

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 130235-EQ

PETITION FOR DECLARATORY STATEMENT  
REGARDING CO-OWNERSHIP OF  
ELECTRICAL COGENERATION FACILITIES  
IN HENDRY COUNTY BY SOUTHEAST  
RENEWABLE FUELS, LLC.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 4

COMMISSIONERS  
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ART GRAHAM  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, December 3, 2013

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR  
Official FPSC Reporter  
(850) 413-6734

## P R O C E E D I N G S

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3           **CHAIRMAN BRISÉ:** So now we are moving on to  
4 item number 4.

5           **MS. GERVASI:** Good morning, Commissioners.

6           **CHAIRMAN BRISÉ:** Good morning.

7           **MS. GERVASI:** Rosanne Gervasi for the Office  
8 of General Counsel.

9           Item 4 is staff's recommendation in Docket  
10 Number 130235-EQ to grant a petition for declaratory  
11 statement declaring that Southeast Renewable Fuels and  
12 its confidential business partner will be self-supplying  
13 electricity from their jointly-owned electrical  
14 generating equipment rather than supplying electricity  
15 to or for any member of the public, and that their joint  
16 ownership arrangement is therefore non-jurisdictional.

17           Staff further recommends that consistent with  
18 Rule 28-105.003, the Commission should rely solely on  
19 the facts set forth in the petition as clarified by  
20 Southeast's response to the staff data request without  
21 taking a position on the validity of those facts, and  
22 that the order should state that it is controlling as to  
23 those facts and not to -- not as to other different or  
24 additional facts.

25           In Issue 1 staff recommended that parties and

1 amici be allowed to participate. The Chairman's office  
2 has allowed for 20 minutes per side such that Southeast  
3 will have 20 minutes and the opponents to the petition  
4 will have a total of 20 minutes to share between them  
5 for their presentations. Parties and interested persons  
6 present to address the Commission are Schef Wright for  
7 the Petitioner, Southeast; Marsha Rule for the  
8 Intervenors, Glades Electric Cooperative; Susan Clark  
9 for the participating IOUs; and Bill Willingham for the  
10 Florida Electric Cooperatives Association.

11 Staff is available to answer questions.

12 **CHAIRMAN BRISÉ:** Thank you very much. And  
13 before we go into questions from the Commission, I think  
14 we'll probably hear from the parties and give each side  
15 20 minutes. I suppose, Mr. Wright, you can divvy up  
16 your time so that you can use your time, your initial  
17 time, and then you can use the balance of your time in  
18 response to some of the comments that are made by those  
19 on the other side. Okay?

20 So with that, if there's nothing further for,  
21 for the parties from my colleagues, the time is yours.

22 **MR. WRIGHT:** Thank you, Mr. Chairman. Just a  
23 procedural question first.

24 **CHAIRMAN BRISÉ:** Sure.

25 **MR. WRIGHT:** Is anybody going to tell me, or

1 do I need to watch the clock? I would like to plan to  
2 reserve five minutes.

3 **CHAIRMAN BRISÉ:** Sure.

4 **MR. WRIGHT:** To respond to the Intervenors',  
5 opponents' comments.

6 **CHAIRMAN BRISÉ:** I'll let you know when you're  
7 there.

8 **MR. WRIGHT:** Excellent. Thank you, sir.

9 **CHAIRMAN BRISÉ:** No problem.

10 **MR. WRIGHT:** Thank you.

11 Good morning, Commissioners. As y'all know,  
12 I'm Schef Wright and I have the privilege of  
13 representing Southeast Renewable Fuels, LLC, in this  
14 declaratory statement proceeding. Thank you very much  
15 for the opportunity to address you. I would like to  
16 reserve five minutes of my time to respond to the  
17 opponents' comments.

18 I'll proceed with a quick summary of this  
19 case, then I'll give you a somewhat more detailed  
20 description of the project, the requested statements,  
21 why it's appropriate and correct law for the PSC to  
22 issue the requested statements, and why the opponents'  
23 arguments are misplaced.

24 At the outset, I want to state the obvious.  
25 Southeast agrees with and asks you to approve your

1 staff's recommendation to issue the requested  
2 declaratory statement. I also want to make clear that  
3 we agree with your staff regarding your reliance, your  
4 ability to rely on our responses to the staff's data  
5 requests, the facts represented in our responses in  
6 rendering the requested declaratory statement. As we  
7 all know, this is a declaratory statement, and  
8 fundamental declaratory statement law provides that it  
9 is, as correctly pointed out by the staff, applicable to  
10 the facts presented by the Petitioner. If the facts on  
11 the ground change or are different in the future, that's  
12 rough (phonetic) at least as far as that goes.

13           Commissioners, this is a straightforward case  
14 of self-service generation. This case doesn't require  
15 any regulatory pretzel, like was the case in *Seminole*  
16 *Fertilizer*, to avoid the Commission's jurisdiction.  
17 It's a case that does not threaten the Commission's  
18 jurisdiction any more than a large industrial customer  
19 serving itself does. The project will produce renewable  
20 electricity and ethanol from sweet sorghum, plus carbon  
21 dioxide from the fermentation byproducts of the ethanol  
22 plant. Those will be produced and refined at the CO2  
23 plant into food grade ethanol. SRF sets out these  
24 renewable fuels, and the CO2 plant will jointly own,  
25 will hold legal title to the electrical generating

1 equipment, and each will also own, have title to the  
2 electricity produced from its undivided ownership  
3 interest in the generating equipment.

4 We properly seek the Commission's declarations  
5 that the planned business arrangements will not cause  
6 either Southeast or the CO2 plant to be subject to the  
7 PSC's regulation as a public utility consistent with the  
8 Commission's precedent. And you've got about six dec  
9 statements on this general subject.

10 These requested statements are a proper  
11 subject for a declaratory statement, and Southeast has  
12 pled sufficient facts and given sufficient facts to our  
13 responses upon which you can grant the requested  
14 statements.

15 Substantively and in a nutshell and as  
16 correctly concluded by your staff, the Commission has  
17 stated unambiguously that, quote, a customer can clearly  
18 choose to serve himself, unquote. And the arrangements  
19 for which Southeast seeks the declarations are simply  
20 these. There will be two joint owners of the electrical  
21 generating equipment, each having an undivided ownership  
22 interest in the equipment that is at least as great as  
23 its maximum usage. This was important because if it  
24 wasn't as great as its maximum usage, there could be a  
25 cross transfer that could be determined to be supplied

1 by one to the other.

2 Not the case here. This is self-service by  
3 each of Southeast and the CO2 plant from its own  
4 respective share of the jointly-owned generating  
5 equipment and thus is non-jurisdictional self-service.  
6 The arguments of the opponents are misplaced at best,  
7 and the Commission should accept the staff's  
8 recommendation and grant the requested declaratory  
9 statement.

10 More detail. We ask you to issue an order --  
11 and this is language that has appeared in many, in  
12 several other dec statements on this subject -- we ask  
13 you to issue an order declaring that the receipt and use  
14 of electricity by Southeast and the CO2 plant from the  
15 jointly-owned electrical generating equipment will not  
16 result in or be deemed to constitute an unlawful sale of  
17 electricity. We ask you to declare that the receipt and  
18 use of electricity by Southeast and the CO2 plant will  
19 not cause either Southeast or the CO2 plant to be deemed  
20 a public utility as that term is defined in your  
21 statute.

22 And finally, we ask you to declare that the  
23 receipt and use of electricity by Southeast and the  
24 CO2 plant will not cause either Southeast or the CO2  
25 plant to be subject to regulation by the Commission.

1 Southeast and its confidential partner -- by the way,  
2 the confidential partner's identity is specifically  
3 known to Glades Electric Cooperative. I was in the room  
4 when my client told them who this confidential partner  
5 is, but the partner wishes to remain confidential as to  
6 the general public.

7           We together, the CO2 plant owner and  
8 Southeast, are developing an integrated renewable energy  
9 facility on County Road 835 in Hendry County. It'll  
10 consist of a 60,000-gallon-a-day ethanol plant, a CO2  
11 plant, and a 25-megawatt power plant with cogeneration  
12 equipment. The equipment will be fueled predominantly  
13 by the gas derived from sweet sorghum. There will be  
14 tiny amounts of fossil fuel for startup purposes. The  
15 generation equipment will be a conventional boiler  
16 fueled by the gas. The facility will be a qualifying  
17 facility.

18           Southeast and the CO2 plant owner will jointly  
19 own the electrical generating equipment. Each will hold  
20 title to its undivided ownership interest, each will own  
21 its share of the electricity. Neither will pay the  
22 other for electricity produced. Neither will pay the  
23 O&M company on a per kWh or per kW basis for  
24 electricity. The only power sale that will occur is  
25 excess generation that will be sold to a Florida



1 utility, clearly lawfully under federal and state law.

2 Southeast and its confidential partner have an  
3 actual present need for the declaratory statement, as  
4 specifically pled in the petition. Before investing  
5 significant sums in this project, we desire to confirm  
6 that the proposed arrangement will not subject either to  
7 the regulation by the PSC because such regulation would  
8 significantly alter the whole deal and alter the  
9 economics of the planned arrangements. Southeast and  
10 the CO2 plant have an actual present need, just as did  
11 the petitioners in *Seminole Fertilizer* and *Monsanto*, for  
12 your declaratory statement.

13 We request this statement because the  
14 Commission has not addressed the specific factual  
15 scenario presented here. We've got joint ownership; we  
16 have two owners of the same generation equipment. The  
17 other cases addressing the regulatory status of  
18 electricity producers and consumers, *Monsanto*, *PW*  
19 *Ventures*, *Seminole Fertilizer*, *Polk Power Partners*,  
20 *Timber Energy*, and *Metropolitan Dade County's* petition  
21 for self-service wheeling, all addressed facts that  
22 involved non-identical producers or owners of the  
23 generating equipment and consumers of the electricity  
24 produced.

25 This is a simple and straightforward case. A

1 customer can clearly choose to serve himself and that's  
2 all that will happen here. Southeast will own its share  
3 of the generating equipment and its corresponding share  
4 of the electricity produced, and it will use that  
5 electricity to run its facility. The CO2 plant will own  
6 its share of the generating equipment, it will own its  
7 share of the electricity produced, and it will use its  
8 share either to run its equipment or, if there's excess,  
9 then it'll be sold to a Florida utility. The Commission  
10 should grant the requested statements.

11 The opponents -- Glades Electric Co-op; the  
12 three IOUs, Tampa Electric, Florida Power & Light, and  
13 Gulf Power; and the Electric Cooperatives Association --  
14 have floated numerous issues and arguments against the  
15 proposed arrangement. As correctly analyzed by your  
16 staff, however, all of their arguments are misplaced and  
17 the Commission should reject them and grant the  
18 requested statements.

19 I put their arguments into three categories:  
20 There are procedural type arguments; assumed facts and  
21 assumptions that, if true, might produce a different  
22 result, but that are not true and not consistent with  
23 the facts pled in a dec statement and the facts upon  
24 which you would rely in granting the statement, we hope;  
25 and what I call a parade of alleged horrors.

1           Procedural type arguments. They argue that  
2           it's premature. They try to assert that there's no  
3           actual present need. Our need is the same need that  
4           *Monsanto* had and that *Seminole Fertilizer* had. We need  
5           to know what our regulatory status is going to be so we  
6           can make informed economic decisions.

