BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Southeast Renewable Fuels, LLC, for a Declaratory Statement Regarding Co-Ownership Of Electrical Cogeneration Facilities in Hendry County	)	DOCKET NO. 130235-EQ
	)	FILED: October 15, 2013

RESPONSE AND INCORPORATED MEMORANDUM OF LAW OF SOUTHEAST RENEWABLE FUELS, LLC, TO MOTIONS TO FILE AMICUS BRIEFS, MOTION TO INTERVENE, AND RESPONSE IN OPPOSITION TO PETITION FOR DECLARATORY STATEMENT

Southeast Renewable Fuels, LLC ("Southeast Renewables," "Southeast," or "Petitioner"), pursuant to Section 120.565, Florida Statutes, and Rules 28-105.0027(3) and 28-106-204(1), Florida Administrative Code ("F.A.C."), hereby files this Response to the motions for leave to file amicus briefs submitted by the Florida Electric Cooperatives Association ("FECA"); and Florida Power & Light Company ("FPL"), Tampa Electric Company ("TECO"), and Gulf Power Company ("Gulf"), collectively referred to herein as the "3 IOUs;" and the motion to intervene and response in opposition to Southeast's Petition filed by Glades Electric Cooperative ("Glades"). The foregoing movants – i.e., FECA, the 3 IOUs, and Glades – are also collectively referred to herein, where applicable, as the "Opponents" to Southeast's Petition for Declaratory Statement.

In summary, as described in Southeast's Petition for Declaratory Statement ("Petition"), Southeast and its Confidential Partner are developing an integrated renewable

energy facility in Hendry County that will produce, from native Florida renewable energy resources, ethanol for use as motor fuel, renewable electricity produced from the combustion of sorghum bagasse, steam produced in the electricity generation process that will be recovered and used in cogeneration applications, and food-grade carbon dioxide refined from the ethanol production byproducts. The electricity (and useful thermal energy) will be produced from electrical generation equipment that will be jointly owned by Southeast and its Confidential Partner and will be used by Southeast and its Confidential Partner to serve their respective electrical requirements.

Southeast's Petition presents a straightforward request for declaratory statements that are appropriate to this type of transaction, and Southeast's Petition alleges sufficient facts upon which the Commission can base its order granting the requested statements. Of course, Southeast recognizes the fundamental principle of declaratory statement law that the statements given are only applicable to the extent that the facts "on the ground" match those represented in its Petition. The Opponents' arguments are misplaced, generally talking around the fundamental holding of the Commission's previous declaratory statements on this subject, that "A customer can clearly choose to serve himself" while discussing what the Commission has done

in cases where the owners and consumers of electric generation equipment were not identical, by mischaracterizing the arrangement presented by Southeast (contrary to the facts presented by Southeast), by concocting many, many hypothetical facts and scenarios that might, were they not contradicted by the facts presented in Southeast's Petition, lead to a different result, by proffering a fairly typical, but baseless, "parade of horribles," which they assert could impair the Commission's jurisdiction to the detriment of public safety and coordinated utility planning, and finally, by throwing a few more strands of spaghetti at the wall (e.g., possible standby service issues, a misplaced argument that Southeast and its Confidential Partner would somehow be an "electric utility" because there would be electric wires connecting the generator to the Ethanol Plant and the CO2 Plant, and the specious allegation that the petition would determine the interests of Southeast's Confidential Partner).

Southeast will address all of the shortcomings of the Opponents' arguments in turn. Southeast begins by acknowledging that the Commission can, and should, receive the Opponents' pleadings as amicus curiae briefs and should hear from the Opponents as well as from Southeast on the Petition. This omnibus response then addresses Southeast's opposition to Glades' motion to intervene, and concludes with Southeast's

unfortunately but necessarily lengthy response to the arguments raised in the Opponents' amicus briefs, including Glades' response in opposition to Southeast's Petition treated as such.

SOUTHEAST'S RESPONSE TO MOTIONS FOR LEAVE TO FILE AMICUS CURIAE BRIEFS AND TO ADDRESS THE COMMISSION

Recognizing the Commission's longstanding practice of allowing interested parties to be heard on petitions for declaratory statements[1] regarding the subject of its Petition, Southeast does not object to either the filing of the amicus curiae briefs proffered by FECA or the 3 IOUS, or to the Commission's consideration of the letter submitted by the Florida Municipal Electric Association, or to the Commission's consideration, as the functional equivalent of an amicus curiae brief, of Glades' response in opposition to Southeast's Petition. Further, in the interest of transparent and open debate, Southeast does not object to all parties, including Glades, having the opportunity to address the Commission on its Petition.

SOUTHEAST'S RESPONSE TO GLADES' MOTION TO INTERVENE

Southeast believes that Glades' motion to intervene is misplaced for a number of reasons, principally that the adverse

[1] See, e.g., In Re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, "Declaratory Statement," PSC Docket No. 860725-EU, Order No. 17009 at 1 (Fla. Pub. Serv. Comm'n, December 22, 1986) ("Monsanto").

effects that it alleges at pages 3-4 of its motion are either misplaced, unfounded, or conjectural and thus not sufficient to establish standing under the standing test enunciated in Agrico Chemical Co. v. Dep't of Envtl. Reg., 406 So. 2d 478 (Fla. 2d DCA 1981). As the Commission described the Agrico standing test in a recent order,

> The first prong of the Agrico test deals with the degree of injury, which must be both real and immediate and not speculative, too remote, or conjectural. The second prong of the test deals with the nature of the injury. Failure to satisfy either or both prongs of the test is grounds for dismissal, as demonstrated by the Florida Supreme Court.

In re: Petition for Approval of Amendment No. 1 to Generation Services Agreement with Gulf Power Company, by Florida Public Utilities Company, Docket No. 110041-EI, Order No. PSC-12-0056-FOF-EI at 3 (Feb. 9, 2012).

Glades begins by making certain conclusory statements regarding Southeast and its Confidential Partner, namely that "Southeast will provide electric service to one or more unrelated entities that otherwise be customers of Glades," and that "Southeast's jointly-owned generating entity will become a privately-held utility in the midst of Glades' historic service area." Items 6(a) and 6(b), Motion to Intervene at 3. These conclusory allegations are false: Southeast and its Confidential Partner will serve themselves from jointly owned generating

equipment, and there will be no separate "generating entity" as alleged by Glades.

Glades' further assertions that these arrangements will reduce Glades' sales and deprive its member-owners of alleged economies of scale from possibly serving additional load are conjectural. Glades itself acknowledges that Southeast can and will serve itself without any regulatory implications, Glades Response at 1, fn. 1, and that Southeast will use at least 10 megawatts ("MW") of the Power Plant's output for Southeast's Ethanol Plant operations. This leaves the hypothesized impact of Glades possibly not serving up to 1.5 MW of new load at the Carbon Dioxide Plant that, if built, would be owned by Southeast's Confidential Partner.[2] As discussed further below, and as acknowledged by Glades, any hypothesized loss of sales would be somewhat offset by standby sales revenues from service

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[2] Glades also misleadingly and disingenuously attempts to discredit Southeast's Petition because of the Confidential Partner's desire to remain anonymous, referring on numerous occasions to Southeast's "secret partner" as though Southeast has something to hide. Nothing could be further from the truth: The truth is that Glades' management knows exactly who Southeast's Confidential Partner is: Southeast officers told Glades' General Manager, Mr. Jeff Brewington, and other Glades Electric management personnel the Partner's identity at a meeting at Glades' offices in Moore Haven on May 29, 2013. That meeting was held at Southeast's request in an effort to be open and transparent with Glades and to come to agreement regarding Southeast's proposed arrangements without contentious adverse litigation.

to the Project. Moreover, the assertion that additional load of 1.5 MW would improve economies of scale is equally conjectural.

Continuing with Glades' assertions regarding standby service and interconnection requirements, Items 6(e) and 6(f), Motion to Intervene at 3-4, Glades' alleged adverse impacts are also conjectural. Southeast and its Confidential Partner fully expect that Glades will provide standby and related services at fair, reasonable, and non-discriminatory rates pursuant to the rules of the Federal Energy Regulatory Commission[3] and also subject to the Commission's rate structure jurisdiction. With respect to Glades' allegation that it might have "to develop a non-standard protection scheme unique" to the integrated renewable energy Project being developed by Southeast and its Confidential Partner, there is no indication at all, and no reason to believe that, even if true, this would adversely affect Glades. The Project is no more complex, and probably

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[3] See Monsanto at 5, where the Commission stated,

> We do not consider this issue to be an appropriate one for resolution in a declaratory statement. There is no question or doubt that pursuant to the controlling Federal Energy Regulatory Commission Rule 18 CFR 292.305(b) and 292.393(b) implementing the Public Utilities Regulatory Policies Act (PURPA) and Rule 25-17.084, Florida Administrative Code, Gulf Power Company must provide "standby" electric power at applicable non-discriminatory tariff rates to Monsanto in its capacity as operator of the proposed qualifying facility.

less complex, than numerous other industrial installations that include self-generation and multiple accounts and meters inside the fence, and electrical engineers design protection schemes for their livings. Moreover, it is doubtless true that Glades would be able to require Southeast and its Confidential Partner to pay for whatever interconnection facilities were determined to be necessary for the Project to be electrically interconnected to Glades' system.

