

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy Florida, Inc. for approval of a negotiated purchase power agreement with U.S. EcoGen Polk, LLC.

Docket No. 110090-EQ

Dated: April 1, 2011

**PROGRESS ENERGY FLORIDA INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Progress Energy Florida, Inc., ("PEF" or "Company"), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information contained in the negotiated agreement ("the Agreement") between PEF and U.S. EcoGen Polk, LLC ("USEG POLK") filed on April 1, 2011. In support of this Request, PEF states:

1. The Agreement contains information that is "proprietary business information" under Section 366.093(3), Florida Statutes.

2. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing unredacted copies of all the documents for which PEF seeks confidential treatment. Composite Exhibit A is being submitted separately in a sealed envelope labeled "CONFIDENTIAL." In the unredacted versions, the information asserted to be confidential is highlighted by yellow marker.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification. The specific

COM _____
APA _____
ECR 5
GCL _____
RAD _____
SSC _____
ADM _____
OPC _____
CLK _____

_____ claim of confidentiality
_____ notice of intent
✓ request for confidentiality
_____ filed by OPC

For DN 02131-11, which is in locked storage. You must be authorized to view this DN.-CLK

DOCUMENT NUMBER-DATE
02130 APR-1 =
FPSC-COMMISSION CLERK

information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a justification table which identifies by page and line the information for which PEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

3. As indicated in Exhibit C, the information for which PEF requests confidential classification is “proprietary confidential business information” within the meaning of Section 366.093(3), F.S. Specifically, the information at issue relates to competitively negotiated contractual data, such as certain contract terms, definitions, payment/energy rates, percentages, timeframes, and insurance/environmental cost limits, the disclosure of which would impair the efforts of the Company or its affiliates to negotiate purchase power contracts on favorable terms. *See* § 366.093(3)(d), F.S.; Affidavit of David Gammon at ¶ 5. Furthermore, the information at issue relates to the competitive interests of PEF, the disclosure of which would impair their competitive businesses. *Id.* § 366.093(3)(e); Affidavit of David Gammon at ¶ 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

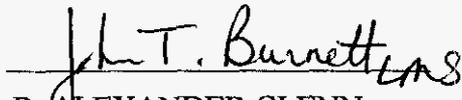
4. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of David Gammon at ¶ 7. The information has not been disclosed to the public, and the Company has treated and continues to treat the information and contracts at issue as confidential. *See* Affidavit of David Gammon at ¶ 7.

5. PEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of section 366.093(3), F.S., that the

information remain confidential for a period of at least 18 months as provided in section 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, PEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 1st day of April, 2011.

A handwritten signature in black ink that reads "John T. Burnett" with a stylized flourish at the end.

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110090-EQ

REDACTED

Exhibit B

REDACTED

DOCUMENT NUMBER-DATE

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REDACTED

“Consent and Agreement” means an instrument to be executed and delivered in connection with Financial Closing by PEF in favor of all Persons that are Lenders during the Term, the form and substance of which shall be substantially similar to the document attached as Appendix 6.

“Contract” means this Renewable Energy Power Purchase Agreement and the appendices and attachments hereto, as it may be amended from time to time in accordance with the terms hereof.

“Creditworthy” with respect to a Party or its credit support provider, as applicable, means such Person 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). Ratings 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. If the RF/QF elects to provide Eligible Collateral in the form of a cash deposit, the RF/QF’s rating shall for purposes of this Contract be deemed to be A- and above.

[REDACTED]

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

“Design Committed Capacity” means the design capacity of the Facility as of the Execution Date, as set out in Appendix 2.

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

“Dispute” has the meaning assigned to it in Section 20.9.1.

“Drop Dead Date” means the date by which the Conditions Precedent must be satisfied or waived, which is [REDACTED] after the Approval Date, as may be extended by Force Majeure or by agreement of the Parties.

“Early Termination Date” has the meaning assigned to it in Section 15.1.

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

“Effective Date” has the meaning assigned to it in Section 5.3.

“Electrical Interconnection and Operating Agreement” means the agreement between RF/QF and the Transmission Provider providing for the physical connection and operation of the electrical interconnection facilities between the Facility and the Transmission System.

“Fuel” means Biomass.