7           The opponents say, well, we have to see the  
8           joint venture agreement. Not so. You need the facts  
9           presented in the petition. You have the facts. You --  
10          we have told you exactly what the ownership arrangement  
11          is going to be; it's going to be joint title and joint  
12          title to the electricity. We told you a fair amount --  
13          I'll get into that -- we told you a fair amount about  
14          what the equipment is and so on. You don't need any  
15          more than that to grant the statement. You didn't have  
16          any more than that in granting the requested declaratory  
17          statements in *Monsanto* and *Seminole Fertilizer*.

18          In those cases, you know, there were unknown,  
19          yet-to-be-identified lessor, lessor owners of the QF in  
20          *Monsanto* and a yet-to-be-formed limited partnership with  
21          yet-to-be-identified partners and no operative documents  
22          before you. You don't need the JVA. You need the facts  
23          that we've represented to you.

24          The opponents allege that the petition does  
25          not contain sufficient facts. Again, not so. At pages

1 10 and 11 of our petition we give you a description of  
2 the generating equipment that will be jointly owned by  
3 Southeast and the CO2 plant. At 11 and 12 we give you  
4 the following specific description of the ownership  
5 arrangements: Southeast Renewable Fuels and the  
6 confidential partner will jointly own, will jointly hold  
7 legal title to the electrical generation equipment via  
8 undivided ownership interest in that equipment. Each  
9 party's interest, its ownership share, will be at least  
10 as great as its maximum power requirements. Each of  
11 Southeast and the confidential partner will also own the  
12 title to the electricity produced from its share of the  
13 generating equipment.

14 Now the opponent is trying to make it sound  
15 like, well, we don't know what this is. It's vague and  
16 hypothetical. It's not vague and hypothetical. The CO2  
17 plant and Southeast own the facility. They're going to  
18 own the electricity.

19 **CHAIRMAN BRISÉ:** Mr. Wright?

20 **MR. WRIGHT:** Yes, sir.

21 **CHAIRMAN BRISÉ:** Just letting you know you  
22 have ten minutes left so, so you can govern yourself.

23 **MR. WRIGHT:** Yes, sir. Thank you. I  
24 appreciate it. Thank you, sir.

25 We also make it clear that we will bear

1 jointly, Southeast and the CO2 plant will bear all risks  
2 of ownership. They also allege, but again correctly  
3 debunked by your staff, that the petition is  
4 inappropriate because the Commission cannot through a  
5 dec statement determine the interest of others here at  
6 the CO2 plant. The Commission did exactly this in  
7 *Monsanto* and *Seminole Fertilizer* with respect to  
8 entities that weren't even known.

9           They make up a number of assumptions. This is  
10 in the facts and assumptions part. They try to make the  
11 PSC believe that there would be another business entity  
12 involved, both Glades and the IOUS try to create this by  
13 saying, for example, that we haven't identified the form  
14 of business organization that Southeast and its  
15 confidential partner will adopt, or the petition  
16 suggests that there will be two distinct entities  
17 forming a third entity who own and operate a generating  
18 facility. These are made-up assumptions. They're  
19 belied by the facts presented in the petition. They  
20 make the conclusory assertion that there will be  
21 balancing compensation that would make this be a retail  
22 sale. Again, this is an assumption. They allege there  
23 will be a retail sale. They offer hypothesized  
24 provisions of both a joint venture agreement and the O&M  
25 contract. This is the IOUs at page 11 of their brief.

1           If the facts on the ground are different in  
2 the future, the dec statement doesn't apply. If the  
3 facts were as hypothesized by the opponents, they might  
4 produce a different result. But this is a declaratory  
5 statement limited to the factual facts presented by the  
6 Petitioner, not addressing facts hypothesized by the  
7 opponents.

8           And finally I want to address the assertion  
9 that there would be cream skimming. This is not cream  
10 skimming. In cream skimming there's an outsider coming  
11 in and picking off a large industrial customer. This  
12 was the fact pattern in PW Ventures. There was an  
13 existing customer that a new entity was formed to come  
14 in and try to serve. Completely unrelated. What you  
15 here is a greenfield site. Southeast and the CO2 plant  
16 are bringing new development to Glades' service area  
17 where there are no existing customers to be skimmed.  
18 Southeast and the CO2 plant's project -- their joint  
19 project is like building a dairy farm that's going to  
20 make milk, cream, and a bunch of other good stuff where  
21 none presently exists.

22           Finally, the opponents throw out a parade of  
23 horribles. They argue that this will impair the  
24 Commission's safety jurisdiction. This is misplaced and  
25 misleading. Just because you won't have direct

1 jurisdiction over the industrial facilities at the  
2 project doesn't mean that they will not be safe and  
3 doesn't mean they will not be regulated. They will be  
4 subject to the National Electrical Safety Code and/or  
5 the National Electrical Code, depending on the nature of  
6 the facilities involved. Moreover, Glades, as the  
7 interconnecting utility, will have full say to approve  
8 the installation. They assert that we will somehow mess  
9 with grid planning and coordination. A 25-megawatt  
10 facility with 7 megawatts of load is going to mess with  
11 grid coordination and planning -- we don't really agree  
12 with that. The utilities know how to plan for  
13 as-available energy, firm capacity and energy, and they  
14 know how to plan for certainly standby service loads, as  
15 correctly analyzed by your staff. This assertion too is  
16 misplaced.

17           They assert that there will be uneconomic  
18 duplication and territorial disputes. The uneconomic  
19 duplication is at best hypothetical and conjectural.  
20 Moreover, Glades will probably provide standby service  
21 to each of the ethanol plant and the C02 plant, and they  
22 will be fairly compensated for their distribution  
23 facilities involved in providing that service.

24           They also threw out the specter that you won't  
25 be able to collect regulatory assessments fees. If

1 you're not regulating, there's no need for regulation.

2 There are no need for fees.

3 And finally they spend a fair amount of time  
4 on the unity of interest test where analysis applied in  
5 several earlier cases. No such analysis is required  
6 here because you have identity of ownership and  
7 consumer. There's no need for a regulatory pretzel  
8 where you have to delve into the limited partnership,  
9 general partnership, cross lease transactions like you  
10 did in Seminole Fertilizer. If the Commission is to  
11 consider whether the Southeast and the CO2 plant have a  
12 unity of interest, and this is pointed out by your  
13 staff, they should find that Southeast, and this is  
14 quoting from the recommendation, and its confidential  
15 partner will clearly have a unity of interest in their  
16 joint ownership of the power plant because they will  
17 both depend critically for the operation of their  
18 ethanol and carbon dioxide plants and in the assumption  
19 of all the risks.

20 **CHAIRMAN BRISÉ:** Mr. Wright, you're running  
21 now into your -- the balance of your time.

22 **MR. WRIGHT:** Yes, sir. I've got one more -- I  
23 appreciate it. Thank you.

24 This -- in summary, Commissioners, this is a  
25 good project. This is an integrated renewable energy



1 project that's good for Florida, good for Hendry County,  
2 and, truth be told, it's probably good for Glades  
3 Electric Co-op too because of the ancillary load that we  
4 developed spurred by the additional economic development  
5 that these new industrial facilities will bring to the  
6 region.

7           The real point though is this: As correctly  
8 analyzed by your staff, this is simple, straightforward  
9 self-service generation. Southeast serving itself from  
10 its share of the jointly-owned generating equipment and  
11 the CO2 plant serving itself from its share of the  
12 jointly-owned generating equipment. There's no retail  
13 sale, there's no supply by one to the other; therefore,  
14 there's no supply of electricity to or for the public.  
15 The Commission should grant the requested declaratory  
16 statement. Thank you very much.

17           **CHAIRMAN BRISÉ:** All right. So you have four  
18 minutes left. Okay. Thank you.

19           So 20 minutes, and you'll divide the time  
20 amongst yourselves.

21           **MS. RULE:** Yes, sir.

22           **CHAIRMAN BRISÉ:** Okay.

23           **MS. RULE:** Good morning. I'm Marsha Rule with  
24 the law firm Rutledge, Ecenia. I represent Glades  
25 Electric Cooperative, the Intervenor. And with me

1 today, as you know, are Mr. Willingham on behalf of the  
2 Florida Electric Co-op Association, and Susan Clark on  
3 behalf of Florida Power & Light, Tampa Electric, and  
4 Gulf Power. And I'd also like to mention that the  
5 Florida Municipal Electric Association has filed a  
6 letter supporting our positions and detailing its own  
7 concerns with safety issues for first responders. Also  
8 with us today is Mr. Jeff Brewington, the general  
9 manager of Glades Electric Co-op, as well as  
10 representatives of several other electric cooperatives  
11 in the audience.

12 And we appreciate the opportunity to address  
13 you today on this jurisdictional issue. It's not often  
14 that you're presented with a case that requires you to  
15 define your jurisdiction over electric utilities, so  
16 this case is of great importance to all electric  
17 utilities in the state and ultimately to their customers  
18 as well.

19 I'm going to begin by discussing the legal  
20 framework surrounding your decision and why Southeast's  
21 proposal simply does not constitute self-service under  
22 existing Commission and court decisions. Mr. Willingham  
23 will next tell you about some of the practical and  
24 safety considerations presented by Southeast's proposal.  
25 And finally Ms. Clark will address the very important

1 policy issues that you must consider when deciding  
2 whether you're essentially going to deregulate the joint  
3 generation of electricity in Florida.

4           What's important here is that Southeast  
5 proposes to join together with its confidential partner  
6 and jointly generate electricity for their individual  
7 consumption. That is, you've got two separate entities  
8 forming a joint venture -- make no mistake about it,  
9 that's a third entity -- and that joint venture will  
10 supply electricity to the two individual parties. And  
11 if you accept this proposal, you're going to be ruling  
12 that this vaguely described arrangement and all future  
13 arrangements like it are beyond your jurisdiction.  
14 That's a pretty far-reaching decision. And the law is  
15 clear that one customer, a single customer may  
16 self-serve without becoming subject to your  
17 jurisdiction, but that's not what Southeast is  
18 proposing.

19           The dictionary definition of self is singular,  
20 as is the definition of self-service. Self-service  
21 means service by oneself to oneself. And consistent  
22 with this usage, the Commission has uniformly limited  
23 self-service to situations in which a single customer  
24 serves only itself. For example, in the PW Ventures  
25 Order Number 18302A the Commission stated that

1 jurisdiction attaches to the supply of electricity to  
2 another but not to one's self. And when the Supreme  
3 Court approved that order, it specified that individuals  
4 were allowed to self-generate. This is consistent with  
5 your Rule 25-17.008, which defines self-service wheeling  
6 of electricity in the singular as transmission or  
7 distribution provided by a public utility to enable a  
8 retail customer to transmit electrical power generated  
9 by the customer at one location to the customer's  
10 facilities in another location.

11 Rule 25-17.0883 is also singular. It  
12 similarly states that self-service transition -- I'm  
13 sorry -- transmission is available to enable a retail  
14 customer to transmit power generated at one location to  
15 the customer's facilities at another location.

16 I'd also like to direct your attention to  
17 Order Number 17510 in which the Commission held that  
18 generation of electricity isn't self-generation where  
19 the end-user consumer of electricity has only a partial  
20 ownership interest in the generating facility. That is  
21 you split the ownership and it's not self-generation  
22 anymore. That's your *Metropolitan Dade* order. And  
23 that's exactly why Southeast's proposal is not  
24 self-service. Southeast and its partner are two  
25 separate end-users, each of which are only going to have

1 a partial ownership interest in the generating facility.

2 The self-service exemption to the Commission's  
3 jurisdiction is very narrow, and you have consistently  
4 held that self-service is non-jurisdictional only where  
5 the entity that generates the electricity and the  
6 entity, the single entity that consumes it are either  
7 exactly the same entity, and that's the *Monsanto* order,  
8 or they are corporate alter egos that share such a  
9 complete unity of interests that they are treated as the  
10 same entity, and that's your *Seminole* order.

