and reliability related testing of its own equipment simply should not determine whether FPL's SOC should require testing like that which FPL would perform on FPL's NPGU.

Second, basing FPL's SOC trip test requirements on the FPL's NPGU is entirely consistent with Commission precedent. The Commission has consistently approved standard offer contracts which contain trip test requirements based on the utility's Next Planned Generating Unit. In fact, in 2007 the Commission approved this very same provision in FPL's 2007 Standard Offer Contract. See, Order No. PSC-07-0492-TRF-EQ issued in Docket No. 070234-EQ on June 11, 2007 (approving FPL's 2007 Standard Offer Contract containing trip test requirements based on its Next Planned Generating Unit). Similarly, PEF's 2007 Standard Offer

Contract, which also contained trip test requirements, was approved by the Commission. See, Order No. PSC-07-0493-TRF-EQ issued in Docket No. 070235-EQ on June 11, 2007 (approving PEF 2007 Standard Offer Contract based on its Next Planned Generating Unit); See, Order No. PSC-07-0491-TRF-EQ issued in Docket No. 070232-EQ on June 11, 2007 (approving Gulf's 2007 Standard Offer Contract based on its Next Planned Generating Unit).

For all of the foregoing reasons, the Commission should find that the trip test requirements contained in FPL's SOC are reasonable and should be approved.

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

FPL: * Yes. The TREC provision is a valuable right protecting FPL's customers. In Order No. PSC-07-0492-TRF-EQ (page 5) in Docket No. 070234-EQ, the Commission notes that a right of first refusal "will insure that Florida's ratepayers enjoy all of the attributes associated with renewable generation without imposing a financial penalty to the owner of the renewable generation facility." FPL's right of first refusal provision is reasonable and is consistent with applicable rules and statutes. *

The requirement in FPL's SOC giving it 30 days to exercise a right of first refusal with respect to any and all bona fide offers to purchase any TRECs received by the REF, is reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C., for several reasons. First, FPL's right of first refusal provision is consistent with Florida law and is reasonable and protective of FPL's customers. Second, the appropriateness of inclusion of a right of first refusal provision has been squarely addressed by the Commission and admitted to by Wheelabrator. Third, inclusion of a right of first refusal provision is consistent with Commission precedent.

Under Section 17.6.2 of FPL's SOC, the REF retains all rights to own and sell TRECs, and FPL's SOC does not reduce payments of full avoided costs. FPL has simply included a right of

first refusal protecting its customers should the REF (i) decide to sell TRECs and then (ii) receive a bona fide offer for those TRECs it decides to sell. Furthermore, FPL would not be paying the REF less than the bona fide offeror should FPL decide to exercise its right of first refusal. Ex. 16 (Sheet No. 9.044).

In contrast, Wheelabrator has suggested that the right of first refusal for TRECs should be eliminated from FPL's SOC. See, Tr. 140 (Dalton). However, the Commission has specifically considered the inclusion of a right of first refusal in the context of renewable standard offer contract rulemaking and in previous standard offer contract dockets. See, Tr. 140-144 (Dalton); See, Tr. 31, 32 (Dubin). As admitted by Wheelabrator's witness, in Docket No. 060055-EI, the issue of whether or not to include a right of first refusal provision in standard offer contracts was squarely addressed and agreed to by the parties, which included Wheelabrator. See, Tr. 140 (Dalton). For example, Staff specifically stated in its recommendation on September 21, 2006, "[t]he IOUs and renewable generators agree that it is appropriate for standard offers to provide a right of first refusal for utilities to purchase T-RECs from the renewable generator." Ex. 18. Wheelabrator, for its part, expressly acknowledged and agreed that inclusion of a right of first refusal provision in standard offer contracts was acceptable. See, Ex. 19. Specifically, Wheelabrator's counsel, when speaking on behalf of Wheelabrator regarding Item No. 4 at the October 3, 2006, Agenda Conference, stated that "[Wheelabrator] certainly [did not] have a problem with the IOUs having the … right of first refusal…" Ex. 19.[3]

Further, in Docket No. 070234-EQ, the Commission expressly recognized the value of the right of first refusal to FPL's customers. More specifically, in Order No. PSC-07-0492-TRF-EQ (page 5) in Docket No. 070234-EQ, the Commission notes that:

[3] In Florida, "[i]n all matters concerning the prosecution or defense of any proceeding in the court, the attorney of record shall be the agent of the client, and any notice by or to the attorney or act by the attorney in the proceeding shall be accepted as the act of or notice to the client." Rule 2.060(k), Florida Rule of Judicial Administration.

> "FPL acknowledged that TRECs are the property of the renewable generator, and also has included the right of first refusal with specific timelines for responding. Such a condition will insure that Florida's ratepayers enjoy all the attributes associated with renewable generation without imposing a financial penalty to the owner of the renewable generation facility." (Emphasis added)

See, Tr. 31, 32 (Dubin).

Also, inclusion of the right of first refusal provision is consistent with Commission precedent. All of the standard offer contracts that the Commission has approved in the recent past include rights of first refusal with respect to TRECs, the majority of which contain the same length of time to exercise the option. See, Tr. 179, 180 (Dubin); See Gulf's 2008 Standard Offer Contract (Sheet No. 9.96); See, PEF's 2008 Standard Offer Contract (Sheet No. 9.417); See, TECO's 2008 Standard Offer Contract (Sheet No. 8.238).

Wheelabrator claimed that a 30 day timeframe for the right of first refusal in FPL's SOC is problematic. See, Tr. 145 (Dalton). However, in testimony and during cross-examination, FPL's witness Dubin explained why FPL's right of first refusal is reasonable. See, Tr. 175, 202-206 (Dubin). This provision represents a balance between the interests of FPL's customers and the interests of REFs. Specifically, the 30 day timeframe allows FPL an adequate amount of time to make the right decision for its customers. FPL's 30 day provision for the right of first refusal permits FPL a reasonable period of time to conduct due diligence and assess the value of bona fide offers for TRECs, and respond to the seller. This period and time provision permits FPL to ensure that it protects its customers' interests by only exercising the right of first refusal if it is in the best interests of FPL customers, based upon assessment of then-existing TREC market conditions. See, Tr. 175 (Dubin). Also, it is important to note that the standard offer contract is just that, a standard offer, something standard for all parties, all generators, all types of things to fit into. Tr. 206 (Dubin). Moreover, as with other standard offer contract provisions,

if this provision does not meet the requirements of an individual seller of capacity and energy, it is like other provisions subject to potential negotiation within the context of an individual contract. See, Tr. 175, 176 (Dubin).

For all of the foregoing reasons, the Commission should find that the right of first refusal provision contained in FPL's SOC is reasonable and should be approved.

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

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

As discussed with respect to each of the issues listed above, FPL's SOC complies fully with applicable statutes and Commission rules, and is reasonable. As such, FPL's SOC should be approved in the form proposed by FPL.

ISSUE 12: Should this docket be closed?

FPL: *Yes.*

WHEREFORE, for all of the foregoing reasons, FPL requests that the Commission enter its order in this matter consistent with the positions stated in this brief.

Respectfully submitted this 26th day of February, 2009.

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CERTIFICATE OF SERVICE
Docket No. 080193-EQ

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished electronically and by U.S. mail this 26th day of February 2009 to the following:

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