“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, appeal, permit, waiver, exemption, variance, order, judgment, instruction, condition of approval, direction, directive, decree, declaration for regulation by any Government Agency relating to the construction, development, ownership, occupancy, start-up, testing, operation or maintenance of the Facility or the execution, delivery or performance of this Contract.

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

“Indemnified Party” has the meaning assigned to it in Section 16.1.

“Indemnifying Party” has the meaning assigned to it in Section 16.1.

“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.

“Late Payment Rate” has the meaning assigned to it in Section 9.4.2.

“Lender(s)” means any Person that provides an equity investment or debt funding in connection with any development, bridge, construction, permanent debt or tax-equity financing or re-financing for the Facility, including any Person providing a working capital facility, letters of credit, credit support or credit enhancement, any counterparty to any Financing Document and any assignee or transferee of such Person, and any trustee, collateral agent, administrative agent or other similar entity acting on behalf of such a Person.

“Letter of Credit” means a stand-by letter of credit from a Qualified Institution, the form of which is reasonably acceptable to PEF, whose approval may not be unreasonably withheld.

“Maintenance Outage” means a time period during which the Facility is shut down or its output reduced for purposes of performing maintenance, servicing and repairs necessary for the reliable operation of the Facility.

“Material Adverse Change” means as to PEF, that PEF or PEF Guarantor, if applicable, or, as to RF/QF, that the provider of Eligible Collateral for RF/QF or RF/QF Guarantor, if applicable, any of the following events: (a) such party is no longer Creditworthy or (b) the party or Party’s guarantor, if applicable, defaults on an aggregate of [REDACTED] of equity, whichever is less.

“Material Casualty Event” means the occurrence of a Force Majeure event (a) if prior to the Capacity Delivery Date, that is reasonably likely to extend achievement of the Capacity Delivery Date by more than [REDACTED] or (b) if after the Capacity Delivery Date, that shall have reduced the Capacity of the Facility by more than [REDACTED] and the period for full restoration or repair of that portion of the Facility damaged by the event is reasonably likely to exceed [REDACTED].

“Maximum Committed Capacity” means the maximum amount of Capacity of the Facility that PEF commits to purchase hereunder, as set out in Appendix 2.

“Meters” has the meaning assigned to it in Section 10.5.1.

“Minimum Committed Capacity” means the minimum amount of Capacity of the Facility that RF/QF must demonstrate to achieve Capacity Delivery Status during a Committed Capacity Test Period, as set out in Appendix 2.

“Monthly Availability Factor” or **“MAF”** 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 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 0001H, on the Capacity Delivery Date and ending at 2400H on the last calendar day of such month.

“Monthly Capacity Payment” or **“MCP”** means the payment for Capacity calculated in accordance with Appendix 1.

“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.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Operating Representative” means a representative of a Party who shall have authority to act for such Party in all technical, real-time or routine matters relating to construction, testing, operation and maintenance of the Facility and performance of this Contract, and to attempt to resolve disputes or potential disputes, which representatives shall have no authority to amend, modify or waive any provision of this Contract.

“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 16.1.

arrangements for an emergency inspection. 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 the status of the Facility as a Renewable Facility or a Qualifying Facility during the prior calendar year.

3. Term of Contract

Except as otherwise provided herein with respect to the Parties' respective rights and obligations to produce, deliver, receive, purchase and sell Committed Capacity and associated Energy, which are conditioned upon the attainment of FPSC Approval and the satisfaction or waiver of the Conditions Precedent, this Contract shall become effective immediately upon the Execution Date and shall end at 12:01 a.m. on the May 31, 2043, (the "Term") unless terminated earlier in accordance with the provisions hereof. This Contract shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