11 In both of these cases, *Seminole* and *Monsanto*,  
12 there were tax and financing reasons for the way the  
13 transaction was structured. But even so, there was only  
14 a single retail customer in the arrangement. And in  
15 contrast, *Southeast* is not the same entity as its  
16 partner. *Southeast* doesn't claim and can't claim that  
17 they're corporate alter egos, and there is no allegation  
18 that the presence of the partner is some sort of alter  
19 ego there only for tax or financing considerations.  
20 They're completely unrelated, they form a joint entity  
21 that will provide service to two customers, not one.  
22 And under your *PW Ventures*, *Monsanto*, and *Seminole*  
23 orders these factors render the proposal jurisdictional.  
24 And as I mentioned before in the *Metropolitan Dade*  
25 order, it's still self-generation only if the consumer

1 of the power owns 100% of the entire generating  
2 facility.

3 In addition, although Mr. Wright says his  
4 petition and data responses provide you all the  
5 information you need, the petition was so vague that  
6 staff had to send a data request, and Southeast's  
7 responses are totally noncommittal and internally  
8 inconsistent, and this raises other issues that should  
9 cause you concern.

10 And we've provided you with a copy in the  
11 handout that staff provided of Southeast's responses to  
12 the data requests and we've highlighted each instance  
13 where Southeast simply ducks staff's question and failed  
14 to give any concrete responses about its plan. I  
15 counted over 30 equivocal and ambiguous responses where  
16 they say perhaps they'll do something or they might do  
17 this.

18 There are some other things though that you  
19 should notice. Southeast proposes joint ownership only  
20 of the generating equipment itself. That equipment  
21 can't generate electricity by itself. It's got to be  
22 permanently installed in a building before it becomes  
23 operational. We don't know who will own the land or who  
24 will own the building, and Glades raised the issue but  
25 Southeast ducked it and said it didn't matter. There's

1 no indication however that the land or the building  
2 would be jointly owned.

3 And, further, the ownership share that belongs  
4 to each party can change apparently at will and based on  
5 usage. And if the parties are able to adjust ownership  
6 shares based on usage and need, this starts to sound  
7 more like a short-term purchase power commitment than  
8 true joint ownership.

9 Even today we don't know the details of the  
10 arrangements between Southeast and its partner or the  
11 terms of the joint venture or the terms of the operating  
12 and maintenance agreement. That's not in the  
13 information you have before you. And those agreements  
14 provide different ways for risks to be shifted among the  
15 joint owners. We don't know who has control over the  
16 facility, who has the construction risk, the risk of  
17 completion, we don't know the operational risk for  
18 management, outage or performance. We don't know about  
19 termination of rights, obligations with respect to  
20 financing, allocation of project costs, or fair market  
21 value. All we know is that these details have not been  
22 determined, and Southeast has provided its expectations  
23 and its possibilities. If you approve the proposal in  
24 the absence of concrete information regarding the  
25 relationship of the parties and the operation of the

1 management or the O&M operator, you're giving Southeast  
2 a blank check to structure the project any of those  
3 possibilities that have been presented to you. And as  
4 Ms. Clark will discuss, you'll have no jurisdiction to  
5 supervise the arrangement or determine what the end  
6 result looks like.

7           Before I turn the discussion over to  
8 Mr. Willingham, I'd like to remind you of why the  
9 Commission has stringently limited the self-service  
10 exemption in the past. In its *PW Ventures* decision,  
11 the Supreme Court emphasized the Commission's role in  
12 preventing uneconomic duplications of facilities and  
13 explained: "Other ventures could enter into similar  
14 contracts with other high use industrial complexes on a  
15 one-to-one basis and drastically change the regulatory  
16 scheme in this state. The effect of this practice would  
17 be that revenue that otherwise would have gone to  
18 regulated utilities that serve the affected areas would  
19 be diverted to unregulated producers. This revenue  
20 would have to be made up by the remaining customers of  
21 the regulated utilities since the fixed costs of the  
22 regulated systems would not have been reduced."  
23 Approval of Southeast's proposal would inevitably lead  
24 to the same result.

25           Mr. Willingham.



1           **CHAIRMAN BRISÉ:** You have about ten minutes  
2 and 30 seconds. Just giving you a marker where we are.

3           **MR. WILLINGHAM:** Thank you, Mr. Chairman,  
4 Commissioners. My name is Bill Willingham. I'm the  
5 Executive Vice President and General Manager of the  
6 Florida Electric Cooperatives Association. I'm here on  
7 behalf of the association today.

8           We agree with everything Marsha just said, and  
9 we believe that if you grant the petition, it will  
10 create chaos for the electric grid. We believe the  
11 "Grid Bill" requires you to find -- the petition  
12 describes a jurisdictional electric utility and that the  
13 backup and supplemental power that the retail customers  
14 and the generator require will result in jurisdictional  
15 sales. Southeast says this is very simple. We  
16 disagree. And I hope today to identify issues that  
17 Southeast has avoided.

18           As Ms. Rule explained, Southeast is trying to  
19 drive a Mack truck through a very narrow exception to  
20 the definition of regulated utility. They want you to  
21 say they can operate an electric utility without PSC  
22 jurisdiction so long as each customer has an undivided  
23 ownership of the generator. Moreover, they allege each  
24 customer would only need to own a very tiny percentage  
25 of the generator, because if they need more energy, they

1 can simply buy the remainder from the local utility.

2 Granting this petition would allow this entity  
3 and every independent power producer, co-generator, and  
4 even subsidiaries of regulated utilities to create  
5 unregulated electric utilities that compete for new  
6 customers, for existing customers of regulated  
7 utilities, by simply selling a portion of their  
8 generator to that customer.

9 To make matters worse for the regulated  
10 utilities, Southeast and others would find it very easy  
11 to compete for our customers because they can avoid all  
12 or part of the franchise fees, sales tax, gross receipts  
13 tax, and public service taxes that regulated utilities  
14 and their customers have to pay. This cherry picking of  
15 customers is exactly what the Court was concerned about  
16 in *PW Ventures*. If such competition is allowed, this  
17 could become a fairly large electric utility and surely  
18 others would follow in their footsteps. It's very  
19 possible that a large percentage of the state's  
20 customers and the grid would soon be outside of the  
21 Commission's jurisdiction and this percentage would  
22 continue to grow.

23 We believe such a scenario would circumvent  
24 the legislator's -- Legislature's directive under the  
25 Grid Bill for the Commission to maintain a coordinated

1 and reliable grid throughout the state to prevent  
2 uneconomic duplication of facilities, and to adopt and  
3 enforce safety standards for the distribution and  
4 transmission facilities of all the state's utilities.

5 Southeast attempts to address the Grid Bill  
6 issues by just focusing on whether regulated utilities  
7 would have notice of Southeast's generation capacity.  
8 We believe you should consider the entire Grid Bill and  
9 should not turn a blind eye to the, blind eye to the  
10 fact that customers constantly switching electric  
11 providers would disrupt the planning processes of  
12 regulated utilities and possibly could affect the  
13 reliability of the grid.

14 Except for the safety provisions in Section  
15 366.04(6)(b), the Grid Bill only applies to electric  
16 utilities. The definition of electric utility in  
17 Section 366.02(2) is very broad. We believe Southeast's  
18 scenario describes a jurisdictional utility. Whether or  
19 not this is an electric utility under Section 366.02 is  
20 a legal question, but by any common definition this will  
21 be an electric utility.

22 As the petition states, the facility will  
23 include electrical generating equipment, related  
24 electrical transmission, distribution, switching, and  
25 control equipment. Contrary to page three of

1 Southeast's response, this will be much more than just  
2 wires. Physically this will look and operate just like  
3 a small utility very similar to the electric co-ops when  
4 they first formed. However, if you grant the petition,  
5 Glades and other regulated utilities would not be able  
6 to file a territorial dispute against this entity or  
7 others as long as they sell at least a de minimis  
8 ownership interest of the generator to each customer.

9 In addition to the legal flaws in the  
10 petition, there are flaws with their theory of using  
11 supplemental power. Southeast alleges that supplemental  
12 power from Glades will ensure that the retail customers  
13 don't take more than their individual ownership share  
14 from the plant. However, their scheme violates the  
15 Commission's policy on the resale of electricity,  
16 violates Glades' tariff that prohibits the sale of --  
17 prohibits the resale of electricity.

18 Also, due to the laws of physics, their scheme  
19 for supplemental power most likely will result in a  
20 jurisdictional retail sale. We believe there are two  
21 options for physical delivery and that both are  
22 prohibited and one is inherently dangerous.

23 We have a handout with two different schemes  
24 on it. It that's also on the board for you. I'm going  
25 to refer to this first schematic to begin with. This

1 one's the easiest to understand. Southeast has not told  
2 us how they want to take up, take the backup in  
3 supplemental power, just that they'd need it. But in  
4 this case we think this is what they want to do. If  
5 they request supplemental backup just for the generator  
6 and they plan to reuse that supplemental backup service  
7 for the confidential partner and for the southeast  
8 building, that would be this scenario. We think this  
9 scenario violates the Commission's resale policy. It  
10 certainly violates Glades' tariff. And both of these  
11 are consistent with the provision in Section 366.03 that  
12 states, "Electric utilities cannot be required to  
13 provide electricity for resale."

14 And if you have any questions about the, the,  
15 the transformer breakers -- actually that would be a  
16 switch. And this would be probably a transmission  
17 voltage, but we were -- we don't know if this will be  
18 done at transmission or distribution voltage, so that  
19 caused a little bit of confusion.

20 And, Chris, if you could put up the second  
21 slide, please. All right. So clearly the first option  
22 won't work, and this is the only other option -- the  
23 second slide, you can see it's much more complicated.  
24 This would require a separate service from Glades to the  
25 generator and separate services to each retail customer,

1 for a total of three services. And, of course, if they  
2 add more owners and customers to this, that number would  
3 grow.

4 As you can see from the schematic, this  
5 configuration will require additional switches and would  
6 create multiple fees to each customer and will look very  
7 much like a utility. With all three customers  
8 interconnected behind Glades' meters, they will be able  
9 to switch to several configurations and resell Glades'  
10 power without Glades' knowledge, violating Glades'  
11 tariff and the Commission's resale policy. Since the  
12 electrons will flow on the path of least resistance,  
13 it'll have little regard for either customers' ownership  
14 limits. It's highly likely that some of the power  
15 needed by one customer may actually flow through the  
16 service to the other customer and also that meter and  
17 there would be a jurisdictional sale. Note that if this  
18 was a regulated utility, we would maintain normally open  
19 points in the system to prevent these erratic loop flows  
20 and backfeeds.

21 This configuration also presents a unique  
22 safety problem. We believe that it would be inherently  
23 dangerous to have two or more services from the utility  
24 to retail customers interconnected behind the utility's  
25 meters. This would enable the customers to energize and

1 de-energize the utility's lines without notice and would  
2 be a hazardous situation for Glades' employees and the  
3 public, especially first responders. This would be even  
4 more dangerous if the interconnected customers are  
5 served by different feeders or transmission circuits of  
6 the same utility or, even worse, if they're taking  
7 backup service from two different utilities.

8 Contrary to the allegations on page seven and  
9 eight and 29 and 30 of Southeast's response --

10 **CHAIRMAN BRISÉ:** Just to give you a sense of  
11 time, you have four minutes left.

12 **MR. WILLINGHAM:** Thank you. Let's see.

13 Commissioners, your safety jurisdiction in  
14 366.046 is exclusive, and we don't think you should  
15 waive that. This is a -- we think this is a very  
16 important deal. And just let me close real quick.