Finally, Glades asserts, in its Items 6(c) and 6(d), that it would be precluded from seeking resolution of a territorial dispute and that its existing transmission and distribution facilities would be uneconomically duplicated. It is true that, assuming the Commission grants the requested declaratory statements and that the facts "on the ground" as implemented by Southeast and its Confidential Partner comport with those upon which the Commission bases those statements, Southeast and its Confidential Partner would at least have a sound defense against some future territorial dispute complaint that Glades might lodge. However, Glades would not be foreclosed from lodging a territorial complaint alleging that the facts were different than those presented in Southeast's Petition, as Glades apparently believes they will be based on its allegations in Items 6(a) and 6(b), and there is no indication or basis to believe that Southeast or its Confidential Partner would

"compete for customers" against Glades - this is merely another conjectural assumption created by Glades.

Finally, Glades' assertion that its transmission and distribution facilities would be uneconomically duplicated by the Confidential Partner's self-service of its electrical requirements, up to 1.5 MW, from its jointly owned share of the Power Plant, is plainly conjectural, and thus affords no basis for Glades to intervene.

In sum, Glades cannot establish standing under Agrico to participate in this proceeding as a party, because its alleged impacts on its substantial interests are either unfounded or conjectural. However, as stated above, Southeast has no objection to Glades participating in this proceeding as amicus curiae.

SOUTHEAST'S RESPONSE TO BRIEFS AND MEMORANDA OF LAW

Southeast's Petition presents a straightforward request for declaratory statements that are appropriate to this type of transaction, and Southeast's Petition alleges sufficient facts upon which the Commission can base its order granting the requested statements. Of course, Southeast recognizes the fundamental principle of declaratory statement law that the statements given are only applicable to the extent that the facts "on the ground" match those represented in its Petition. The Opponents' arguments are misplaced, generally talking around the fundamental holding of the Commission's previous declaratory statements on this subject, that "A customer can clearly choose to serve himself" while discussing what the Commission has done in cases where the owners and consumers of electric generation equipment were not identical; by attempting to freight in the "unity of interest" test or analysis, which is inapplicable here; by mischaracterizing the arrangement presented by Southeast (contrary to the facts presented by Southeast); by concocting many, many hypothetical facts and scenarios that might, were they not contradicted by the facts presented in Southeast's Petition, lead to a different result; by proffering a fairly typical, but baseless, "parade of horribles," which they assert could impair the Commission's jurisdiction to the detriment of public safety and coordinated utility planning; and

finally, by throwing a few more strands of spaghetti at the wall (e.g., possible standby service issues, a misplaced argument that Southeast and its Confidential Partner would somehow be an "electric utility" because there would be electric wires connecting the generator to the Ethanol Plant and the CO2 Plant, and the specious allegation that the petition would determine the interests of Southeast's Confidential Partner).

Southeast's Petition Presents Sufficient Facts Upon Which The Commission Can and Should Granted the Requested Declaratory Statements.

Southeast's Petition presents a straightforward request for declaratory statements that are appropriate to this type of transaction, and Southeast's Petition alleges sufficient facts upon which the Commission can base its order granting the requested statements. The Opponents' arguments include repeated conclusory assertions that the Petition does not plead sufficient facts, and that it is vague and hypothetical. Glades Response at 9-10, 3 IOUs Amicus Brief at 8-10, 12-13. They also attempt to confuse the issues actually presented by claiming to identify a number of ancillary issues that they assert should be, but cannot be, determined based on the facts presented in Southeast's Petition.

Contrary to the Opponents' assertions, the Petition sets forth sufficient facts upon which the Commission can base the

requested declaratory statements. Those facts are set forth at pages 10-12 and 19 of the Petition, and include the following.

1. A description of the generating equipment that will be jointly owned by Southeast and its Confidential Partner.

2. "Southeast Renewable Fuels and the Confidential Partner will jointly own - i.e., will jointly hold legal title to - the electrical generation equipment via undivided ownership interests in that equipment; each party's interest (ownership share) will be at least as great as its maximum power requirements. Each of Southeast and the Confidential Partner will also own the title to the electricity produced from its share of the generating equipment."

3. Southeast and the Confidential Partner will be the owners of the electrical generating equipment and will, accordingly, bear all risks of ownership.

These facts are sufficient for the Commission to issue the requested declaratory statements. Because this is simple, straightforward joint ownership of the Power Plant, there is no need for any complicated "regulatory pretzel" arrangements creating a nexus between non-identical owners and consumers as was the case in Seminole Fertilizer,[4] nor is there any need for any more detailed explanation: ownership is ownership, and where there is identity of the owners of the Power Plant and the consumers of that Plant's output - specifically structured to ensure that each will own at least as much of the Plant's capacity as it maximum electrical requirements, as well as all

[4] In Re: Petition of Seminole Fertilizer Corporation for a Declaratory Statement Concerning the Financing of a Cogeneration Facility, 90 FPSC 11:126 ("Seminole Fertilizer").

of the electricity produced by each joint owner's share of the Plant - there is only self-generation.

The Opponents further argue that there are insufficient facts upon which the Commission might base a substantial number of ancillary determinations that the Opponents assert are necessary, but which are not.

For example, at pages 9-10 of its response in opposition, Glades asserts that "It is impossible to glean from Southeast's petition the basic information necessary to even understand its proposal, let alone determine that the parties' arrangements would not constitute a sale." Glades goes on to suggest that Southeast has not identified the form of business organization that Southeast and its Confidential Partner will adopt for their joint ownership of the electrical generation equipment; that the equipment to be jointly owned isn't specified; that the owner or owners of the facility in which the electrical generating equipment would be installed is, or are, not identified; that the Petition fails "to provide any details whatsoever regarding the parties' arrangements, such as the form of their business organization" and other potential provisions, and that "there is no explanation of how or when" the Joint Owners' respective shares will be determined, whether other joint owners might be allowed to purchase ownership interests in the generator, or whether ownership shares may change in the future.

These criticisms are either false or irrelevant to the declaratory statements actually requested in the Petition. Southeast has most assuredly described the form of business organization by which Southeast and its Confidential Partner will own the electrical generating equipment, specifically that

> Southeast Renewable Fuels and the Confidential Partner will jointly own - i.e., will jointly hold legal title to - the electrical generation equipment via undivided ownership interests in that equipment; each party's interest (ownership share) will be at least as great as its maximum power requirements. Each of Southeast and the Confidential Partner will also own the title to the electricity produced from its share of the generating equipment.

The form of business organization is joint ownership and jointly held legal title to the electrical generation equipment. The Opponents' assertions that there will be some other entity created to own the generating equipment, Glades Response at 9, 3 IOUs' Amicus Brief at 6, FECA Amicus Brief at 5, are simply fabricated, conclusory assumptions that are contradicted by the facts presented in the Petition. Because this is simple, straightforward joint ownership, there is no need for any "regulatory pretzel" arrangements between non-identical owners and consumers as was the case in Seminole Fertilizer.

Glades' criticism that the Petition does not specify exactly what equipment will be jointly owned is also misplaced: the Petition describes the generating equipment (at paragraph 11) and states, unequivocally (at paragraph 13), that

> Southeast Renewable Fuels and the Confidential Partner will jointly own - i.e., will jointly hold legal title to - the electrical generation equipment via undivided ownership interests in that equipment; each party's interest (ownership share) will be at least as great as its maximum power requirements. Each of Southeast and the Confidential Partner will also own the title to the electricity produced from its share of the generating equipment.

The clear import of this language is that both Southeast and the Confidential Partner will jointly own all of the electrical generating equipment.

Glades' further alleged deficiency, that the Petition fails to identify the ownership of the facility (apparently the building) in which the generation equipment will be located, is equally misplaced. When addressing this subject, the Commission has consistently focused on the ownership of the equipment that produces electricity and not on who owns the building or land where that equipment is located; of course, this is proper because it is the supply of electricity to or for the public that determines the Commission's jurisdiction, not who owns the building in which or the land upon which electrical generating equipment is located.