4. FPSC Approval

- 4.1** It is a condition precedent to the obligations of PEF hereunder to receive and purchase Committed Capacity and associated Energy that FPSC Approval be obtained, the Facility achieve its status as a Qualifying Facility by the Drop Dead Date and Capacity Delivery Status be achieved by the Required Capacity Delivery Date.
- 4.2** Within ten (10) Business Days after the Execution Date, PEF shall submit a copy of this Contract and related documentation to the FPSC and shall petition the FPSC for FPSC Approval. RF/QF agrees to cooperate with and assist PEF in obtaining FPSC Approval as PEF may reasonably request. PEF agrees to notify RF/QF of any significant developments in obtaining FPSC Approval. RF/QF shall have the right to receive the final draft of any proposed submission by PEF to the FPSC relating to the petition for FPSC Approval as soon as practicable but in any event not less than one (1) full Business Day prior to submission and to confer with PEF for purposes including the redaction of Confidential Information of RF/QF contained in any submission made by PEF to the FPSC.
- 4.3** Notwithstanding Sections 4.1 and 4.2, if FPSC Approval is not obtained to RF/QF's and PEF's satisfaction, each in its sole discretion, within [REDACTED] after the Submission Date, or such longer period as the Parties may agree, then this Contract shall terminate upon [REDACTED] notice by either Party. Termination of this Contract pursuant to this Section 4.3 shall not constitute an Event of Default hereunder and neither Party shall have any further liability under this Contract as a result of such termination.
- 4.4** If FPSC Approval is obtained, RF/QF's obligation to deliver and PEF's obligation to accept and pay for Committed Capacity and associated Energy are conditioned upon satisfaction or waiver of the Conditions Precedent and, subject to Sections 7.5 and 7.6, attainment by the Facility of Capacity Delivery Status on or before the Required Capacity Delivery Date.

5.4 Unless all Conditions Precedent are satisfied or waived in writing on or before the Drop Dead Date (as such date may be extended by agreement of the Parties), this Contract may be terminated after such date by notice from one Party to the other Party prior to the satisfaction of Condition Precedents pending as of the Drop Dead Date, and upon such termination neither Party shall have any further liability to the other Party for such termination.

5.5 RF/QF shall achieve the Capacity Delivery Date on or before the Required Capacity Delivery Date. RF/QF shall certify to PEF before the initial Committed Capacity Test that the Facility shall have been constructed so that the Committed Capacity Test may be duly and properly undertaken and 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 and Environmental Attributers by the RF/QF

6.1 Consistent with the terms hereof, the RF/QF shall sell to PEF and PEF shall purchase from the RF/QF the Committed Capacity and associated Energy generated by the Facility.

6.2 Subject to [REDACTED], RF/QF shall retain any and all rights, title and interest in or to and right to market, exchange, trade, retire, sell or otherwise convey any and all Environmental Attributes and Emission Reduction Credits generated by or associated with the Fuel consumed by the Facility and/or the generation of Energy by the Facility.





- 6.4** The RF/QF shall not rely on interruptible or curtailable standby service for the start up requirements (initial or otherwise) of the Facility.
- 6.5** RF/QF shall be responsible for delivery of Committed Capacity and Energy to the Electrical Interconnection Point and, as between the Parties, shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with respect to the delivery of Committed Capacity and associated Energy to the Electrical Interconnection Point. Except as otherwise provided in the Electrical Interconnection and Operating Agreement, PEF shall be responsible for providing or obtaining transmission and distribution service from the Electrical Interconnection Point and, as between the Parties, PEF shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed at and after the delivery of Committed Capacity and associated Energy at the Electrical Interconnection Point.
- 6.6** Each Party acknowledges that during the Term of this Contract it will be required to obtain and maintain certain Governmental Approvals in connection with the performance of its obligations hereunder.
 - 6.6.1** RF/QF, at its cost and expense, will obtain and maintain in full force and effect from the Drop Dead Date through the end of the Term all applicable Governmental Approvals and insurance as and when are necessary for (a) the ownership, development, construction, operation and maintenance of the Facility and (b) the generation, delivery and sale of Capacity and Energy. Upon reasonable request from RF/QF, PEF shall use commercially reasonable efforts to assist RF/QF in procuring all Governmental Approvals for which RF/QF is responsible. Reasonable out-of pocket expenses incurred by PEF in providing such assistance that have been budgeted by PEF shall be reimbursed by RF/QF upon receipt of PEF's invoice therefor.
 - 6.6.2** RF/QF will, at all times during the Term, comply with all Applicable Laws related to the operation and maintenance of the Facility and RF/QF's performance of its obligations under this Contract, including all applicable environmental laws in effect at any time during the Term.
 - 6.6.3** PEF shall endeavor to obtain the FPSC Approval and obtain and maintain all other Governmental Approvals required for the payment

7.3 Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the Maximum Committed Capacity without the prior written consent of PEF, which consent shall be granted, withheld or denied in PEF's sole discretion.