17 Commissioners, when you start fleshing out the  
18 so-called facts in their petition, it becomes apparent  
19 that their scheme is flawed legally, technically, and  
20 from a public safety perspective. We believe they have  
21 provided enough information for you to conclude that  
22 this will be a jurisdiction utility. We also believe  
23 that if you require them to provide the partnership  
24 agreement and other documents, additional fatal flaws in  
25 their scheme will become obvious and you will then be

1 able to conclude they have to be a regulated utility.

2 Thank you.

3 **CHAIRMAN BRISÉ:** Okay. Thank you.

4 **MS. CLARK:** Mr. Chairman, Mr. Wright said I  
5 could have his time.

6 **CHAIRMAN BRISÉ:** Okay.

7 (Laughter.)

8 **MS. CLARK:** How much time do I have actually?

9 **CHAIRMAN BRISÉ:** You have three minutes and 30  
10 seconds.

11 **MS. CLARK:** Thank you, Mr. Chairman.

12 We agree with the points made by Ms. Rule and  
13 Mr. Willingham, and we disagree absolutely with your  
14 staff's recommendation. The analysis staff, the  
15 analysis staff gives you does not take into account the  
16 precedent being set by this recommendation and the  
17 impact that precedent will have on the regulatory scheme  
18 in Florida. That is the analysis that was done in the  
19 *PW Ventures* case and that was the analysis the Supreme  
20 Court said was necessary in that case.

21 What Southeast has proposed is a transparent  
22 device to provide retail service to the confidential  
23 partner. There is no long-term full -- or firm  
24 ownership relationship being established. And because  
25 the details of that arrangement are so loosely



1 described, approving your staff recommendation will open  
2 the door to all kinds of joint ownership agreements.  
3 There will be no end to the combinations of customers  
4 and no end to the amount of ownership. It can be a very  
5 de minimis amount. And, in fact, in this case if they  
6 expand the plant, the confidential partner will only own  
7 3% of the generating unit.

8           Therefore, we have provided in our memorandum  
9 various combinations that are highly relevant for you to  
10 consider because they would be authorized by the  
11 precedent you're setting now. So it is critical that  
12 you consider the likely proliferation of these types of  
13 arrangements and how they will impact regulated  
14 utilities and their customers. Allowing this type of  
15 arrangement, essentially an electric, a private electric  
16 utility, will have a profound effect on your ability to  
17 assure that all Floridians have safe, reliable, and  
18 reasonably priced electric service. Third party  
19 generators will have license to provide retail service  
20 to unrelated parties by offering joint ownership in the  
21 generating facility, ownership that can change as the  
22 joint owners' needs change. They can cherry pick large  
23 industrial and commercial customers, both new and  
24 existing, using any type of generating fuel. It would  
25 not be limited to renewable fuels.

1           As both Ms. Rule and Mr. Willingham have said,  
2 there are serious consequences to the utilities and  
3 their customers. There will be a loss of revenue to  
4 support the facilities that will still have to be  
5 planned and built and maintained to serve those  
6 customers who leave the public utility and go to the  
7 private utility.

8           Essentially the regulated utility will still  
9 have the obligation to serve but will not have the right  
10 to serve. This, this leads to stranded costs,  
11 uneconomic duplication of facilities, and it will  
12 seriously impair your ability to maintain a coordinated  
13 electric grid. Keep in mind that once you determine  
14 this arrangement is non-jurisdictional, you will have no  
15 ability to review the joint venture agreement or the  
16 operating and management contract to assure the proposed  
17 structure is carried out as represented.

18           Authorizing the arrangement contemplated is a  
19 significant, significant change to established  
20 regulatory policy. The precedent set in approving the  
21 arrangement will provide a blueprint for others to  
22 follow to provide unregulated service to handpick  
23 customers, thereby disrupting the monopolies given to  
24 the regulated utilities.

25           Commissioners, it's significant that in the 25

1 years since *PW Ventures* the Legislature has not changed  
2 the regulatory scheme that was the basis of that  
3 decision. And as was said in *PW Ventures*, the sort of  
4 change sought cannot be granted in an administrative  
5 adjudication, but must be guided by legislative wisdom.

6 We ask that you deny staff's recommendation  
7 and instead issue a declaratory statement finding this  
8 is an unlawful sale of retail electricity. Thank you,  
9 Mr. Chairman.

10 **CHAIRMAN BRISÉ:** Thank you.

11 Mr. Wright.

12 **MR. WRIGHT:** Thank you, Mr. Chairman.

13 **CHAIRMAN BRISÉ:** Sure. No problem.

14 Four minutes and 30 seconds.

15 **MR. WRIGHT:** Thank you, sir.

16 I'll respond as quickly as I can going through  
17 following the order in which the comments were made.

18 **CHAIRMAN BRISÉ:** Sure. Sure.

19 **MR. WRIGHT:** There will be a joint venture  
20 agreement between the parties, there will be only legal  
21 title vested in each of, in each of Southeast and the  
22 CO2 plant. There's not a third entity. There's a  
23 contract. There's self-service. There's ownership by  
24 Southeast and self-service by Southeast from its share.  
25 There's ownership by the CO2 plant and self-service from

1 its share.

2 As the staff correctly pointed out, and this  
3 is responding to Ms. Rule's comments about the *Metro*  
4 *Dade* case, one, this isn't self-service wheeling in any  
5 event. And, two, in the *Dade* case, as the Commission  
6 correctly pointed out, they didn't even own a piece of  
7 the generator. They owned a parking garage where the  
8 co-gen facility is located. They owned the land and  
9 some of the building. This is not *Metro Dade*. There  
10 was no, no -- the plausible color was that there was, in  
11 *Metro Dade* was that it was all kind of together and  
12 that, and that they owned part of the facility itself.  
13 What the Commission focuses on correctly is the  
14 ownership of that which produces the electricity because  
15 you have jurisdiction over the electricity.

16 And by the way, the argument about the  
17 building and the land is a red herring too. And as is  
18 pointed out by the PURPA rules, 292.202, 18 CFR  
19 292.202(c), "Cogeneration facility means equipment used  
20 to produce electric energy and forms of useful thermal  
21 energy (such as heat or steam), used for industrial,  
22 commercial, heating, or cooling purposes, through the  
23 sequential use of energy." The QF is the facility. It  
24 doesn't matter who owns the building, it doesn't matter  
25 who owns the land. If it were some particular species

1 of hydro facility where ownership of the land matters --  
2 not here.

3           They assert that granting this declaratory  
4 statement would be giving us a blank check or giving --  
5 I guess they say it would be giving us a blank check.  
6 No, not so. It's limited to its facts. And this  
7 actually addresses the last remark made by, by Ms. Clark  
8 that the Commission had no ability to review the joint  
9 venture agreement or the O&M agreement. Now I'm not  
10 happy about what I'm about to tell you, but it's the  
11 truth. The dec statement hopefully that you will grant  
12 today, the dec statement is limited to its facts. If  
13 the facts -- and we said this like three times, maybe  
14 more in our response -- if the facts on the ground are  
15 different, if Glades or anybody else believes, has a  
16 good faith belief that we are not in compliance with the  
17 declaratory statement as issued, they can bring a  
18 territorial dispute and say, oh, no, the O&M company is  
19 selling electricity. Oh, no, Southeast is giving  
20 electricity, giving its electricity to the CO2 plant.  
21 If they have a good faith belief that that's true, they  
22 can invoke your jurisdiction. You know, I'm not happy  
23 about it, but, you know, this is our society and people  
24 can bring actions when they want to bring actions.

25           Clearly this is not uneconomic. This is a

1 very economic deal that's going to bring new development  
2 to Glades County -- to Hendry County in Glades' service  
3 area. And, by the way, having all the generation right  
4 there on the site is going to avoid 7% line losses to  
5 get the power from wherever else it might come from.

6 I'm not even going to talk more about the, the  
7 proliferation argument. That's not the case here. The  
8 case here is on these facts is this self-service  
9 generation?

10 Mr. Willingham tried to make the argument  
11 about electric utility. I'll read you what electric  
12 utility is in 366.06(2). "Electric utility means any  
13 municipal electric utility, investor-owned electric  
14 utility, or rural electric cooperative which owns,  
15 maintains, or operates an electric generation  
16 transmission or distribution system within the state."  
17 It doesn't say anybody who owns a power line, anybody  
18 who owns a generator. It says, "Muni, co-op, IOU."  
19 It's clear we're not a muni; it's clear we're not a  
20 co-op. Co-ops, by the way, are creatures, as Chapter  
21 425. So the question before you, as we have correctly  
22 pled in our petition, is are we a public utility? We,  
23 we believe the answer is no.

24 With regard to the standby and supplemental  
25 service, I think that the second slide that

1 Mr. Willingham showed is a lot more likely. There will  
2 be -- our scenario is that there would be separate  
3 services to each of the three entities. And under the  
4 Federal Energy Regulatory Commission's *Alcon* cases we  
5 are entitled, as a matter of federal law and federal  
6 rules, to standby service.

7 And finally the idea that this would be cherry  
8 picking is just inapt. It is inapposite. Cherry  
9 picking is a scenario in *PW Ventures* where somebody  
10 comes in, builds a facility, picks off a customer. It's  
11 not cherry picking where you've got real industrial  
12 facilities with real investors' money in them on the  
13 ground deciding to invest additionally, additional money  
14 in electric generating equipment to serve themselves.  
15 You've got two neighbors, whether it's two new ones or  
16 two existing ones. That's not cherry picking. That's  
17 common sense; the American competitive economy at work.  
18 Thank you very much.

19 **CHAIRMAN BRISÉ:** Thank you, Mr. Wright.

20 All right. Questions, Commissioners.

21 Commissioner Brown.

22 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

23 I do think this is a very interesting question of law  
24 for us, so I took a great deal of interest in this.  
25 But, Mr. Wright, I do not think it's a simple,

1 straightforward arrangement at all.

2 The first thing that I thought was where is  
3 this joint venture agreement? That's the first thing I  
4 wanted to see. So I know that the Commission precedent  
5 has, we have approved dec, issued dec statements without  
6 those type of documents. But I actually have a ton of  
7 questions for you about this arrangement, this creative  
8 business arrangement. So I'd like some clarity to get  
9 an understanding of what is actually going on here.

10 First, if you don't mind, and if you would  
11 give me some latitude here.

12 **CHAIRMAN BRISÉ:** No. Go right ahead. Go  
13 right ahead.

14 **COMMISSIONER BROWN:** Is the confidential  
15 partner any way related to Southeast currently?

16 **MR. WRIGHT:** Not -- they're currently not  
17 corporately related.

18 **COMMISSIONER BROWN:** In any other way are they  
19 related of significance?

20 **MR. WRIGHT:** They will have a separate  
21 contractual relationship separate from their joint  
22 ownership of -- as of today, no. But in, in the  
23 scenario here they will have a separate contractual  
24 relationship as part of the integrated renewable energy  
25 facility. They will buy CO2 from the ethanol plant, so



1 it will be a separate contractual relationship there.  
2 This is all one project. We're going, we're going to  
3 make -- we're going to harvest the gas, we're going to,  
4 we're going to harvest sorghum, we're going to convert  
5 that into gas, we're going to convert that into, into  
6 electricity. That will be make electricity, thermal  
7 energy. It'll also make -- will use the sugars to  
8 produce ethanol. CO2 comes out of the ethanol process.  
9 That will be sold to the CO2 plant. So there will be  
10 additional relationships besides just their joint  
11 ownership of the electric generating equipment.

12 **COMMISSIONER BROWN:** And you said there's not  
13 going to be though a separate joint limited liability  
14 partnership or something to that effect?