Similarly, at page 14 of their amicus brief, the 3 IOUs assert that Southeast's Petition fails to allege facts sufficient to make a number of determinations that the 3 IOUs apparently would like made, but which are unnecessary to the requested declaratory statements. In point of fact, the 3 IOUs

assertions are generally false or irrelevant or both. For example, the 3 IOUs assert that there are insufficient facts to determine "the specific amount" of electricity Southeast and its Confidential Partner would be entitled to receive, that neither Southeast nor the Confidential Partner will utilize more than its respective ownership share of the output, and that neither will compensate the other for inadvertent flows. These are all addressed by the factual representations that Southeast's Ethanol Plant will, at least prior to its expansion, use a maximum of approximately 10 MW of power and that the Carbon Dioxide Plant will use, at maximum, approximately 1.5 MW of power, and that each of Southeast and its Confidential Partner will own at least as much of the generating equipment and the electricity as it consumes. Petition at 11-12. These are clear, unambiguous factual representations upon which the Commission can rely in granting the requested statements.[5]

[5] "[A]n agency may rely on the statement of facts contained in the petition for declaratory statement without taking a position on the validity of the facts when making a determination on the petition." In re: Petition by Board of County Commissioners of Broward County for Declaratory Statement, Docket No. 060049-TL, Order Granting in Part and Denying in Part Petition for Declaratory Statement, Order No. PSC-06-0306-DS-TL, 2006 WL 1085213 (Fla. P.S.C., April 19, 2006). Moreover, declaratory statements are inherently limited to the facts upon which they are based. Seminole Fertilizer at 2.

The Commission Has Issued Declaratory Statements on the Subject Matter of Southeast's Petition Without Having Definitive Agreements or Detailed Information Regarding the Parties To Be Involved in Such Arrangements.

The Opponents attempt to make much of the fact that the Joint Venture Agreement and the Operating and Maintenance Agreement have not been developed yet. Glades Response at 9-10, 3 IOUs Amicus Brief at 14. The 3 IOUs further argue that the Commission cannot grant the requested declaratory statements without first seeing the Joint Venture Agreement and the contract with the Operating and Management Company ("O&M Company"). 3 IOUs Amicus Brief at 12. In so doing, these Opponents ignore the fact that the Commission has, on at least two significant occasions - indeed, in the Monsanto and Seminole Fertilizer orders that the Opponents cited in their pleadings - rendered declaratory statements while expressly recognizing that it did not have the relevant operative documents and that it did not know the identities of parties to those arrangements. These cases and situations were in fact identified explicitly in Southeast's Petition. For example, in Monsanto, the Commission held that a "yet-to-be-selected manufacturer/lessor" of cogeneration equipment would not "be deemed a public utility under Florida law." Monsanto at 2, 5. Similarly, in Seminole Fertilizer, the Commission declared that the proposed financing and ownership structure presented in that case would not cause

the petitioner or a yet-to-be-formed partnership/lessor or the not-yet-identified individual partners in that partnership to be subject to regulation by the Commission. Seminole Fertilizer at 2, 7.

Moreover, the Opponents' efforts to focus the Commission's attention on their assumptions about what the contract between Southeast and its Confidential Partner, and the O&M Company, are also misplaced, because none of the requested declaratory statements even addresses the O&M Company.

The 3 IOUs' efforts also constitute an irrelevant attempt to implicate the O&M Company, which will be paid by Southeast and the Confidential Partner, but which clearly will not own the generating equipment, such that there is no issue as between owner and consumer. Again, if Glades believes that Southeast and the Confidential Partner have created a utility-customer relationship with the O&M Company, they can file a territorial dispute complaint. The 3 IOUs cannot create hypothesized facts contrary to those presented by Southeast and then argue that, because something different from those facts might occur "on the ground," the Commission should deny the requested statements. Southeast believes that its factual assertions that it and its Partner will own the electrical generating equipment and the electricity it produces are more than sufficient to enable the Commission to issue the requested statements.

The 3 IOUs, at page 11 of their amicus brief, also raise the specter that the Joint Venture Agreement might contain provisions that might, if they were to exist in the real world rather than in the IOUs' assumptions, produce different results. These are merely additional assumed, concocted scenarios that are not in any way among the facts upon which the Commission is asked to render the requested declaratory statements.

The Requested Declaratory Statements Would be Limited to the Facts Presented by Southeast in Its Petition.

It is well settled that declaratory statements are inherently limited to the facts upon which they are based. See, e.g., the "Caveat" stated by the Commission in Seminole Fertilizer:

> This Declaratory Statement is based solely upon information provided by Petitioner. Any alteration or modification of that information or failure to realize arrangements as described in the petition may substantially affect the conclusions reached in this Declaratory Statement as stated herein. Moreover, our conclusion is limited to the facts presented by Petitioner.

Seminole Fertilizer at 2.

The import of this fundamental principle of the law of declaratory statements is that all of the different facts hypothesized and concocted by the Opponents have absolutely no relevance to the declaratory statement requested or to any declaratory statement granted by the Commission.

The Opponents' Many Hypothesized Facts and Assumptions Are Irrelevant to the Questions Presented in Southeast's Petition.

The Opponents have creatively concocted many hypothetical scenarios and assumed facts that might, if they were to come to exist in the real world, lead to a different result than the non-jurisdictional status of Southeast and its Confidential Partner under Chapter 366 based on the facts set forth in the Petition. However, these are no more than speculative hypotheses and assumptions advanced by the Opponents in an effort to muddy the waters surrounding Southeast's straightforward request. The Opponents' hypothesized facts and scenarios are beyond the facts presented in the Petition and accordingly irrelevant, and the Opponents' attempts to rely on their own assumptions is clearly inconsistent with the fundamental principle that declaratory statements are limited to the facts presented by the petitioner. Id.

For example, contrary to the facts set forth in the Petition, which specify that Southeast and the Confidential Partner will be the joint owners of the generating equipment and the users of the electricity produced by that equipment, the Opponents (Glades Response at 6, 3 IOUs Amicus Brief at 14) first assume the possibility that there might be additional joint owners in the future and then attempt to turn that assumption into a basis to deny the requested declaratory

statements because it would, they hypothesize, leave the Commission unable to "draw a line" delineating a certain number of joint owners beyond which joint ownership might not qualify as self-service generation. They also assume additional hypothetical scenarios involving industrial parks and condominiums that are outside the facts presented in the Petition. While such scenarios might pose different questions in the future - e.g., will the Opponents fight a group of 3 or 4 Florida homeowners who want to jointly own and benefit from a solar installation? - they are well beyond the facts set forth in the Petition and well beyond the declaratory statements requested by Southeast's Petition.

The Opponents further hypothesize that there will be a third entity that will actually own the generation equipment. Glades Response at 9, 3 IOUs Amicus Brief at 6, FECA Amicus Brief at 5. Similarly, the IOUs have created hypothetical provisions in the Joint Venture Agreement. 3 IOUs Amicus Brief at 11. The 3 IOUs have also concocted hypothetical provisions of the anticipated contract between Southeast and its Confidential Partner, as owners, and an O&M Company, as operator of the generating equipment. 3 IOUs Amicus Brief at 11-12. If the provisions of the contracts were to be - in the future and in reality - what the Opponents assert they might be, they might produce a different result than the non-jurisdictional self-

service generation conclusion that Southeast asserts is warranted here, and if Glades were to have a good-faith belief that the facts were different from those presented by the Petition or that the facts otherwise warranted a different conclusion, Glades could file an appropriate action with the Commission to attempt to seek a different result and appropriate relief. Here, however, the Opponents' assumptions are merely assumptions and they have no relevance to the facts presented in the Petition. (To the extent that the Opponents focus on the O&M Company, the Commission should note that none of the requested declaratory statements even addresses the O&M Company.)

The Opponents' Attempts to Invoke the "Unity of Interests" Test or Analysis is Inapplicable to the Joint Ownership Arrangement Under Which Southeast and Its Confidential Partner Will Own the Generating Equipment and the Electricity It Produces.

The 3 IOUs' amicus brief, at pages 6-8, relies heavily on the unity of interests test, but fails to recognize that the "unity of interest" test or analysis is only applicable, and has only been applied by the Commission, where the producing and consuming entities were not identical. In other words, the Commission has recognized that self-generation is not jurisdictional, Monsanto at 4, see also Seminole Fertilizer at 6-7, and has only conducted a "unity of interest" analysis where the non-identity of the producing and consuming entities

suggested the possibility that one entity might be "supplying electricity to or for the public," thus potentially triggering the Commission's jurisdiction. Here, where there is identity of ownership, no "unity of interests" analysis is required or appropriate.