7.4 The RF/QF shall be entitled to receive and PEF shall be obligated to purchase and pay for Committed Capacity beginning on the Capacity Delivery Date, provided that the Capacity Delivery Date occurs on or before the Required Capacity Delivery Date, unless or such later date pursuant to Sections 7.5 and 7.6. If the Capacity Delivery Date does not occur before the Required Capacity Delivery Date, and RF/QF does not pay [REDACTED] in accordance with Sections 7.5 and 7.6, PEF shall immediately be entitled to terminate this Contract and draw down the Eligible Collateral, [REDACTED] paid by RF/QF, which shall be its sole and exclusive remedy therefor, and the Parties shall be relieved of any further obligation or liability under this Contract.

7.5 If the Capacity Delivery Date does not occur within ninety (90) days after the Required Capacity Delivery Date, subject to extension for Force Majeure, RF/QF shall [REDACTED], unless this Contract is sooner terminated pursuant to Section 15 for a reason other than non-attainment of Capacity Delivery Status prior to the Required Capacity Delivery Date. Except as provided in Section 13.2 and Section 15, [REDACTED] shall be PEF's sole and exclusive remedy for RF/QF's failure to achieve the Capacity Delivery Status on or before the Required Capacity Delivery Date.

7.6 If the Capacity Delivery Date does not occur within one hundred eighty (180) days after the Required Capacity Delivery Date, subject to extension for Force Majeure, PEF shall have the right to terminate this Contract upon fifteen (15) days notice to RF/QF. Upon termination of this Contract pursuant to this Section 7.6, PEF shall be entitled to receive draw on Eligible Collateral less [REDACTED]. Such right to terminate and receive damages shall be PEF's sole and exclusive remedy for RF/QF's failure to so achieve the Capacity Delivery Date before the Required Capacity Delivery Date. [REDACTED]

8. Testing Procedures

8.1 Capacity Delivery Status must be attained on or before the Required Capacity Delivery Date. A Committed Capacity Test must be completed within the Demonstration Period, which period, including the approximate start time of the

discretion. Within thirty (30) days of receiving RF/QF's proposed operating schedule, including the Planned Outages, PEF may propose reasonable amendments thereto consistent with the terms of this Contract. The RF/QF shall only schedule Planned Outages during periods approved by PEF, which shall not be unreasonably withheld. RF/QF shall not unreasonably withhold its consent to PEF's proposed amendments, provided, however, that, for the avoidance of doubt, it shall not be unreasonable for RF/QF to withhold its consent to any proposed amendments of PEF that would, in RF/QF's opinion, be contrary to manufacturer's recommendation, any applicable warranty or Prudent Utility Practices. Planned Outage Days shall be limited to [REDACTED].

10.3 If the need arises for RF/QF to conduct maintenance on the Facility in addition to the Planned Outages ("Additional Maintenance Outages"), RF/QF shall notify PEF of such maintenance, together with dates for carrying out such maintenance and the estimated duration of the work to be carried out. RF/QF and PEF shall confer in good faith to determine a reasonable schedule during which such Additional Maintenance Outages shall take place.

10.4 If RF/QF identifies the need to remove the Facility from operation due to a Forced Outage, RF/QF shall provide PEF with prompt notice of the Forced Outage. As soon as possible following the commencement of the Forced Outage, RF/QF shall provide PEF with information pertaining to the cause of the outage and the anticipated return to service date. Notwithstanding the foregoing, the RF/QF is required to provide the Capacity from the Facility to PEF except (i) during a Planned Outage or Additional Maintenance Outage, (ii) during a period in which notification of a Forced Outage or reduction was provided, (iii) during an event of Force Majeure, (iv) during a period when performance is suspended hereunder and (v) during Emergency Conditions.

10.5 Control

10.5.1 Power supplied by the RF/QF hereunder shall be in the form of three-phase 60 hertz alternating current, at a nominal operating voltage of the interconnection voltage level as of the Execution Date.