15 **MR. WRIGHT:** No, ma'am.

16 **COMMISSIONER BROWN:** They'll still be separate  
17 companies operating under a joint venture agreement?

18 **MR. WRIGHT:** Correct.

19 **COMMISSIONER BROWN:** So no new, newly created  
20 entity operating that joint venture.

21 **MR. WRIGHT:** Those are the facts on -- those  
22 are the facts as we envision them today and upon which  
23 we ask you to render the declaratory statement.

24 **COMMISSIONER BROWN:** And Southeast is going to  
25 own though, Southeast will own the ethanol plant -- and,

1 again, this is just clarification. Okay?

2 **MR. WRIGHT:** Yeah.

3 **COMMISSIONER BROWN:** Because I -- the facts  
4 are a little vague to me here. So Southeast will own  
5 the ethanol plant, the smoke and the energy going into  
6 the cogeneration facility. Could you explain that  
7 arrangement? And then the confidential partner will own  
8 the carbon dioxide plant.

9 **MR. WRIGHT:** I missed a word in what you were  
10 saying after the Southeast will own the ethanol plant.  
11 That's true. But then you said a couple of words and I  
12 missed one of them. I apologize.

13 **COMMISSIONER BROWN:** I don't remember it.

14 **MR. WRIGHT:** Southeast will own --

15 **COMMISSIONER BROWN:** I just want to know who  
16 is owning the --

17 **MR. WRIGHT:** Who's owning what?

18 **COMMISSIONER BROWN:** Yes. The cogeneration  
19 facility is being jointly owned.

20 **MR. WRIGHT:** That is correct. Southeast will  
21 own the ethanol plant. The confidential partner will  
22 own the carbon dioxide plant.

23 **COMMISSIONER BROWN:** And all of the electrical  
24 components will be jointly owned.

25 **MR. WRIGHT:** Yes, ma'am.

1           **COMMISSIONER BROWN:** Just the electrical  
2 components.

3           **MR. WRIGHT:** Probably the whole cogeneration  
4 facility, the thermal derivative. But that's not really  
5 part of your jurisdiction.

6           **COMMISSIONER BROWN:** Well, I understand that  
7 you said that the ownership of the land is irrelevant.  
8 Will that be -- is that -- is it contemplated that that  
9 will be co-owned? My understanding is that Southeast  
10 has already broken ground on this, I believe on the  
11 ethanol project.

12           **MR. WRIGHT:** Correct.

13           **COMMISSIONER BROWN:** Okay. So they've already  
14 proceeded then. I know in your petition you said that  
15 there -- it's a possibility that this project won't even  
16 come to fruition.

17           **MR. WRIGHT:** The CO2 plant.

18           **COMMISSIONER BROWN:** The CO2 plant. The  
19 ethanol plant --

20           **MR. WRIGHT:** The ethanol plant and the power  
21 plant will be constructed under --

22           **COMMISSIONER BROWN:** Irrelevant.

23           **MR. WRIGHT:** They will be constructed under  
24 any scenario. And to answer the question I think you're  
25 trying to ask, Southeast owns the land.

1           **COMMISSIONER BROWN:** Okay. Okay.

2           **MR. WRIGHT:** Again, that's, that's not the  
3 generating equipment, but --

4           **COMMISSIONER BROWN:** And Southeast is the one,  
5 the entity that broke ground in March.

6           **MR. WRIGHT:** Yes, ma'am.

7           **COMMISSIONER BROWN:** And you think that this  
8 dec statement now is ripe for consideration because  
9 additional funds will be expended on the co-gen  
10 facility.

11          **MR. WRIGHT:** On the CO2 plant.

12          **COMMISSIONER BROWN:** Okay. The other thing  
13 that I'm a little unclear of is the percentage of  
14 ownership and how it appears that it can, it can vary.  
15 There's an initial -- correct? Is that correct?

16          **MR. WRIGHT:** We contemplate that it will be --  
17 that the parties will be able to change their ownership  
18 interests over time.

19          **COMMISSIONER BROWN:** Over time.

20          **MR. WRIGHT:** Well, suppose, for example, the  
21 CO2 plant decides to double its capacity. They will be  
22 able to buy an additional share of the facility. They  
23 may negotiate more than 1,500 kW at the outset. If we  
24 double the capacity, they may both say this is a good  
25 investment, we're going to make some money selling power

1 to the wholesale market or we've got a REC market now or  
2 something like that, they may, they may elect to buy  
3 different percentages in the expansion or they may just  
4 decide to redo their deal.

5 The important point in terms of the  
6 self-service generation question, I believe, is whether  
7 there will be the supply of electricity by one to the  
8 other. That issue is taken out of play by each owning  
9 at least as much as it will ever use.

10 **COMMISSIONER BROWN:** And one of the reasons  
11 why the joint venture agreement is not in place or even  
12 a draft of the joint venture agreement in place is  
13 because this confidential partner and Southeast don't  
14 know their exact energy needs, is that an element?

15 **MR. WRIGHT:** I don't think that's -- no. I  
16 would say the answer to that question is no. We know  
17 what the energy needs are going to be within, within  
18 refined engineering tolerances.

19 **COMMISSIONER BROWN:** So we've got 25 megawatts  
20 with an expansion of 50 megawatts.

21 **MR. WRIGHT:** Potential expansion to 50.

22 **COMMISSIONER BROWN:** Okay.

23 **MR. WRIGHT:** Southeast would -- Southeast's  
24 initial load is projected to be approximately -- maximum  
25 load is projected to be approximately 5,500 kW.

1           The CO2 plant's initial load is projected to  
2 be approximately 1,500 kilowatts. If you'd like me to  
3 answer the question why isn't the JVA in place, I will  
4 answer that question for you.

5           **COMMISSIONER BROWN:** I will, I will get to  
6 that.

7           **MR. WRIGHT:** Yeah. Okay.

8           **COMMISSIONER BROWN:** But it seems like there's  
9 a great deal of surplus energy that is expected,  
10 anticipated to go to the wholesale market.

11          **MR. WRIGHT:** Correct.

12          **COMMISSIONER BROWN:** So my question is really,  
13 before I get to the joint operating agreement, I mean,  
14 there is a persuasive element to the fact that anyone  
15 can create this creative business arrangement. You and  
16 I can. We could, we could form a joint partnership and  
17 circumvent our jurisdiction for the, for that -- for the  
18 very purposes of circumventing the jurisdictional issue.

19                 Do you see the slippery slope here? Do you  
20 see, do you see the policy issue?

21          **MR. WRIGHT:** No, I don't, and here's why.

22                 The slippery slope is where it's really easy  
23 for people to evade this. The reason that's not the  
24 case here is both parties are putting up lots of money  
25 to make this whole deal work. Both parties are taking

1 the risks of ownership. That's the difference between  
2 this case and all the other cases where somebody else is  
3 going to put up the money and there is going to be this  
4 other, this other arrangement that was going to let the,  
5 that is going to let somebody essentially get  
6 electricity. *PW Ventures* is the obvious case.

7 **COMMISSIONER BROWN:** The *Monsanto* and the  
8 *Seminole Fertilizer* case I think is distinguishable from  
9 the instant facts. Those were existing facilities  
10 seeking an expansion. This, we don't have -- I mean,  
11 there's nothing in place right now. We don't have --  
12 there's just this idea of a new facility, a new  
13 arrangement, and you believe it's ripe because the  
14 parties -- or this confidential party won't move forward  
15 on the CO2 element until the Commission issues its  
16 decision.

17 **MR. WRIGHT:** That is exactly right, and that  
18 is why the joint venture agreement isn't in place yet.  
19 It's going -- you know, it's not going to be, it's not  
20 going to be rocket science, but it's not going to be the  
21 easiest agreement that myself and folks like me have  
22 written. It's going to be a fairly expensive  
23 undertaking to craft that.

24 **COMMISSIONER BROWN:** Oh, and there's a  
25 critical --

1           **MR. WRIGHT:** And that's why, that's exactly  
2 why the CO2 plant owner does not want to move forward  
3 until we have the assurance that we've asked for here.  
4 That's why it's ripe for decision.

5           **COMMISSIONER BROWN:** Okay. I appreciate your,  
6 your, your opinion. And, but, again, more -- I do  
7 believe this is a creative situation that needs to be  
8 more thoroughly developed. There isn't a lot -- there's  
9 a lot of ambiguities. The purpose of a dec statement is  
10 to clear up any ambiguities. And I feel that new  
11 ambiguities are arising on the arrangement.

12           So a couple more questions. Can you tell me  
13 why the business relationship, getting back to the  
14 policy argument here that this can create new business  
15 arrangements around the state, circumventing  
16 jurisdiction, why is -- what -- I want to hear your take  
17 on why this business arrangement is being constructed  
18 the way it is.

19           **MR. WRIGHT:** It is constructed the way it is  
20 because this is the business arrangement that the CO2  
21 plant owner and Southeast want it to be. Now could we  
22 have constructed a regulatory pretzel like Seminole with  
23 cross leases and all this other stuff? Sure. That's  
24 not what we chose to do. That's not what the CO2 plant  
25 wants to do. That's not what Southeast wants to do.



1 That's why the deal presented to you is the deal  
2 presented to you. It's the business arrangement that  
3 the parties believe best serve their needs -- serves  
4 their needs.

5 **COMMISSIONER BROWN:** In going back to the  
6 policing of this arrangement, if any of the facts that  
7 are presented in your petition for a dec statement  
8 deviate, you know, there's a lot of different situations  
9 because there are a lot of vague, there's a lot of  
10 vagueness on the needs, I believe. And what happens  
11 with the excess power? What happens if the, you know,  
12 you've got the CO2 plant generates less energy than it's  
13 anticipated? Those type of clarifications will be  
14 thoroughly developed in that joint venture agreement;  
15 correct?

16 **MR. WRIGHT:** I apologize for my pause. There  
17 was a lot in there.

18 I do think that the maximum needs are known  
19 and the ownership interests will be known specifically.  
20 Whether it's 1,500 or 1,800 or 2,000 kW that's owned by  
21 the CO2 plant, there will be a maximum value. The  
22 CO2 plant will own that, they'll have title to the  
23 electricity.

24 Regarding the excess power, the plant is going  
25 to generate whatever it generates. Whether there's

1 enough gas available on a given day to generate  
2 15 megawatts or 25 megawatts or 9 megawatts, it's going  
3 to generate what it generates. The CO2 plant will use  
4 up to its amount, up to its ownership share to serve its  
5 needs; probably in most, most hours it's going to be  
6 less than 1,500 or 2,000 or whatever the number is, so  
7 there will be some extra. Probably in most hours the  
8 ethanol plant will be running somewhat less than its  
9 \$5,500 -- 5,500-kilowatt maximum load. Regardless, even  
10 if they're running full out, that's 7 kW -- 7 MW. It  
11 will be 15 MW, say, running in a given hour or 25,  
12 whatever it is. The excess has to go somewhere. It'll  
13 go through the interconnection metering gear back into  
14 the grid and be sold to Glades, Seminole, or FPL. Most  
15 likely it could conceivably be sold to someone, some  
16 other Florida utility pursuant to an as-available tariff  
17 or pursuant to a contract for the sale of firm capacity  
18 and energy. We're definitely interested in that; it's  
19 just not in the cards right now.

20 **COMMISSIONER BROWN:** I understand all that.

21 Two more questions, and then I'll defer to  
22 rest of the Commissioners.

23 **CHAIRMAN BRISÉ:** Sure.

24 **COMMISSIONER BROWN:** And I have some  
25 questions, follow-up questions for staff.