The several cases on this subject (including P.W. Ventures,[6] Timber Energy Resources,[7] Monsanto, and Seminole Fertilizer) that have previously been presented to the Commission for decision have involved cases where there was not prima facie self-service generation, because each such case involved supply by a generation owner that was not identical to the consumer of the power generated. In those instances, naturally and obviously, the Commission has focused on how closely related the supplier-producer entity and the consumer entity were, i.e., on how closely the proposed transaction was to self-service. See, e.g., Seminole Fertilizer at 6 ("The Commission finds that the lessee/QF (Seminole) and partnership/lessor (Seminole Sub L.P.)

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[6] In Re: Petition of PW Ventures, Inc. for Declaratory Statement in Palm Beach County, "Order Denying Declaratory Statement," PSC Docket No. 870446-EU (Fla. Pub. Serv. Comm'n, October 22, 1987), aff'd sub nom., PW Ventures v. Nichols, 533 So. 2d 281 (Fla. 1988) ("PW Ventures").

[7] In Re: Petition of Timber Energy Resources, Inc., for a Declaratory Statement Concerning Sales as "Private Utility" Status, "Order Granting Petition for Declaratory Statement," PSC Docket No. 861621-EU, Order No. 17251 (Fla. Pub. Serv. Comm'n, March 5, 1987) ("Timber Energy Resources").

are so 'related' that the arrangement surmounts the jurisdiction boundary identified in PW Ventures, Inc.")

Perhaps obviously, where there is identity of ownership of the producing and consuming entities, there is no need for complex "regulatory pretzels," such as the Seminole Fertilizer arrangements illustrated in an appendix to Glades' Response, to establish a unity of interests, because the "unity of interest" test is not implicated where the producing and consuming entities are identical.

Moreover, both substantively and logically, it is clear on the face of the facts presented that Southeast and its Confidential Partner will indeed have a unity of interests in their joint ownership of the Power Plant upon which they both depend critically for the operation of the Ethanol Plant and the Carbon Dioxide Plant. The fact that they use their jointly owned electrical generating equipment to operate their separate industrial facilities - the Ethanol Plant and the Carbon Dioxide Plant - is irrelevant.

The Opponents' Parade of Hypothetical Horribles Provides No Basis to Deny Southeast's Requested Declaratory Statements.

All of the Opponents assert that horrible consequences to the Commission's jurisdiction and public safety could result if the Commission were to grant the requested declaratory statements. These hypothetical problems include the loss of the

Commission's ability to ensure the coordinated planning, development, and maintenance of a coordinated electric grid in Florida, 3 IOUs Amicus Brief at 2, 8, Glades response at 6, FECA at 5; purported concerns regarding impairment of the Commission's safety jurisdiction, 3 IOUs Amicus Brief at 2, Glades response at 6, FECA at 5; alleged inability to resolve territorial disputes, id.; and the potential loss of regulatory assessment fee revenues, Glades Response at 6. Each of these purported concerns is easily demonstrated to be misplaced.

A. Planning, Development, and Maintenance of the Grid. The Commission's jurisdiction over the grid is no more threatened by the proposed arrangement between Southeast and its Confidential Partner than it is by any other self-generating customer or complex industrial load that is partially or principally served by a customer's self-service generation. This is because any affected utilities will have ample notice of at least the proposed generating equipment and its capacity and configuration by virtue of required interconnection agreements and, where applicable, by virtue of required advance transmission service requests. Affected utilities would also have advance notice of anticipated service requirements for interconnecting self-generators who would be requesting standby service. The point is that the electrical loads of the Ethanol Plant and the Carbon Dioxide Plant will be what they are (unless

the roadblocks thrown up by the Opponents chase the Confidential Partner's Carbon Dioxide Plant to another state) regardless of who owns what, and utilities surely know how to plan to serve standby service loads. Further, any excess power supplied to the grid will be what it is, and both the Commission and Florida's utilities surely know how to consider both firm capacity and energy and as-available energy supplied in their planning. See, e.g., FPL's Ten Year Power Plant Site Plan, 2013-2022 at 22-26 (excerpt provided as Attachment A). The Opponents' suggestion that a 25 MW or 50 MW generator, with self-served loads smaller than the generator's capacity, would impair their ability to plan or coordinate is misplaced.

Adequate knowledge of generation that will be connected to the grid, adequate knowledge of the loads that the utility will be expected to serve, and adequate knowledge of the facilities and equipment involved are all that is required to ensure the coordinated planning, development, and maintenance of the grid. Glades would have this knowledge, as would FPL or any other IOU pursuant to its Open Access Transmission Tariff ("OATT"). Here again, the Opponents' argument is misplaced.

B. Neither Public Safety Nor The Commission's Safety Jurisdiction Will Be Impaired If the Commission Grants The Requested Declaratory Statements. The Commission's safety jurisdiction extends only to electric utilities. Fla. Stat. §

366.04(6) (2013). However, assuming that the Commission were to grant the requested declaratory statements, just because the Commission, per se, would not have jurisdiction over Southeast's and its Confidential Partner's installations does not mean that the installations would be unregulated or that public safety would be threatened in any way. In fact, those installations would be subject to either or both of the National Electrical Safety Code or the National Electrical Code, as well as most likely IEEE Standard 1547, applicable to distributed generation resources interconnected to utility systems. And, in fact, the Commission can rely, as it should rely, on the utilities themselves to police the installations. For example, Glades' tariff includes its "NET METERING INTERCONNECTION AGREEMENT FOR MEMBER-OWNED RENEWABLE GENERATION SYSTEMS," Tariff Sheets No. 20.0 through 20.7. (A copy of these tariff sheets is included as Attachment B.) While this particular tariff agreement only provides to facilities with up to 100 kW of capacity, it includes the following provisions relative to Glades' ability to know exactly what is being installed and its ability to ensure the safety of such self-service generation installations:

> (1) The Member agrees to provide GEC with written certification that the RGS [Renewable Generation System] installation has been inspected by the local county code official who has certified that the installation was permitted and has been approved and has met all electrical and mechanical requirements. Such certification

shall be provided to GEC prior to the operation of the RGS.

(2) The Member shall, prior to operation of the RGS, provide equipment specifications to GEC identifying and certifying in writing that the RGS, inverters and associated equipment design, and installation and operation adhere to IEEE-1547 Standards, UL-1741 Standards, the National Electric Code, and, if applicable, has been approved by the Florida Solar energy Center (FSEC Std 203-05).

* * *

(4) The Member agrees to permit GEC and/or Seminole, if it should so choose, to inspect the RGS and its component equipment and documents necessary to ensure compliance with various sections of this Interconnection Agreement both before and after the RGS goes into service and to witness the initial testing of the RGS equipment and protective apparatus. . . . Member agrees to provide GEC access to the Member's premises for any reasonable purpose in connection with the performance of the obligations imposed by this Interconnection Agreement.

* * *

(6) The Member shall not energize GEC's system when GEC's system is de-energized.

* * *

(8) The Member shall, at the Member's expense, install and maintain a manual disconnect switch to provide a separation point between the AC power output of the RGS and an Member facilities connected to GEC's electrical system . . . .

Thus, it is clear beyond argument that Glades has the ability to promulgate an interconnection agreement sufficient to protect itself and public safety. While Glades does not

presently have a tariffed interconnection agreement in place for larger self-service generators, Glades does have in place its Interconnection Agreement for renewable net-metering installations as described above. Obviously, Glades knows how to prepare tariffs and interconnection agreements to address issues relating to interconnections, including specific requirements that interconnected self-service generators must comply with numerous safety and code requirements, and it would seem to be a simple matter for Glades to modify its existing interconnection agreement to address larger generators. Of course, larger transmission-owning utilities like FPL have extensive generator interconnection procedures and agreements in place pursuant to their OATTs.

Moreover, while the electrical arrangements to be developed by Southeast and its Confidential Partner, and by Glades and with Glades' approval as the interconnecting utility, may require "non-standard" interconnection facilities and isolation electronics, this by no means indicates that this would be problematic. There are many industrial installations in Florida, and throughout the United States, that include self-service generation and multiple uses inside, and sometimes outside, the customer's fence. In Florida, for example, there are mining operations that include chemical plant operations on one meter, mining equipment served by other meters, and office

facilities served on still other meters, but this has never seemed to be a problem for the utilities serving such facilities. Similarly, other industrial facilities have self-generation with multiple meters and accounts behind the meter. Conceptually, at least, there is no a priori reason to believe that the arrangements involving Southeast and its Confidential Partner would be any more complex or require anything other than off-the-shelf metering and switching technology. In any event, Glades will necessarily know, beginning with the design phase, what is involved and will necessarily have to approve the interconnection arrangements beforehand, and under normal practice, Southeast and its Confidential Partner will have to pay for the interconnection facilities. There is no inherent difference between this arrangement and any other industrial complex with self-generation and multiple meters and accounts "inside the fence" of the self-generating customer.