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, PEF's system, except for normal testing and repair in accordance with Prudent Utility 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 Prudent Utility 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 Prudent Utility 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 or contract with a Person having 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 During the term of this Contract, the RF/QF shall maintain sufficient Fuel [REDACTED] to deliver the Committed Capacity and associated Energy for an uninterrupted [REDACTED] 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 [REDACTED]

[REDACTED]. This calculation will be adjusted to exclude all outage periods and periods during which the RF/QF's output is affected by a Force Majeure event or the breach or failure of PEF or the Transmission Provider. In the event of a failure of RF/QF to comply with this Section 10.5.5 with respect to output, it shall within sixty (60) days after receipt of notice thereof from PEF, develop a plan to address such conditions and thereafter implement such plan in accordance with Prudent Utility Practices.

10.5.6 PEF shall not be obligated to purchase, and may require curtailed or reduced deliveries of Energy to the extent allowed under FPSC Rule 25-17.086 and under any curtailment plan which PEF may have on file with the FPSC and as may be amended from time to time.

10.6 Metering

10.6.1 All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the "Meters"), shall be installed at the Facility, and tested at RF/QF's expense in accordance with Prudent Utility Practice and any applicable requirements and standards issued by NERC and the Transmission Provider. The Meters shall be

and procedural), shall rest exclusively with PEF. PEF shall promptly notify RF/QF of any such determination by the Internal Revenue Service.

13. Non-Default Termination Rights

Notwithstanding any other provision of this Contract, PEF's exclusive remedy for the failure of RF/QF to satisfy by the Drop Dead Date Conditions Precedent to be satisfied by RF/QF shall be the following:

13.1 PEF shall have the right to terminate this Contract by notice to RF/QF if RF/QF fails to timely satisfy by the Drop Dead Date (or such later date as may be agreed upon by the Parties for satisfaction of Conditions Precedent) any Condition Precedent to be satisfied by RF/QF by such date for any reason other than an Event of Default by PEF. If RF/QF's failure to satisfy any such Condition Precedent was not caused by an Event of Default by PEF, PEF shall have the right, as its sole and exclusive remedy hereunder for the failure of RF/QF to satisfy any Condition Precedent, to make a single draw in the full amount of the Eligible Collateral provided by RF/QF pursuant to Section 11.1 and Appendix 5 within thirty (30) days after the Drop Dead Date or such later date agreed upon by the Parties and the Parties shall have no further liability in respect of such termination.

13.2 If, after all Conditions Precedent to be satisfied by the Drop Dead Date are satisfied or waived and RF/QF provides the Eligible Collateral required under Section 11.1 and Appendix 5, RF/QF fails to achieve completion of the Facility and Capacity Delivery Status on or before the Required Capacity Delivery Date (or such later date, if any as permitted in Section 7.5 and 7.6) for any reason other than an Event of Default by PEF, PEF shall have the right to terminate this Contract and make a single draw in the full amount of the Eligible Collateral provided by RF/QF pursuant to Section 11.1, [REDACTED] paid to PEF, in accordance with Section 7.6 and the timelines contained within this Agreement. Such termination of this Contract by PEF and drawing on the Eligible Collateral provided by RF/QF shall be PEF's sole and exclusive remedy and relief for the failure of RF/QF to achieve Capacity Delivery Status before the Required Capacity Delivery Date and the Parties shall have no further liability in respect of such termination.

14. Default

Subject to the applicable cure period, if any, each of the following shall constitute an Event of Default:

- (a) the RF/QF permanently and materially changes or modifies the Facility from that described in Appendix 2 with respect to its type, location (subject to Appendix 2), technology or fuel source, without the prior written approval of PEF;