1           But -- so -- and I'm just trying to understand  
2 this, the excess power issue. So if one of the joint  
3 partners needs less in any given month per se and then  
4 sells it, okay, who gets the proceeds from that sale?  
5 Does it go to that partner?

6           **MR. WRIGHT:** Yes, ma'am.

7           **COMMISSIONER BROWN:** You've got partner A,  
8 partner B.

9           **MR. WRIGHT:** Yeah.

10          **COMMISSIONER BROWN:** Partner A does not  
11 generate as much -- or does not use as much electricity  
12 as its generation according to the ownership interests.  
13 If it generates less energy and then sells the  
14 remaining, who gets that, who gets the sales from that  
15 product?

16          **MR. WRIGHT:** I think -- I do believe we  
17 answered this in our response to the staff data request.

18          **COMMISSIONER BROWN:** I'm asking you here.

19          **MR. WRIGHT:** Oh, I was definitely -- I want to  
20 answer it.

21          Each party owns the electricity that is  
22 produced by its percentage of the generation. To take  
23 an easy case, let's just suppose the CO2 plant is down  
24 for a month. It doesn't use any electricity. It still  
25 owns 1,500 kilowatts of capacity or 6% of the, of the 25

1 megawatts. If the plant runs full out for that month,  
2 then the CO2 plant would get 1,500 kilowatt hours per  
3 hour, so 1,500 kWh per hour times 720 hours in a month,  
4 they would get the proceeds from their share of the  
5 electricity. If it produces less than 25 megawatts,  
6 then there would be a percentage. They own 6%, they'll  
7 get, they'll get 6% of the total electricity to their  
8 account since by hypothesis in the example I set up here  
9 they're not generating, they're not using anything, they  
10 would get the full proceeds for that. They own the  
11 electricity. They either get to use it in the CO2 plant  
12 or they get the proceeds from selling it to Glades or  
13 FPL.

14 **COMMISSIONER BROWN:** Okay. And that will be  
15 delineated in the joint venture agreement?

16 **MR. WRIGHT:** Yes, ma'am.

17 **COMMISSIONER BROWN:** All right. Thank you.

18 **CHAIRMAN BRISÉ:** Okay. Further questions,  
19 Commissioners, from anybody else?

20 Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you.

22 I have a question or two for Mr. Wright. I  
23 guess the first question is this exhibit, there were two  
24 exhibits that were provided, which one of these schemes  
25 do you anticipate being utilized, if any?

1           **MR. WRIGHT:** Are you referring to the slides  
2 offered by Mr. Willingham?

3           **COMMISSIONER BALBIS:** Yes.

4           **MR. WRIGHT:** The second one, the one that  
5 shows three separate connections, one to the generator,  
6 one to the CO2 plant, and one to the ethanol plant.

7           **COMMISSIONER BALBIS:** And following up on Mr.  
8 Willingham's comments, I mean doesn't that provide a  
9 more risky power generation scheme with the potential  
10 opportunity for backfeeding the individual customer into  
11 the utility system itself?

12           **MR. WRIGHT:** I think the technical answer to  
13 that is yes. When you've got multiple connections,  
14 there are additional opportunities for backfeeding.  
15 Remember though, Glades will have to approve the  
16 interconnection arrangements. They can say this switch  
17 out front by our substation also has to disconnect the  
18 connection between the inside of the fence generator in  
19 the CO2 plant if we're working on anything that has to  
20 do with the CO2 plant to prevent backfeeding. This is,  
21 this is not difficult. This is a fairly off-the-shelf  
22 switching technology. It may not be standard, although  
23 it may be. You know, there are much larger industrial  
24 facilities in Florida and the United States where there  
25 are multiple meters, multiple services, and multiple

1 loads located within the fence of any, of given  
2 industrial facilities, and those all seem to work out  
3 okay.

4 **COMMISSIONER BALBIS:** Well, and I agree with  
5 you, that Glades --

6 **MR. WRIGHT:** And they can be isolated.

7 **COMMISSIONER BALBIS:** -- that Glades will have  
8 control of how it connects to their system. Will they  
9 have any control over inside the fence connections or  
10 arrangements?

11 **MR. WRIGHT:** I think the answer to that is,  
12 is -- I would say it is either a qualified yes or a  
13 qualified no. I would phrase it as a qualified yes in  
14 that they would have say over anything inside the fence  
15 that affects their connections.

16 **COMMISSIONER BALBIS:** So is that a yes or a  
17 no? You went --

18 **MR. WRIGHT:** Well, I, I tried to appropriately  
19 qualify it. But they, they will have the authority to  
20 approve -- we're going to have to interconnect with  
21 them.

22 **COMMISSIONER BALBIS:** Okay.

23 **MR. WRIGHT:** Their interconnection has to be  
24 reasonable and appropriate, the costs have to be fair,  
25 just, and reasonable, but they will have the authority

1 to approve the interconnection arrangements. To the  
2 extent that any of the interconnects within, inside the  
3 fence, as you asked your question, affect the  
4 interconnection arrangements, they would have to approve  
5 that too.

6 I mean, my --

7 **COMMISSIONER BALBIS:** Well, let me, let me ask  
8 this.

9 **MR. WRIGHT:** I'm not the engineer on this.  
10 Let me just get out two more sentences, if I may.

11 **COMMISSIONER BALBIS:** Okay.

12 **MR. WRIGHT:** You know, I'm not the engineer on  
13 this, but, you know, we're going to work with these  
14 people, you know. We don't -- I mean, the last thing we  
15 want is to create an unsafe situation for a Glades  
16 lineman or anybody else or anybody in our plant. We  
17 don't want unintentional backfeeds. We're going to,  
18 we're going to give them our schematics, we're going to  
19 give them our one lines, and we're going to sit down  
20 with them and work out what the best way to make the  
21 interconnection is. They will have to approve it before  
22 it ever gets built. So I'm going with a qualified yes  
23 in answer to your question.

24 **COMMISSIONER BALBIS:** Okay. Thank you. And  
25 at least the position I'm in, we've had concerns raised

1 about safety issues and potential backfeeding, et  
2 cetera. So, you know, I personally need to flesh that  
3 out.

4 And I ask the same question for  
5 Mr. Willingham -- do you believe that Glades Utility  
6 will have any inside-the-fence input?

7 **MR. WILLINGHAM:** Input probably into the  
8 design. The operation we may have input. We won't have  
9 control of the operation. Where this gets really scary  
10 is say that the CO2 plant, depending on where they  
11 locate, we're pretty close to FPL's territory here. And  
12 they've got another 300 acres that they've got an option  
13 on to buy. There's an industrial office park they're  
14 planning to build next to this thing. If one of those  
15 customers is actually connected to FPL, that means they  
16 could connect our system to FPL's system through their  
17 switching. We would not have direct control over their  
18 switches. That would be their private property beyond  
19 our meter that we would have no direct control over, not  
20 the day-to-day operation over.

21 **COMMISSIONER BALBIS:** Okay. And then, Mr.  
22 Wright, you've stated several times that the declaratory  
23 statement are contained to the facts -- confined to the  
24 facts within.

25 **MR. WRIGHT:** Yes, sir.



1                   **COMMISSIONER BALBIS:** However, in each -- in  
2 your petition, and also the other Intervenors, if you  
3 will, they've each cited different declaratory  
4 statements as almost a precedential value. So although  
5 it's contained to the facts within, shouldn't we be very  
6 concerned about writing a declaratory statement that has  
7 this much information lacking when the potential for  
8 setting a precedent has a ripple effect throughout the  
9 entire regulatory structure of the state is at play?

10                   **MR. WRIGHT:** Well, Commissioner, I don't think  
11 so. You know, and I'll say it this way, I think you're  
12 right to be concerned, but I think, I believe you have  
13 sufficient facts upon which to render the requested  
14 statements. Your staff, fortunately for our side today,  
15 agrees with that assessment. You have, you have every  
16 bit as much facts as, as, as there were in *Seminole*  
17 *Fertilizer*. You didn't know what the partnership was  
18 going to be, you didn't know who the partners were going  
19 to be. *Monsanto*, they hadn't identified the lessor and  
20 you didn't have operative documents in those cases  
21 either. The petition said the operative documents will  
22 provide X, Y, and Z. Our petition says the operative  
23 document will provide X, Y, and Z.

24                   We believe that the issue here is whether  
25 joint ownership, commonly owned electric generating

1 equipment where each owner owns that part of the  
2 generator to an undivided ownership interest -- which  
3 isn't foreign to the Commission. That was the case in  
4 *Seminole*. You had two entities having undivided  
5 ownership interests. Well, in *Seminole* it needed it for  
6 itself and the other was this LP that was going to sell  
7 it to the utility. It's not really that different here.

8 So I, I think your concern is well-founded,  
9 but I, but I think the result is that you should grant  
10 the statement.

11 **COMMISSIONER BALBIS:** What is the distance  
12 between the generator and each entity that will be using  
13 --

14 **MR. WRIGHT:** I missed a word.

15 **COMMISSIONER BALBIS:** The distance, the  
16 distance between the generator and each entity that will  
17 be using the power.

18 **MR. WRIGHT:** I don't know the answer to that.  
19 I would say at most, at most a few hundred feet,  
20 probably less than that.

21 **COMMISSIONER BALBIS:** Is that --

22 **MR. WRIGHT:** And I say that because the site,  
23 the site is a hundred acres. So let's say if it's 20 by  
24 100 acres, let's say it's 10 by 10 acres, that's  
25 2,090 feet on a side. The generator will be located in

1 one place. The other place, the other facilities will,  
2 I would assume, be located optimally. I don't know that  
3 there's a full site plan that includes the exact  
4 location of the CO2 plant. There may be. I don't know  
5 that. But considering the size of the, of the site, at  
6 most a few hundred feet, probably, probably on the lower  
7 side of that.

8 **COMMISSIONER BALBIS:** Okay. And my, and my  
9 concern is that this is a case of first impression, and  
10 with any precedent we set by approving this statement,  
11 that it would encourage or perhaps allow companies to  
12 build a generating facility anywhere within the state  
13 and find a customer to have a similar type arrangement  
14 with a joint venture agreement and use that. So that's  
15 one of the concerns that I do have, that it is setting a  
16 precedent. And there wasn't a question there.

17 The other, the other part is since you --  
18 you're representing the parties and you've come up with  
19 a creative arrangement to, some would say, circumvent  
20 the jurisdictional issue. Why not make it even more  
21 creative and create a single entity? That way there's  
22 no question you're self-serving. Why haven't you  
23 pursued that?

24 **MR. WRIGHT:** The answer to that is because  
25 this is the business arrangement that the CO2 plant

1 owner, which is a big CO2 company, it's the business  
2 arrangement that the CO2 plant owner and Southeast  
3 believe best serves their needs.

4 I know there wasn't a question, but may I  
5 respond to your previous statement?

6 **COMMISSIONER BALBIS:** Sure. And will it be  
7 concise?

8 **MR. WRIGHT:** Yes, sir.

9 **COMMISSIONER BALBIS:** Okay. Yes.

10 **MR. WRIGHT:** This isn't a case where somebody  
11 is going in and building a generator and trying to serve  
12 two people. This is a case where two industrial  
13 customers are coming together to own a generator. If it  
14 happens anywhere else, at least as to these facts, it  
15 would be two industrial customers putting their own  
16 money at risk to serve their loads. This isn't *PW*  
17 *Ventures*.