Finally, if the Commission were concerned that, somehow, an electric utility such as Glades might not adequately provide for safe operation of self-generators with whom the electric utility was interconnected, the Commission could simply impose its interconnection standards rules, e.g., Rule 25-17.087, F.A.C., on electric utilities. The Opponents' argument is misplaced.

C. Territorial Disputes. Territorial disputes can only be raised between electric utilities. However, where there is

no retail sale, there is no utility and no territorial dispute can exist. Here, Southeast has asked the Commission to declare that the proposed self-service generation by Southeast and its Confidential Partner will not render either a public utility. The Opponents focus on many assumed hypothetical facts that might, if they were to exist in the real world, create a jurisdictional retail sale that would make the selling entity, or the supplying entity, a utility subject to the Commission's jurisdiction, including its jurisdiction over territorial matters. At least Glades, among the Opponents, would always retain the right to pursue a territorial dispute complaint against anyone whom it believed was engaging in the retail supply of electricity to or for the public, e.g., if it had a good-faith reason to believe that the facts "on the ground" were different from those presented in Southeast's Petition. Again, all Southeast has asked the Commission to declare is the status of Southeast and its Confidential Partner under Chapter 366 based on the facts presented in its Petition. If Glades believes that the real-world facts are different, or if it were to believe that the O&M Company were somehow "selling" electricity by the kilowatt-hour to Southeast or its Confidential Partner, it could institute a territorial dispute proceeding. The Opponents' argument is misplaced.

D. Regulatory Assessment Fees. Apparently, Glades felt that it had to raise the specter that the Commission might not realize additional revenues. This argument is misplaced because where there is nothing to regulate, the Commission need incur no expense to regulate. For example, the Commission does not regulate the entities in the Seminole Fertilizer arrangement or in any other self-service arrangement, and incurs no expense and thus needs no regulatory assessment fees. This argument is misplaced and adds nothing to the discussion or analysis of whether Southeast's and its Confidential Partner's joint ownership self-service arrangement is or is not jurisdictional.

The Opponents' Other Miscellaneous Arguments Are Also Misplaced.

The Opponents have concocted still more irrelevant arguments in their efforts to mislead the Commission. The 3 IOUs assert that the requested declaratory statement should not be granted because it would determine the substantial interests of Southeast's Confidential Partner, and thus, they argue, the Petition is inappropriate. In so doing, they blatantly ignore the Commission's holdings in two cases that the IOUs themselves cited in their amicus brief, Monsanto and Seminole Fertilizer. In both of those declaratory statement orders, the Commission determined that as-yet-unknown and unidentified parties would not be deemed to be public utilities under Chapter 366. Monsanto

at 2, 5; Seminole Fertilizer at 2, 7. This argument is absurd and misleading and should be rejected out of hand.

The Opponents, specifically FECA in its amicus brief at page 4, further criticize the Petition because it does not "reveal whether either party will take backup or standby service form the local electric utility." While it is virtually certain that both Southeast and its Confidential Partner will request standby service from Glades (and, in fact, Southeast's representatives have discussed such service and how to structure rates for it with Glades and FECA representatives), this criticism is irrelevant because the Commission has specifically stated that standby service issues are not appropriate for a declaratory statement. In the Monsanto declaratory statement proceeding, Monsanto (the company) had asked the Commission to declare that "Gulf Power Company (Gulf) was required to supply supplemental, backup and maintenance ("standby") electric power at approved non-discriminatory tariff rates to Monsanto." Monsanto at 1.[8] The Commission, however, declined to issue the requested declaration on the standby service issue, stating

> We do not consider this issue to be an appropriate one for resolution in a declaratory statement. There is no question or doubt that pursuant to the controlling

[8] Interestingly, although on its face this request would have directly determined Gulf's interests by requiring it to provide standby service, the Commission rejected Gulf's petition to intervene. Monsanto at 1.

> Federal Energy Regulatory Commission Rule 18 CFR 292.305(b) and 292.393(b) implementing the Public Utilities Regulatory Policies Act (PURPA) and Rule 25-17.084, Florida Administrative Code, Gulf Power Company must provide "standby" electric power at applicable non-discriminatory tariff rates to Monsanto in its capacity as operator of the proposed qualifying facility.

Monsanto at 5. Thus, this issue raised by FECA is inappropriate here. Southeast believes that the Commission's conclusion in Monsanto was and remains correct, and that Glades would be required to provide standby service at reasonable rates, consistent with the FERC's PURPA rules and also consistent with the Commission's statutory jurisdiction over the rate structure of electric utilities such as Glades.

Further, Glades and the 3 IOUs argue that Southeast has not articulated a need for the requested declaratory statements. Glades Response at 8, 3 IOUs Amicus Brief at 13-14. To the contrary, the Petition specifically articulates the need for the requested statements at page 9, where the Petition explains that

> Southeast's and the Confidential Partner's investments in this renewable energy complex are significant, and they need the Commission's declaratory statements requested in this Petition in order to assure Southeast, the Confidential Partner, and financing parties that the transactions will not result in unexpected regulatory consequences, i.e., regulation of Southeast or the Confidential Partner, by the Commission as a public utility.

This is the same need for the requested statements that has formed the "need" basis in the several other Commission dockets

in which it has issued declaratory statements on this subject. The Opponents' arguments here are, yet again, misplaced,

Finally, the 3 IOUs attempt to polish the perception of their anti-competition sword - which in this instance cuts indiscriminately against renewable energy as well - by arguing that the Project can still be built and that any excess power can be sold under applicable as-available or firm capacity purchase tariffs or contracts. While Southeast did not invoke the Commission's express statutory mandates to promote renewable energy, Fla. Stat. §§ 366.91-.92, the IOUs have raised this issue and attempted to persuade the Commission that available power sales alternatives are sufficient to adequately promote renewable energy. The problem with this argument is that the rates for such power purchases by Florida utilities are very low, much lower than the value of the power to Southeast and its Confidential Partner. Assuming that even the Opponents will agree, as they must, that Southeast can serve itself without regulatory implications, this leaves the questions (1) whether the Confidential Partner will locate in Florida if its costs are higher due to the roadblocks thrown up by Glades and the other Opponents, and (2) whether the economic incentives in Florida utilities' renewable energy purchase rates will induce Southeast, if it is forced by the Opponents' roadblocks to go it alone, to use available renewable resources to produce renewable

electricity, thus promoting the fuel diversity and other benefits of renewable specifically articulated by the Legislature, or to use those resources for other, more valuable purposes. As low as the purchase rates are, it will not take much to incentivize Southeast to seek more valuable alternatives or simply not to produce as much excess electricity. Either way, this is not the determinative issue here, but Southeast discusses it because the 3 IOUs have raised it. The determinative issue is whether, as urged by Southeast and consistent with the Commission's holdings that a "customer can clearly choose to serve himself," the Commission will recognize Southeast's and its Confidential Partner's joint ownership arrangement, wherein each will own its share of electrical generating equipment and its share of the electricity produced by that equipment, as non-jurisdictional self-service generation.

FECA's "Electric Utility" Argument is Misplaced. FECA also argues that the proposed joint ownership arrangement would be an "electric utility" under Chapter 366. This is simply another red herring inserted into this discussion. Section 366.02(3), Florida Statutes, defines "electric utility" as follows:

> (2) "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

It is clear that neither Southeast, nor its Confidential Partner, individually or collectively as the joint owners of the generating equipment (or possibly as joint owners of the wires connecting the Ethanol Plant and the Carbon Dioxide Plant to the generating equipment), will be either a municipal electric utility or a rural electric cooperative, so the correct question is exactly that asked by Southeast's Petition: Will the joint ownership arrangements described in the Petition cause either Southeast or its Confidential Partner - recall that there is no other entity that will own the generation - to be a public utility?

FECA's argument is misplaced and should be rejected.