- (b) after the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix 3, of at least seventy-four percent (74%);
- (c) the RF/QF fails to satisfy its obligations to maintain sufficient Fuel on the Site to deliver the Committed Capacity and associated Energy for an uninterrupted [REDACTED] under Section 10.4.4 hereof within five (5) days after written notice from PEF;
- (d) either Party fails to make when due, any undisputed payment required pursuant to this Contract if such failure is not remedied within five (5) Business Days after written notice;
- (e) either Party, or the entity which owns or controls either Party, 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 either Party or the entity which owns or controls either Party; or if a receiver shall be appointed for either Party or any of its assets or properties, or for the entity which owns or controls either Party; or if any part of either Party'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 unless such proceedings are commenced by or on behalf of a Lender; or if either Party shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;
- (f) 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 within twelve (12) months following the occurrence of such event of Force Majeure;
- (g) any representation or warranty made by a Party herein proves to have been false or misleading in any material respect when made or when deemed made or repeated and, if curable, is not cured within sixty (60) days after notice, or if the misrepresentation or breach of warranty is not capable of a cure;
- (h) either Party breaches any material provision of this Contract not specifically mentioned in this Section 14 and fails to cure such breach within sixty (60) days after written notice, or if such breach cannot be cured within sixty (60) days, within one hundred eighty (180) days thereafter, provided that the Party commences efforts to cure the breach within sixty (60) days and thereafter uses best commercially reasonable efforts to cure the breach in no event greater than 90 days.
- (i) The RF/QF fails to give Proper Assurance within thirty (30) calendar days after PEF, with reasonable grounds for insecurity with respect to RF/QF's performance of the cure of any of the events set forth in Section 14(a)–(h), has requested in writing Proper Assurance.

include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that in the context of such indemnification there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel; provided however, the foregoing shall not preclude the Indemnified Party from otherwise participating in any such proceeding at its own expense. If the Indemnifying Party fails to timely assume the defense of a Claim or appear in a proceeding, the indemnification of which is required under this Contract, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such Claim; provided, however, that settlement or full payment of any such Claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. All indemnity rights herewith shall survive the expiration or any sooner termination of this Contract in full for a period of twenty-four (24) months after the expiration date or effective date of such termination.

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 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, including the deductible amounts. Any premium assessment or deductible shall be for the account of the RF/QF and not PEF except to the extent that the casualty, loss or damage results from the negligence or willful misconduct of PEF or its contractors. In such event, PEF shall only be liable for that portion of the deductible directly attributable to the extent of its negligence.
- 17.2** The RF/QF Insurance shall have a minimum limit of [REDACTED] 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** A “Force Majeure” is defined as an event, or circumstance that is not reasonably expected and is beyond the control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its transportation providers, contractors, vendors, distributors or suppliers and prevents, prohibits, delays or adversely affects the performance by that Party of its obligations or conditions precedent or the cure of breaches under or pursuant to this Contract. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental, regulatory, customs or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage, pestilence, epidemics, pandemics, explosions and fires [REDACTED], earthquakes, sinkholes, hurricanes, tornadoes, floods, tidal surges, 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 or deregulation of PEF’s markets; (ii) PEF’s economic inability to use or resell the Committed Capacity and Energy purchased hereunder; or (iii) RF/QF’s inability to sell the Committed Capacity or associated Energy at a price greater than the price herein. Equipment delivery delays, breakdowns or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet the requirements of Governmental Approvals, financing or regulatory standards, or otherwise caused by an event originating in the control of a Party, or a Party’s failure to obtain on a timely basis and maintain a necessary Governmental Approval, shall not be presumed to be an event of Force Majeure, unless such Party can reasonably demonstrate that the event was not reasonably foreseeable, was beyond the Party’s reasonable control and was not caused by its negligence or lack of due diligence or the negligence or

Applicable Law that specifically addresses environmental or regulatory issues and that takes effect after the Execution 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) in Environmental Law or Other Regulatory Requirements should affect the cost of the Avoided Unit by an amount greater than the Threshold defined in Section 20.21(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.21(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 Contract. Accordingly, the Parties agree that for the purposes of this Contract, Change(s) in Environmental Law or Other Regulatory Requirements will not be deemed to have occurred unless the change in Avoided Unit Cost Changes resulting from such change(s) exceed a mutually agreed upon net aggregate Threshold amount. This mutually agreed upon aggregate amount is [REDACTED] ("Threshold").
- (d) If an Avoided Unit Cost Change meets the threshold set forth in Section 20.21(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 20.21 shall be resolved in accordance with Section 20.9.

**[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S)
FOLLOW]**

**APPENDIX 4
RATES**

A. Capacity Payment Rate. Notwithstanding the cost of any Avoided Unit for any period during the Term, the Capacity Payment rate to be paid by PEF to RF/QF in respect of the Committed Capacity under this Contract shall be computed using the capacity payment rate table below.

Year	Capacity Payment Rate (\$/kW-month)
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
2040	
2041	
2042	
2043	

B. Energy Rate. Notwithstanding the cost of any Avoided Unit, the rate to be paid by PEF to RF/QF for all Energy delivered under the Contract shall be paid at the Energy Rate in the table below.