18 **COMMISSIONER BALBIS:** I see this as a very  
19 simple case. I think the statutes are clear that in a  
20 self-serving provision you have to serve yourself, a  
21 single entity. Here you're serving two entities. And I  
22 think it's a very difficult burden, if you will, to  
23 prove that this is not jurisdictional. And I think  
24 there are serious precedential issues in writing the dec  
25 statement as staff recommended. And I agree with some

1 of the previous comments that, you know, we don't have  
2 the joint venture agreement. I agree with some of the  
3 parties that indicated, dozens of times indicated in  
4 your response to staff's data request there's  
5 uncertainty throughout all of the details of the  
6 arrangement, which I think are important when  
7 considering this, this issue. I may have a few more  
8 questions, but I would defer to my colleagues.

9 **CHAIRMAN BRISÉ:** Commissioner Brown.

10 **COMMISSIONER BROWN:** Thank you. And thank  
11 you, Commissioner Balbis. I agree wholeheartedly with  
12 your comments.

13 Question for staff. I'm also not comfortable  
14 with the facts as laid out, nor am I comfortable with  
15 the staff recommendation. If we were to -- what,  
16 procedurally what are our options that we can weigh?

17 **MS. GERVASI:** There should be a declaratory  
18 statement -- pardon me -- issued one way or the other  
19 within 90 days. You -- if, if the Commission believes  
20 that this is, that there's enough information to show  
21 that this would in fact be a jurisdictional activity,  
22 the declaratory statement, of course, would be written  
23 to explain why you have arrived at that decision, and  
24 the declaratory statement would be written in the  
25 negative. Or you could -- if you determine that there

1 are not enough facts in order to make a decision one way  
2 or the other, you could deny the declaratory statement  
3 on that basis.

4 **COMMISSIONER BROWN:** And they would not be  
5 precluded at any -- from coming back. It would not be  
6 something that you denied with prejudice. It would just  
7 be denied based on the facts presented in this certain  
8 dec statement petition.

9 **MS. GERVASI:** That's correct. It would be  
10 probably a good idea to give some direction as to what  
11 additional facts would be required so that --

12 **COMMISSIONER BROWN:** I think we've laid that  
13 out here.

14 **MS. GERVASI:** So those are your options.

15 And your third option, of course, is to agree  
16 with staff's recommendation. That's obvious. That  
17 would be to -- you have to issue a declaratory statement  
18 one way or the other within 90 days.

19 **COMMISSIONER BROWN:** We can't defer it.

20 **MS. GERVASI:** Correct.

21 **COMMISSIONER BROWN:** Okay. Thank you.

22 **CHAIRMAN BRISÉ:** Commissioners, any further  
23 comments or questions?

24 Okay. Okay. Commissioner Brown.

25 **COMMISSIONER BROWN:** Mr. Chairman, if there

1 are no comments from the other Commissioners, I'd be  
2 interested to hear, but I'm not 100% comfortable with  
3 the facts laid out in the petition. So if those are our  
4 procedural options, either to approve or deny, I would  
5 move to deny staff's recommendation.

6 **COMMISSIONER BALBIS:** Second.

7 **CHAIRMAN BRISÉ:** Okay. It's been moved and  
8 second. Further discussion?

9 Commissioner Edgar.

10 **COMMISSIONER EDGAR:** And just so I'm clear, if  
11 I may, Commissioner Brown, my understanding is that if,  
12 if your motion were to carry, that the entities that  
13 brought the request before us would have the opportunity  
14 to file at a later date, should they choose to, with  
15 additional information responding to some of the issues  
16 that have been raised today.

17 **COMMISSIONER BROWN:** Most certainly. And, of  
18 course, we welcome that.

19 **COMMISSIONER EDGAR:** Okay. Thank you.

20 **CHAIRMAN BRISÉ:** Okay. Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

22 I just wanted to restate, you know, one of the  
23 reasons why I support denial, and I'm glad Commissioner  
24 Brown clarified that it does not preclude them from  
25 coming back with additional information.

1 I think that this is a creative arrangement  
2 that I, at this point with the information, I just see  
3 the risks involved with issuing the statement as staff  
4 recommended. I think that it looks at first glance of a  
5 way for other entities throughout the state to build  
6 their own power plant, to have customers that they have  
7 joint venture agreements in where they can invest some  
8 or even a penny, if you will, for a bolt of the  
9 generating equipment just to avoid jurisdictional  
10 issues, which may result in duplication of  
11 infrastructure and not having fair, just, and reasonable  
12 rates for any internal retail sales that are in place,  
13 and not to mention the safety issues that were raised.

14 **MR. KISER:** Mr. Chairman?

15 **CHAIRMAN BRISÉ:** Yes, sir.

16 **MR. KISER:** In going through the options that  
17 Rosanne outlined, I believe there may also be another  
18 option. That is prior to any vote of rejection, the  
19 Petitioner might also consider withdrawing it at this  
20 time rather than have a rejected vote. That would  
21 strictly be within the Petitioner's right to do that, I  
22 believe, and that's another option.

23 **CHAIRMAN BRISÉ:** Thank you very much. I know  
24 Mr. Wright has practiced before us for quite a long  
25 time, and I'm sure he's aware of that option. But if



1 that is something that you, considering the posture that  
2 we're in, if that's something that you want to entertain  
3 prior to any vote. And if you need some time to confer  
4 with your client, we can, we can allow for that.

5 **MR. WRIGHT:** I'm not -- Mr. Chairman, Mr.  
6 Kiser, Commissioners, thank you very much. I'm, I'm  
7 kind of in a difficult spot here because I am not able  
8 to reach my client right now. If I might, I would like  
9 to offer this.

10 **CHAIRMAN BRISÉ:** Sure.

11 **MR. WRIGHT:** That we would waive the clock to  
12 the next convenient Agenda Conference, maybe the first  
13 Agenda Conference of January, during which time I can  
14 confer with my client and, and determine whether we want  
15 to withdraw the petition for declaratory statement. You  
16 know, I think we've gotten good flavor from where two of  
17 the Commissioners are on the, on what additional  
18 information they'd like to see and where they are on  
19 some of the policy issues.

20 You know, I'm kind of torn, but I think that's  
21 the best service I can do to my client today. So with  
22 your leave, I would respectfully ask that we be allowed  
23 to waive the 90-day clock so that this matter can be  
24 taken up again at the first convenient Agenda  
25 Conference, ideally the first Agenda Conference of

1 January -- or on December 17th, that's fine with me, if  
2 that, if that's okay. And in that time I can -- if the  
3 client decides he wants to withdraw, then we can  
4 withdraw and need not come back. If he decides he wants  
5 the vote on the record, then, then we'll come back  
6 accordingly.

7 **CHAIRMAN BRISÉ:** Okay. Thank you.

8 Let me hear from my colleagues. And actually  
9 before I hear from my colleagues, I want to hear from,  
10 from the Intervenors.

11 **MS. CLARK:** You know, procedurally I think the  
12 right thing to do is simply deny it without prejudice to  
13 come back. I mean, you're not really, if I understand  
14 it correctly, some people would like more information.  
15 Simply deny it without prejudice and they can come back  
16 with more information. They can choose to do that or  
17 not choose to do that.

18 **CHAIRMAN BRISÉ:** Okay. Thank you.

19 Commissioner Graham.

20 **COMMISSIONER GRAHAM:** I think Ms. Clark took  
21 the words right out of my mouth. I was going to ask our  
22 legal staff, Ms. Helton, what is the downside to us just  
23 denying this? I mean, there's no -- it's not like  
24 there's a year-long clock or 30-day clock. There's no  
25 prohibition from them coming right back and refileing

1 this thing.

2 **MS. HELTON:** Well, the legal ramification in  
3 my mind if you deny it is then you have given Schef's --  
4 or Mr. Wright's client an appealable order. If he were  
5 to withdraw it, then his, his legal ramification is that  
6 he can come back and file another petition.

7 **CHAIRMAN GRAHAM:** But what's the downside  
8 about giving him an repealable order? I mean, we're  
9 just saying that we are not comfortable with the facts  
10 as they're set out.

11 **MS. HELTON:** Oh, no. I'm not, I'm not saying  
12 that at all. I'm just saying there could be a potential  
13 next legal step if you were to deny the petition. And  
14 I'm not suggesting that Mr. Wright would appeal, appeal  
15 any decision to deny the petition.

16 **COMMISSIONER GRAHAM:** And I am not trying to  
17 hammer anything down Mr. Wright's throat. I'm just  
18 trying to understand the difference between the two.  
19 But thank you.

20 **CHAIRMAN BRISÉ:** Okay.

21 **MR. WRIGHT:** Mr. Chairman.

22 **CHAIRMAN BRISÉ:** Yeah.

23 **MR. WRIGHT:** For the record, I will request,  
24 in the form of an ore tenus motion, that we be permitted  
25 to extend the clock and defer action to the next

1 convenient Agenda Conference, whether that's  
2 December 17th or January, during which time I would have  
3 an opportunity to confer with my client and to decide  
4 whether to withdraw the petition or to come back and ask  
5 y'all to vote on it. So that's my motion. Thank you.

6 **CHAIRMAN BRISÉ:** Understood. And since we  
7 are, since we are in, in, in posture right now, it's a  
8 decision by the full Commission to take that up.

9 So Commissioner Graham.

10 **COMMISSIONER GRAHAM:** Well, then I guess I  
11 will offer the right motion, that we would -- given  
12 the -- and I guess, Ms. Helton, you can tell us, can we  
13 waive the 90-day clock, or since he's granted the  
14 permission, with his permission we can waive the 90-day  
15 clock and basically table this until the first meeting  
16 in January?

17 **MS. HELTON:** I believe that the 90-day clock  
18 exists for the benefit of Mr. Wright's client. And  
19 because of that reason, I believe that Mr. Wright can  
20 waive the 90-day clock and you can accept that.

21 **COMMISSIONER GRAHAM:** Okay. So I would like  
22 to make a motion that we table this, this agenda item,  
23 with the permission for Mr. Wright -- until the first  
24 meeting, the first agenda meeting we have in January.

25 **MS. CLARK:** Mr. Chairman, I hate to interrupt,

1 but he's just made a motion. We've not had the  
2 opportunity to respond to that.

3 I would -- we, we would like to confer. Could  
4 you give us about five minutes?

5 **COMMISSIONER GRAHAM:** Actually it was me that  
6 made the motion.

7 **CHAIRMAN BRISÉ:** Well, so procedurally,  
8 procedurally we are --

9 **MS. CLARK:** I beg your pardon.

10 **CHAIRMAN BRISÉ:** Procedurally we are in --  
11 there's a motion and we don't have a second yet, but  
12 there are comments that are going to be made. So let's,  
13 let's sort of back up and analyze where we are.

14 So we have a motion on the floor. I need a  
15 second.

16 **COMMISSIONER BROWN:** Yes.

17 **CHAIRMAN BRISÉ:** Actually we have two motions  
18 on the floor. You're absolutely right. We have two  
19 motions on the floor.

20 We need to decide what we want to do with the  
21 first motion, whether we're going to dispose of that  
22 motion at this time and look at the second motion. So  
23 we're clear on what the first motion is, that's the  
24 motion by Commissioner Graham -- I mean Commissioner  
25 Brown. It was seconded by Commissioner Balbis. Okay?

1 So I'm looking to the maker of the motion to see what is  
2 the disposition of that motion.

3 **COMMISSIONER BROWN:** Thank you. And I had my  
4 light on. I was trying to say I will gladly withdraw my  
5 motion if it is the will of the Commission to take up  
6 Commissioner Graham's motion to table the item. So I'm  
7 looking for guidance. Before I withdraw that motion,  
8 I'd like a little bit of input from, from you all to see  
9 if there's a flavor to entertain that and extend some  
10 professional courtesy to Mr. Wright.