Glades "Barriers to Entry" Argument Is Both Misplaced and Substantively Erroneous. Glades argues, at page 7 of its Response, that the barriers to entry discussed in P.W. Ventures would not be present under the joint ownership arrangements planned by Southeast and its Confidential Partner. In the first place, this is at best an ancillary policy argument that does not address the core question, which is whether the joint ownership of the generating equipment, and the individual ownership of the electricity produced by that equipment by each

of the joint owners, constitutes the supply of electricity to or for the public. Of course, for the reasons set forth in its Petition and in this Response to the Opponents, Southeast strongly believes that the supply of electricity from jointly owned generating equipment to each of the joint owners, without the involvement of any third entity, is non-jurisdictional self-service.

Glades' argument is also substantively erroneous, because the "barriers to entry" discussed in P.W. Ventures are exactly those assumed, and that will be surmounted if the Commission grants the requested declaratory statements, by Southeast and its Confidential Partner: they both put up the up-front capital to construct the facility and they both bear the risks of ownership. Glades' argument is misplaced and erroneous, and the Commission should reject it accordingly.

CONCLUSION

As explained above, the arrangement proposed by Southeast Renewables and the Confidential Partner is joint ownership of electrical generating equipment, in which each Joint Owner would own an undivided ownership interest in generating equipment at least as great as its maximum electrical requirements and in which each would own the electricity produced by its share of the generating equipment. On these facts, there is only self-supply or self-service of electricity by the Joint Owners to

their respective electricity-consuming industrial facilities, and the sale of excess power to a utility such as Glades Electric Cooperative or Seminole Electric Cooperative. Accordingly, the proposed arrangements and transactions do not render either Southeast or the Confidential Partner a public utility subject to the Commission's jurisdiction under Chapter 366, Florida Statutes, and the Commission should issue the requested declaratory statements.

The Opponents' arguments focus, extensively and mistakenly, on what the facts in the real-world future might be rather than on the facts presented in the Petition. They mistakenly characterize the issues in many instances, notably in their assertion that there would be some additional entity that would own the generating equipment, plainly contrary to the facts presented in the Petition. The Opponents then argue that their assumed facts should cause the Commission to deny the requested declaratory statements because, if those were the facts, the Commission's conclusion (they assert) should be different. It might be, but the Opponents continually ignore the fundamental principle of declaratory statement law that such statements are limited to their facts, period.

The Commission should reject the Opponents' arguments, innuendo, and hypothesized facts, including their misplaced assertions that the Commission's jurisdiction would be impaired,

and should instead focus on the facts set forth in the Petition. When it does so, the Commission should recognize that joint ownership of generating equipment and electricity produced thereby, on the facts as presented in the Petition, constitutes self-service generation that would not subject either Southeast or its Confidential Partner to the Commission's jurisdiction as a public utility.

WHEREFORE, Southeast Renewable Fuels, LLC, respectfully requests that the Florida Public Service Commission enter its order granting the declaratory statements as prayed in Southeast's Petition.

Respectfully submitted this 15th day of October, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically on this 15th day of October, 2013, to the following:

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DOCKET NO. 130235-EQ, PETITION OF SOUTHEAST RENEWABLE FUELS, LLC FOR A DECLARATORY STATEMENT

ATTACHMENT A TO SOUTHEAST'S RESPONSE IN OPPOSITION

EXCERPT FROM

FLORIDA POWER & LIGHT COMPANY TEN YEAR SITE PLAN, 2013-2022

Ten Year Power Plant Site Plan
2013-2022

FPL

Description of Existing Resources

I.B Firm Capacity Power Purchases

Purchases from Qualifying Facilities (QF):

Firm capacity power purchases are an important part of FPL's resource mix. FPL currently has contracts with eight qualifying facilities; i.e., cogeneration/small power production facilities, to purchase firm capacity and energy during the 10-year reporting period of this Site Plan as shown in Table I.A.3, Table I.B.1, and Table I.B.2.

A cogeneration facility is one which simultaneously produces electrical and thermal energy, with the thermal energy (e.g., steam) being used for industrial, commercial, or cooling and heating purposes. A small power production facility is one which does not exceed 80 MW (unless it is exempted from this size limitation by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990) and uses as its primary energy source solar, wind, waste, geothermal, or other renewable resources.

Purchases from Utilities:

FPL has a Unit Power Sales (UPS) contract to purchase 928 MW from the Southern Company (Southern) through the end of December 2015. This capacity is being supplied by Southern from a mix of gas-fired and coal-fired units.

In addition, FPL has contracts with the Jacksonville Electric Authority (JEA) for the purchase of 381 MW (Summer) and 388 MW (Winter) of coal-fired generation from the St. John's River Power Park (SJRPP) Units No. 1 and No. 2. However, due to Internal Revenue Service (IRS) regulations, the total amount of energy that FPL may receive from this purchase is limited. FPL currently assumes, for planning purposes, that this limit will be reached in November of 2017. Once this limit is reached, FPL will be unable to receive firm capacity and energy from these purchases. (However, FPL will continue to receive firm capacity and energy from its ownership portion of the SJRPP units.)

As part of the agreement that FPL will begin serving Vero Beach's electrical needs beginning in January 2014, FPL has acquired two existing power purchase agreements totaling approximately 37 MW of coal-fired capacity. These agreements will run through the end of 2016.

These purchases are shown in Table I.A.3, Table I.B.1, and Table I.B.2. FPL also has ownership interest in the SJRPP units. The ownership amount is reflected in FPL's installed capacity shown on Figure I.A.1, in Table I.A.1, and on Schedule 1.

Other Purchases:

FPL has two other firm capacity purchase contracts with non-QF, non-utility suppliers. These contracts with the Palm Beach Solid Waste Authority were previously listed as QFs; however, the addition of a second unit will cause both units to no longer meet the statutory definition of a QF. These contracts are therefore listed as "Other Purchases" after the current estimated in-service date of the new unit. Table I.B.1 and I.B.2 present the Summer and Winter MW, respectively, resulting from these contracts under the category heading of Other Purchases.

Table I.B.1: FPL's Firm Purchased Power Summer MW

Summary of FPL's Firm Capacity Purchases: Summer MW (for August of Year Shown)

I. Purchases from QF's:

Cogeneration Small Power Production Facilities	Contract Start Date	Contract End Date	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Broward South	01/01/93	12/31/26	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
Broward South	01/01/95	12/31/26	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Broward South	01/01/97	12/31/26	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6
Broward North	01/01/93	12/31/26	7	7	7	7	7	7	7	7	7	7
Broward North	01/01/95	12/31/26	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Broward North	01/01/97	12/31/26	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Cedar Bay Generating Co.	01/25/94	12/31/24	250	250	250	250	250	250	250	250	250	250
Indiantown Cogen., LP	12/22/95	12/01/25	330	330	330	330	330	330	330	330	330	330
Palm Beach SWA -extension 1/	01/01/12	04/01/32	40	40	0	0	0	0	0	0	0	0
U.S. EcoGen - Clay 2/	01/01/21	12/31/49	0	0	0	0	0	0	0	0	60	60
U.S. EcoGen -Okeechobee 2/	01/01/21	12/31/49	0	0	0	0	0	0	0	0	60	60
U.S. EcoGen - Martin 2/	01/01/21	12/31/49	0	0	0	0	0	0	0	0	60	60
		QF Purchases Sub Total:	**635**	**635**	**595**	**595**	**595**	**595**	**595**	**595**	**775**	**775**

II. Purchases from Utilities:

	Contract Start Date	Contract End Date	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
UPS Replacement	06/01/10	12/31/15	928	928	928	0	0	0	0	0	0	0
SJRPP 3/	04/02/82	11/01/17	381	381	381	381	381	0	0	0	0	0
OUC - Stanton 1 4/	01/01/14	12/31/16	0	21	21	21	0	0	0	0	0	0
OUC - Stanton 2 4/	01/01/14	12/31/16	0	16	16	16	0	0	0	0	0	0
		Utility Purchases Sub Total:	**1,309**	**1,346**	**1,346**	**418**	**381**	**0**	**0**	**0**	**0**	**0**

		Total of QF and Utility Purchases =	**1,944**	**1,980**	**1,940**	**1,012**	**976**	**595**	**595**	**595**	**775**	**775**

III. Other Purchases:

	Contract Start Date	Contract End Date	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Palm Beach SWA -extension 1/	01/01/12	04/01/32	0	0	40	40	40	40	40	40	40	40
Palm Beach SWA - additional	01/01/15	04/01/32	0	0	70	70	70	70	70	70	70	70
		Other Purchases Sub Total:	**0**	**0**	**110**	**110**	**110**	**110**	**110**	**110**	**110**	**110**

		Total "Non-QF" Purchase =	**1,309**	**1,346**	**1,456**	**528**	**491**	**110**	**110**	**110**	**110**	**110**

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Summer Firm Capacity Purchases Total MW:	**1,944**	**1,980**	**2,050**	**1,122**	**1,086**	**705**	**705**	**705**	**885**	**885**

1/ When the second unit comes into service at the Palm Beach SWA, neither unit will meet the standards to be a small power producers, and both units then will be accounted for under "Other Purchases".