Year	Energy Rate (\$/MWh)
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
2040	
2041	
2042	
2043	

APPENDIX 5
RF/QF's Eligible Collateral Requirements

RF/QF shall provide Eligible Collateral by the dates and in the amounts specified in the table below. RF/QF shall have the right to elect to provide performance security in the form of a letter of credit, bond or cash or by providing a RF/QF Guarantee to PEF. The Parties acknowledge that RF/QF shall have the right to elect to provide performance security in the form of (i) cash to secure its obligations relating the Conditions Precedent to be satisfied by it prior to the Drop Dead Date and (ii) a Letter of Credit issued in favor of PEF to secure its obligations after the Effective Date.

Credit Class	\$/MW*	\$/MW**	\$/MW***
	30 Days after FPSC Approval Date (Cash Deposit)	Earlier of Financial Closing and Second Anniversary of FPSC Approval Date – Year 5 After Capacity Delivery Date	Years 6 – Termination Date
A- and Above		50,000	40,000
BBB+ to BBB		80,000	70,000
BBB-		135,000	125,000
Below BBB-		190,000	180,000

* - Design Committed Capacity

** - Design Committed Capacity until Capacity Delivery Status achieved, at which time based on Committed Capacity Test

*** - Committed Capacity Test

APPENDIX 6
FORM OF CONSENT TO ASSIGNMENT

[REDACTED]

Comparison of Payments to US EcoGen and 2018 CT Avoided Costs

REDACTED

Contract MW: 60
 Capacity Factor: 94%
 PV Date: 6/30/2011
 Discount Rate: 8.10%

REDACTED

(\$000)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	# of Months	Contract Energy	Contract Capacity Payments	Contract Energy Payments	(3) + (4) Contract Energy & Capacity Payments	Contract Cumulative Payments	Avoided Capacity Payments	Avoided Energy Payments	(7) + (8) Avoided Energy & Capacity Payments	Avoided Cumulative Payments	(9) - (5) Difference from Contract	(10) - (6) Cumulative Difference from Contract	Discount Factor
Units		MWh	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Year													
2011	0	-					\$ -	\$ -	\$ -	\$ -			1.000
2012	0	-					\$ -	\$ -	\$ -	\$ -			0.925
2013	0	-					\$ -	\$ -	\$ -	\$ -			0.856
2014	12	494,067					\$ -	\$ 29,593	\$ 29,593	\$ 29,593			0.792
2015	12	494,067					\$ -	\$ 33,902	\$ 33,902	\$ 63,496			0.732
2016	12	495,420					\$ -	\$ 34,571	\$ 34,571	\$ 98,067			0.677
2017	12	494,067					\$ -	\$ 37,143	\$ 37,143	\$ 135,210			0.627
2018	12	494,067					\$ 2,541	\$ 39,004	\$ 41,545	\$ 176,755			0.580
2019	12	494,067					\$ 4,486	\$ 36,294	\$ 40,780	\$ 217,534			0.536
2020	12	495,420					\$ 4,615	\$ 34,461	\$ 39,076	\$ 256,611			0.496
2021	12	494,067					\$ 4,752	\$ 34,151	\$ 38,903	\$ 295,514			0.459
2022	12	494,067					\$ 4,889	\$ 34,887	\$ 39,776	\$ 335,289			0.424
2023	12	494,067					\$ 5,033	\$ 35,580	\$ 40,613	\$ 375,902			0.393
2024	12	495,420					\$ 5,184	\$ 39,991	\$ 45,175	\$ 421,077			0.363
2025	12	494,067					\$ 5,335	\$ 41,100	\$ 46,435	\$ 467,512			0.336
2026	12	494,067					\$ 5,494	\$ 41,295	\$ 46,788	\$ 514,300			0.311
2027	12	494,067					\$ 5,652	\$ 45,508	\$ 51,160	\$ 565,460			0.288
2028	12	495,420					\$ 5,818	\$ 44,437	\$ 50,254	\$ 615,715			0.266
2029	12	494,067					\$ 5,990	\$ 45,108	\$ 51,099	\$ 666,813			0.246
2030	12	494,067					\$ 6,163	\$ 46,465	\$ 52,629	\$ 719,442			0.228
2031	12	494,067					\$ 6,350	\$ 47,858	\$ 54,209	\$ 773,651			0.211
2032	12	495,420					\$ 6,538	\$ 49,413	\$ 55,950	\$ 829,601			0.195
2033	12	494,067					\$ 6,725	\$ 50,773	\$ 57,498	\$ 887,099			0.180
2034	12	494,067					\$ 6,926	\$ 52,296	\$ 59,222	\$ 946,320			0.167
2035	12	494,067					\$ 7,128	\$ 53,864	\$ 60,992	\$ 1,007,313			0.154
2036	12	495,420					\$ 7,337	\$ 55,616	\$ 62,953	\$ 1,070,266			0.143
2037	12	494,067					\$ 7,560	\$ 57,144	\$ 64,704	\$ 1,134,969			0.132
2038	12	494,067					\$ 7,776	\$ 58,859	\$ 66,635	\$ 1,201,605			0.122
2039	12	494,067					\$ 8,006	\$ 60,626	\$ 68,632	\$ 1,270,237			0.113
2040	12	495,420					\$ 8,244	\$ 62,596	\$ 70,840	\$ 1,341,078			0.104
2041	12	494,067					\$ 8,489	\$ 64,317	\$ 72,806	\$ 1,413,883			0.097
2042	12	494,067					\$ 8,741	\$ 66,247	\$ 74,988	\$ 1,488,871			0.089
2043	5	204,395					\$ 3,747	\$ 24,949	\$ 28,696	\$ 1,517,567			0.083
Total	353	14,541,809					\$ 159,518	\$ 1,358,049	\$ 1,517,567				
NPV 2010\$			\$ 36,776	\$ 322,357	\$ 359,133		\$ 36,573	\$ 382,379	\$ 418,951		\$ 59,818		

Exhibit C**PROGRESS ENERGY FLORIDA
Confidentiality Justification Matrix**

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Petition	<p>Exhibit A (USEG POLK Agreement):</p> <p>Page 4: Definition;</p> <p>Page 4: "Drop Dead Date" Section: term;</p> <p>Page 7: "Material Adverse Change" Section: creditworthy amount;</p> <p>Page 8: "Material Casualty Event": percentage & terms;</p> <p>Page 13, Section 4.4: timeframes;</p> <p>Page 15, Section 6.2: contract term;</p> <p>Page 15, Section 6.3: entire ¶ (contract terms);</p> <p>Page 18, Section 7.4: definition/contract terms;</p> <p>Page 18, Section 7.4: definition/contract terms;</p> <p>Page 18, Section 7.5: payment amounts / contract terms;</p> <p>Page 18, Section 7.6: contract terms;</p> <p>Page 23, Section 10.2: timeframe;</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair PEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

DOCUMENT NUMBER-DATE

02130 APR-1 =

FPSC-COMMISSION CLERK

	<p>Page 24, Section 10.5.5: percentages, timeframes & contract terms;</p> <p>Page 29, Section 13.2: contract terms;</p> <p>Page 30, Section 14(c): timeframe;</p> <p>Page 33, Section 17.2: insurance amount;</p> <p>Page 34, Section 18.1: contract term;</p> <p>Page 48, Section 20.21(c): environmental/regulatory limit amount;</p> <p>Appendix 4-1: capacity payment rate (\$/kW-month);</p> <p>Appendix 4-2: energy rate (\$/MWh);</p> <p>Appendix 5: \$/MW amounts;</p> <p>Appendix 6: USEG POLK "Form of Consent to Assignment" – entire document;</p> <p>Exhibit B (Calculation of Cost Savings): Columns 3, 4, 5, 6, 11 and 12 (capacity payment amounts).</p>	
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State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

John T. Burnett
P.O. Box 14042
St. Petersburg FL 33733

Re: Acknowledgement of Confidential Filing in Docket No. 110090-EI

This will acknowledge receipt by the Florida Public Service Commission, Office of Commission Clerk, of a CONFIDENTIAL DOCUMENT filed on April 1, 2011, in the above-referenced docket.

Document Number 02131-11 has been assigned to this filing, which will be maintained in locked storage.

If you have any questions regarding this document, please contact Kim Peña, Records Management Assistant, at (850) 413-6393.