2/ The EcoGen units will enter service in 2019, and initially provide non-firm energy. Firm capacity delivery will commence in 2021.

3/ Contract End Date shown for the SJRPP purchase does not represent the actual contract end date. Instead, this date represents a projection of the earliest date at which FPL's ability to receive further capacity and energy from this purchase could be suspended due to IRS regulations.

4/ These units are part of the purchase of the Vero Beach Electric System.

Table I.B.2: FPL's Firm Purchased Power Winter MW

Summary of FPL's Firm Capacity Purchases: Winter MW (for January of Year Shown)

I. Purchases from QF's:

Cogeneration Small Power Production Facilities	Contract Start Date	Contract End Date	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Broward South	01/01/93	12/31/26	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
Broward South	01/01/95	12/31/26	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Broward South	01/01/97	12/31/26	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6
Broward North	01/01/93	12/31/26	7	7	7	7	7	7	7	7	7	7
Broward North	01/01/95	12/31/26	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Broward North	01/01/97	12/31/26	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Cedar Bay Generating Co.	01/25/94	12/31/24	250	250	250	250	250	250	250	250	250	250
Indiantown Cogen., LP	12/22/95	12/01/25	330	330	330	330	330	330	330	330	330	330
Palm Beach SWA -extension 1/	01/01/12	04/01/32	40	40	0	0	0	0	0	0	0	0
U.S. EcoGen - Clay 2/	01/01/21	12/31/49	0	0	0	0	0	0	0	0	60	60
U.S. EcoGen -Okeechobee 2/	01/01/21	12/31/49	0	0	0	0	0	0	0	0	60	60
U.S. EcoGen - Martin 2/	01/01/21	12/31/49	0	0	0	0	0	0	0	0	60	60
		QF Purchases Sub Total:	635	635	595	595	595	595	595	595	775	775

II. Purchases from Utilities:

	Contract Start Date	Contract End Date	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
UPS Replacement	06/01/10	12/31/15	928	928	928	0	0	0	0	0	0	0
SJRPP 3/	04/02/82	11/01/17	388	388	388	388	388	0	0	0	0	0
OUC - Stanton 1 4/	01/01/14	12/31/16	0	21	21	21	0	0	0	0	0	0
OUC - Stanton 2 4/	01/01/14	12/31/16	0	16	16	16	0	0	0	0	0	0
		Utility Purchases Sub Total:	1,316	1,353	1,353	425	388	0	0	0	0	0

		Total of QF and Utility Purchases =	1,951	1,987	1,947	1,019	983	595	595	595	775	775

III. Other Purchases:

	Contract Start Date	Contract End Date	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Palm Beach SWA -extension 1/	01/01/12	04/01/32	0	0	40	40	40	40	40	40	40	40
Palm Beach SWA - additional	01/01/15	04/01/32	0	0	70	70	70	70	70	70	70	70
		Other Purchases Sub Total:	0	0	110	110	110	110	110	110	110	110

		"Non-QF" Purchase =	1,316	1,353	1,463	535	498	110	110	110	110	110

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Winter Firm Capacity Purchases Total MW:	1,951	1,987	2,057	1,129	1,093	705	705	705	885	885

1/ When the second unit comes into service at the Palm Beach SWA, neither unit will meet the standards to be a small power producers, and both units then will be accounted for under "Other Purchases".

2/ The EcoGen units will enter service in 2019, and initially provide non-firm energy. Firm capacity delivery will commence in 2021.

3/ Contract End Date shown for the SJRPP purchase does not represent the actual contract end date. Instead, this date represents a projection of the earliest date at which FPL's ability to receive further capacity and energy from this purchase could be suspended due to IRS regulations.

4/ These units are part of the purchase of the Vero Beach Electric System.

I.C Non-Firm (As Available) Energy Purchases

FPL purchases non-firm (as-available) energy from several cogeneration and small power production facilities. Table I.C.1 shows the amount of energy purchased in 2012 from these facilities.

Table 1.C.1: As-Available Energy Purchases from Non-Utility Generators in 2012

Project	County	Fuel	In-Service Date	Energy (MWH) Delivered to 2012
Okeelanta (known as Florida Crystals and New Hope Power Partners) *	Palm Beach	Bagasse/Wood	11/95	141,594
Broward South *	Broward	Solid Waste	9/09	127,533
Broward North *	Broward	Solid Waste	1/12	119,168
Tomoka Farms *	Volusia	Landfill Gas	7/98	0
Waste Management - Renewable Energy *	Broward	Landfill Gas	1/10	45,371
Waste Management - Collier County Landfill *	Broward	Landfill Gas	5/11	29,303
Tropicana	Manatee	Natural Gas	2/90	22,935
Calnetix	Palm Beach	Natural Gas	7/05	0
Georgia Pacific	Putnam	Paper by-product	2/94	9,550
Rothenbach Park (known as MMA Bee Ridge)	Sarasota	PV	10/07	320
First Solar	Miami	PV	4/11	67
Customer - Owned PV & Wind	Various	PV/Wind	Various	877
Palm Beach SWA	Palm Beach	Solid Waste	4/10	370,109
INEOS Bio *	Indian River	Wood	9/12	70

* These Non-Firm Energy Purchases are Renewable and are reflected on Schedule 11.1 row 9 column 6.

I.D Demand Side Management (DSM)

FPL has sought out and implemented cost-effective DSM programs since 1978. These programs include a number of conservation/energy efficiency and load management initiatives. FPL's DSM efforts through 2012 have resulted in a cumulative Summer peak reduction of approximately 4,652 MW at the generator and an estimated cumulative energy saving of approximately 62,653 Gigawatt-hour (GWh) at the generator. After accounting for reserve margin requirements, FPL's DSM efforts through 2012 have eliminated the need to construct the equivalent of approximately 14 new 400 MW generating units. DSM is discussed further in Chapter III.

DOCKET NO. 130235-EQ, PETITION OF SOUTHEAST RENEWABLE FUELS, LLC FOR A DECLARATORY STATEMENT

ATTACHMENT B TO SOUTHEAST'S RESPONSE IN OPPOSITION

GLADES ELECTRIC COOPERATIVE'S TARIFF SHEETS 20.0-20.7,

NET METERING INTERCONNECTION AGREEMENT FOR CUSTOMER-OWNED RENEWABLE GENERATION

EXHIBIT A

GLADES ELECTRIC COOPERATIVE, INC.

NET METERING INTERCONNECTION AGREEMENT FOR MEMBER-OWNED RENEWABLE GENERATION SYSTEMS

This Interconnection Agreement for Member-Owned Renewable Generation Systems ("Interconnection Agreement") is made this _____ day of _____ 200_, by and between Glades Electric Cooperative, Inc. ("GEC") and _____ ("the Member") located at _____, Florida, referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

Whereas, a Renewable Generation System ("RGS") is an electric generating system that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power as defined in Section 377.803, Florida Statutes, rated at no more than 100 kilowatts (kW) alternating current (AC) power output and is primarily intended to offset part or all of a Member's current electricity requirements.

Whereas, the Member has requested to interconnect its Renewable Generation System [INSERT FURTHER FACILITY DESCRIPTION IF APPROPRIATE] of ____ kW to GEC's electrical service grid at the Member's presently metered location; and

Whereas, GEC and Seminole Electric Cooperative, Inc. ("Seminole") have entered into that certain Wholesale Power Contract ("WPC"), effective as of July 30, 1975, which, as amended, has a term through December 31, 2045, and which provides, among other things, that GEC may allow net metering for renewable energy resources which are located on a Member's premises; and

Whereas, GEC and Seminole have entered into that certain Net Metering Agreement dated January 1, 2009, which provides the standard interconnection requirements for a Member's RGS installation, and

Whereas, the Member acknowledges the complexity and integrated nature of GEC's electric system, to which the Member desires interconnection and with which Member desires parallel operation, and

Whereas, the Member acknowledges the important safety issues and financial consequences on GEC's electric system that could result from any deviation by the

Member from the requirements of this Agreement.

Now, Therefore, in consideration of the mutual covenants and agreements herein set forth, the Parties do hereby agree as follows:

1) The Member agrees to provide GEC with written certification that the RGS installation has been inspected by the local county code official who has certified that the installation was permitted and has been approved and has met all electrical and mechanical requirements. Such certification shall be provided to GEC prior to the operation of the RGS.

2) The Member shall, prior to operation of the RGS, provide equipment specifications to GEC identifying and certifying in writing that the RGS, inverters and associated equipment design, and installation and operation adhere to IEEE-1547 Standards, UL-1741 Standards, the National Electric Code, and, if applicable, has been approved by the Florida Solar Energy Center (FSEC Std 203-05).

3) The Member is responsible for the inspection, maintenance, and testing in accordance with the manufacturer's instructions and applicable codes, standards, and regulations to insure that the RGS and associated equipment are operated correctly and safely.

4) The Member agrees to permit GEC and/or Seminole, if it should so choose, to inspect the RGS and its component equipment and the documents necessary to ensure compliance with various sections of this Interconnection Agreement both before and after the RGS goes into service and to witness the initial testing of the RGS equipment and protective apparatus. GEC shall provide the Member with as much notice as reasonably practicable, either in writing, e-mail, facsimile or by phone, as to when GEC may conduct inspection or document review, and the Member shall provide GEC with as much notice as reasonably practicable regarding the testing of the RSG equipment and protective apparatus. Upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, Member agrees to provide GEC access to the Member's premises for any reasonable purpose in connection with the performance of the obligations imposed by this Interconnection Agreement. The Member shall notify GEC at least ten (10) days prior to the in-service date of the RGS to provide sufficient notice for GEC to be able to be present, if it so chooses, when the RGS is placed in service. Seminole shall have the same rights and duties of inspection as GEC; however, nothing herein obligates GEC or Seminole to inspect, and the failure of GEC and/or Seminole to inspect or, upon inspection, to detect a problem or deficiency shall not transfer responsibility to Cooperative or Seminole nor relieve Member of its duties hereunder.

5) The Member is responsible for protecting the RGS, inverters, protection devices, and other system components from the normal and abnormal conditions and

operation that occur on GEC's electrical system in delivering and restoring system power. The Member certifies that the RGS equipment includes a utility-interactive inverter or interconnection system equipment that ceases to interconnect with the utility upon a loss of utility power. The inverter shall be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally-recognized testing laboratory (NRTL) to comply with UL 1741. The NRTL shall be approved by the Occupational Safety & Health Administration (OSHA).

6) The Member shall not energize GEC's system when GEC's system is de-energized. There shall be no intentional islanding, as described in IEEE 1547, between the Member's and GEC's systems.

7) For each RGS installation, the Member shall provide and maintain not less than one hundred thousand dollars ($100,000) of Personal Injury and Property Damage Liability Insurance. Proof of said insurance shall be provided by the Member and attached to this Interconnection Agreement, and all policy renewals shall be provided to GEC. Failure to maintain the required insurance will subject the RGS to disconnection from GEC's system.

8) The Member shall, at the Member's expense, install and maintain a manual disconnect switch to provide a separation point between the AC power output of the RGS and any Member facilities connected to GEC's electrical system (between the inverter and A.C. breaker feeding the inverter). The manual disconnect switch shall be mounted separately from the meter socket and shall be readily accessible at all times to GEC and shall be capable of being locked in the open position by GEC. GEC may open and lock the switch, isolating the RGS from GEC's electrical service grid without prior notice to the Member. To the extent practical, GEC will attempt to notify the Member of its intent to disconnect the RGS from GEC's electrical service grid, but shall have no liability for failure to do so.

9) "Gross power rating" ("GPR") means the manufacturer's AC nameplate generating capacity of the RGS that will be interconnected to and operate in parallel with GEC's distribution facilities. For inverter-based systems, the GPR shall be calculated by multiplying the total installed EC nameplate generating capacity by .85 in order to account for losses during the conversion from DC to AC. It is the Member's responsibility to notify GEC of any change to the GPR of the RGS by submitting a new application for interconnection specifying the modifications at least thirty (30) days prior to making the modifications. If such modifications are approved by GEC, an amendment to this Interconnection Agreement shall be executed by the Parties and the Member recognizes and agrees that an increase in GPR may impose additional requirements on the Member.

10) The RGS must have a GPR that does not exceed ninety percent (90%) of the Member's utility distribution service rating at the Member's location. If the GPR does exceed that ninety percent (90%) limit, the Member shall be responsible to pay the cost of upgrades for that distribution service to accommodate the GPR capacity and to ensure the ninety percent (90%) threshold is not breached.

11) GEC will, at the Member's expense, furnish, install, own and maintain metering equipment to measure kilowatt-hours (kWh) of energy and, if applicable, the kW of demand and time of use of said energy and demand. The Member's service associated with the RGS will be metered at a single metering point, and the metering equipment shall be capable of measuring the net energy delivered by GEC to the Member and the net energy delivered by the Member to GEC on a monthly basis. The Member agrees to provide safe and reasonable access to the premises for installation of this equipment and its future maintenance or removal.

12) The Member's meter will be read on a monthly basis. If the kilowatt-hour of energy produced by the Member's RGS exceeds the Member's kilowatt-hour consumption for the month, GEC shall carry forward that credit for the excess energy to the next billing period. Kilowatt-hour credits may accumulate and be carried forward during 12-monthly periods. An annual true-up will be performed on the first monthly read in January of each calendar year. If a credit to the Member is outstanding, GEC shall pay the Member for each kilowatt-hour credit at GEC's current avoided energy cost at the time of the annual true-up meter reading.

13) Once GEC has received the Member's written documentation that the requirements of this Interconnection Agreement have been met and the correct operation of the manual switch has been demonstrated to GEC personnel, GEC will, within ten (10) business days, send written notice that parallel operation of the RGS may commence.

14) The Member shall indemnify, hold harmless and defend GEC and Seminole from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property in any way directly or indirectly connected with, or growing out of operation of the RGS, except in those cases where loss occurs due to the grossly negligent actions of GEC.

15) GEC may charge a reasonable non-refundable processing fee for interconnection of an RGS.

16) GEC has the right, at the Member's expense, to disconnect the RGS at any time. This may result from but is not limited to :

    a) Cooperative and/or Seminole's system maintenance, operation and emergency operations;

b) Hazardous conditions existing on GEC's and/or transmission provider's system due to the operation of the RGS generating or protective equipment as determined by GEC or Seminole;

c) Adverse electrical effects on the electrical equipment of GEC's other electric Members as determined by GEC;

d) Failure by the Member to adhere to the terms of this Interconnection Agreement ;

e) Evidence of tampering with GEC equipment including but not limited to broken or missing seals, illegal service taps, meter bypassing, etc., and,

f) Failure by Member to pay sums due to GEC for electric service or any other reason.

17) On the termination of this Interconnection Agreement, GEC, at the Member's expense, shall open and padlock the manual disconnect switch and remove any additional Cooperative equipment associated with the provision of net metering service. At the Member's expense, the Member agrees to permanently isolate the RGS and associated equipment from GEC's electric service grid. The Member shall notify GEC within ten (10) working days that the disconnect procedure has been completed.

18) The Parties agree that the sole and proper jurisdiction and venue for any legal action brought to enforce this Interconnection Agreement or to address the rights and obligations of this Interconnection Agreement shall be the State Court of the proper jurisdiction located within the State of Florida.

19) In the event of any dispute hereunder for any action to interpret or enforce this Interconnection Agreement, the prevailing Party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

20) Any written notice required or appropriate hereunder shall be deemed properly made, given to, or served on the Party to which it is directed, when sent by United States certified mail, Return Receipt Requested, addressed as follows:

If to Member:

_____
_____
_____

If to Cooperative:

_____
_____
_____

Notice of any change in any of the above addresses shall be deemed in the manner specified in this section.

18) Other Special Provisions (***e.g. collection of monthly administrative fees, interconnection/upgrade costs)***:

_____
_____
_____
_____
_____
_____

19) This Interconnection Agreement, when duly executed, constitutes the entire agreement between the Parties with respect to matters herein contained.

(THE SIGNATURE PAGE FOLLOWS)

In Witness Whereof, the Parties hereto have caused this Interconnection Agreement to be duly executed in triplicate the day and year first above written.

_____	Glades Electric Cooperative, Inc.
Member: Print Name or Organization	Cooperative
By:_____	By:_____
Signature: Authorized Representative	Signature
_____	_____
(Print Name and Title)	(Print Name and Title)

EXHIBIT B

INDEX OF RENEWABLE GENERATION SYSTEMS TO NET METERING AGREEMENT BETWEEN SEMINOLE ELECTRIC COOPERATIVE, INC. AND GLADES ELECTRIC COOPERATIVE, INC.

Delivery Point Name	Customer Name	Effective Date of Interconnection Agreement