11 **CHAIRMAN BRISÉ:** Sure. All right. So I  
12 always like to hear from the person who made the motion  
13 and the person who seconded the motion. Commissioner  
14 Balbis.

15 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
16 I think, I think I've made my concerns known. But  
17 procedurally, and I think I agree with what Commissioner  
18 Brown is indicating, that, you know, if the will of the  
19 Commission is to table this, then obviously the other  
20 motion would be withdraw. And if so, then technically  
21 we'd be taking up Commissioner Graham's motion first.  
22 And if that is the case, I would like the opportunity  
23 for the other parties to respond to that, to that  
24 motion.

25 **CHAIRMAN BRISÉ:** Sure. So, so we have

1 consensus between the maker of the motion and the  
2 seconder of the motion that they would like to withdraw  
3 the motion and hear from the parties. Now recognizing  
4 that, you all asked to confer, an opportunity to confer.  
5 So we have a motion, right, and so we need a second to  
6 that motion because you all are going to confer based  
7 upon that motion, if I'm correct. Ms. Clark.

8 **MS. CLARK:** Actually I wanted to be able to  
9 respond to his oral motion before you take a vote.

10 **CHAIRMAN BRISÉ:** Understood, and I understood  
11 when you said that the first time. But we have a motion  
12 from, from the Bench, so -- which is a little different  
13 than the response from, from Mr. Wright, to Mr. Wright.

14 **MS. CLARK:** Well, can I, can I --

15 **CHAIRMAN BRISÉ:** But I will give you that  
16 opportunity to make your statement.

17 **MS. CLARK:** Well, here -- what is, what is  
18 being offered, that between now and January he has the  
19 opportunity to withdraw it. But when we come back in  
20 January, it's -- there's no more presentation, there's  
21 no more conversation on this, and you go strictly to  
22 your vote?

23 **CHAIRMAN BRISÉ:** That's a good question.

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

1 I am unclear procedurally, and I guess I just  
2 didn't hit that button fast enough this time. I'm going  
3 to work on that on the next one.

4 But my understanding is that Commissioner  
5 Brown made a motion, that it was seconded, that we were  
6 in discussion. And then prior to me being able to  
7 comment in that discussion, my good friend and colleague  
8 Commissioner Graham got very excited and eager and I  
9 guess procedurally offered a substitute motion that has  
10 not been seconded. So are we in the posture to discuss  
11 the first motion or the second unseconded motion or  
12 neither?

13 **CHAIRMAN BRISÉ:** Well, right now we're in the  
14 posture for neither because we don't have a second and  
15 we have a motion that has been withdrawn. So we are  
16 back to --

17 **COMMISSIONER EDGAR:** I don't believe that  
18 first motion has been withdrawn, Mr. Chairman, unless I  
19 heard incorrectly.

20 **COMMISSIONER BROWN:** Mr. Chairman, may I?  
21 Because I -- that --

22 **CHAIRMAN BRISÉ:** Sure. Hold on. Hold on.  
23 Hold on. Hold on. Hold on. Maybe I'm missing  
24 something.

25 **COMMISSIONER EDGAR:** Or maybe I am.



1           **CHAIRMAN BRISÉ:** Because, because the  
2 agreement is that Commissioner Brown and Commissioner  
3 Balbis would agree to withdraw their motion if we take  
4 up the second motion. Is that where we are? Is that my  
5 understanding?

6           **COMMISSIONER BROWN:** Not from perspective, but  
7 maybe from Commissioner Balbis'. Mine was to get a  
8 sense of whether we are in -- whether we want to  
9 entertain the second motion, and then I would retract my  
10 motion. But I'm not, I have not withdrawn my motion  
11 yet.

12           **CHAIRMAN BRISÉ:** Okay. So then we are still  
13 on the first motion. Okay. So, so let's back it all up  
14 and we're back on the first motion. Sorry everyone.  
15 We're back on the first motion, and we're in discussion  
16 on the first motion.

17           Commissioner Edgar.

18           **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
19 I told you I was going to get faster with that button.

20           I have enjoyed listening to the discussion and  
21 the questions today. I had a long discussion with our  
22 staff in my briefing yesterday on this, and then also  
23 with my personal staff. And walking in here today I had  
24 some questions about the legal ramifications, how the  
25 statutory and policy underpinning of *PW Ventures*

1 interrelates or does not with the particular factual  
2 situation that came to us as part of the declaratory  
3 statement request and the added information to the staff  
4 request for information. And listening to the  
5 discussion today I have more questions than I did even  
6 when I walked in. And factual gaps I do believe exist  
7 that are -- that could be meaningful, and still the  
8 legal underpinnings and the ramifications are, are not  
9 clear enough to me to be comfortable to proceed with a  
10 yes.

11 I think we have made very clear that there are  
12 gaps in information and questions that we have, and I  
13 appreciate us all working together as always and wanting  
14 to give the advocates before us all courtesy, but in  
15 this instance I do believe it would be neater to vote no  
16 to the staff recommendation, recognizing the questions  
17 that have arisen, and then the client and their  
18 advocates can choose whether to move forward or not. I  
19 think it would be cleaner for all parties and cleaner  
20 for this Commission, and I say that with all courtesy  
21 offered.

22 **CHAIRMAN BRISÉ:** All right. Any further  
23 comments? Okay. So we have a motion; it's seconded.  
24 Additional comments?

25 Okay. Seeing none, all in favor, say aye.

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(Vote taken.)

All right. Thank you very much.

**MR. WRIGHT:** Thank you, Commissioner.

**CHAIRMAN BRISÉ:** No problem.

(Agenda item concluded.)

\* \* \* \* \*

1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3  
4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that I  
9 stenographically reported the said proceedings; that the  
10 same has been transcribed under my direct supervision;  
11 and that this transcript constitutes a true  
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,  
14 employee, attorney or counsel of any of the parties, nor  
15 am I a relative or employee of any of the parties'  
16 attorney or counsel connected with the action, nor am I  
17 financially interested in the action.

18 DATED THIS 18<sup>th</sup> day of December  
19 2013.

20  
21 Linda Boles

22 LINDA BOLES, CRR, RPR  
23 FPSC Official Commission Reporters  
24 (850) 413-6734  
25

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Southeast Renewable )  
Fuels, LLC, for a Declaratory ) DOCKET NO. 130235-EQ  
Statement Regarding Co-Ownership )  
Of Electrical Cogeneration ) FILED: October 31, 2013  
Facilities in Hendry County )  
\_\_\_\_\_ )

SOUTHEAST RENEWABLE FUELS, LLC'S NOTICE OF FILING RESPONSES  
TO DATA REQUESTS NOS. 1-9 PROPOUNDED BY THE STAFF  
OF THE FLORIDA PUBLIC SERVICE COMMISSION

As requested by the Staff of the Florida Public Service Commission, through a letter from Rosanne Gervasi, Senior Attorney, dated October 22, 2013, Southeast Renewable Fuels, LLC ("Southeast" or "Southeast Renewables"), hereby files its responses to the Staff's First Data Requests Nos. 1-9.

Respectfully submitted this 31st day of October, 2013.



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Attorneys for Southeast Renewable Fuels, LLC

Parties/Staff Handout  
Internal Affairs/Agenda  
on 12/3/13  
Item No. 4

## RESPONSES TO STAFF'S FIRST DATA REQUESTS

### Preliminary Statement

For convenience, Southeast's responses to the Staff's Data Requests are provided following each part and subpart of the Data Requests, using a different font. The following terms are used in these responses. The Confidential Partner referenced in Southeast's Petition for Declaratory Statement is also referred to as the "CO2 Plant" in these responses. The term "Power Plant" means the electrical generating equipment that will produce the electricity to be used by Southeast's Ethanol Plant and the CO2 Plant. Southeast and the Confidential Partner are sometimes referred to collectively as the "Joint Owners" and individually as a "Joint Owner." The Joint Venture Agreement contemplated by Southeast and the Confidential Partner is sometimes referred to as the "JVA."

In Paragraph 13 of the above-referenced Petition, Southeast states that it and the Confidential Partner will jointly own the electrical generation equipment via undivided ownership interests, and that each party's interest (ownership share) will be at least as great as its maximum power requirements. Please clarify this ownership arrangement by providing responses to the following staff data requests:

1. If Southeast and the Confidential Partner's ownership interests in the electrical generation equipment are undivided, how can they own specific shares in that equipment?

### Southeast Renewable Fuels Response

There are no "specific shares" involved in an undivided ownership arrangement. Each of Southeast and the Confidential Partner (CO2 Plant) will own a percentage ownership interest in the proposed Power Plant and the electricity produced by the Power Plant with their rights and obligations defined by a Joint Venture Agreement between them. Essentially, they will each be entitled to receive and use defined amounts of the Power Plant's capacity (measured in kilowatts and megawatts) and electrical energy produced (measured in kilowatt-hours or megawatt-hours) according to their ownership percentages of the jointly owned generating equipment. The undivided ownership interests will be analogous, if not identical, to the "undivided interest in the cogeneration assets" that, in an earlier declaratory statement proceeding, Seminole Fertilizer proposed to lease from the yet-to-be-created limited partnership that would own

the cogeneration assets. In Re: Petition of Seminole Fertilizer Corporation for a Declaratory Statement Concerning the Financing of a Cogeneration Facility, 90 FPSC 11:126, 129.

2. What percentages of the total generation will be allocated to Southeast and to the Confidential Partner?

Southeast Renewable Fuels Response

At least initially, Southeast and the Confidential Partner expect that Southeast will own a minimum of 5,500 kW (22 percent) of the total generating capacity of the Power Plant, and that the CO2 Plant will own a minimum of 1,500 kW (6 percent) of the Power Plant, and that, correspondingly, each will be able to receive and use up to its respective share of the electrical energy produced over any period of time. Ownership of the additional capacity, i.e., the capacity above the sum of Southeast's minimum of 5,500 kW plus the CO2 Plant's minimum of 1,500 kW, will be negotiated and specified in the JVA. It is possible, although not finally determined, that Southeast may initially own the balance of the Power Plant's capacity, i.e., 23,500 kW if the CO2 Plant decides to own only 1,500 kW of the Plant's capacity.

- a. What will happen if the electric demand of one of the owners exceeds its allocated portion of the output of the generating unit?

Southeast Renewable Fuels Response

As contemplated by Southeast and the Confidential Partner, this will not happen. Although the final details have not been determined, one possibility is that the Joint Venture Agreement would provide that each Joint Owner must demonstrate that its total connected load is no greater than its ownership share. For example, suppose that the CO2 Plant has total connected load, including every pump, motor, lamp, light fixture, computer, coffee-maker, radio, television, or any other piece of equipment that uses electricity, of 1,500 kW. The CO2 Plant could be required by the JVA to have an engineer certify that this was and is the CO2 Plant's maximum possible load. Another possibility, obviously not desirable because of the extra expense that would be involved, would be for each Joint Owner to have a circuit breaker or relay switch at its meter that would open - break the circuit - if the respective owner's load were to reach the kW value of its ownership share. For example, assume that the CO2 Plant's ownership share was



1,500 kW; a breaker or interrupting relay could be installed at the meter from the Power Plant to the CO2 Plant that would cause the circuit to open if more than 1,500 kW of load were to be sensed at the meter and breaker.

b. Will the ownership of the generating unit be allocated on a "sliding scale?"

Southeast Renewable Fuels Response

No.

c. Will Southeast and the Confidential Partner be able to change their ownership shares over time?

Southeast Renewable Fuels Response

Yes. The Joint Venture Agreement will contain specific terms providing for such changes in ownership shares.

d. Are there any limits on the frequency of those changes?

Southeast Renewable Fuels Response

Although the details have not been determined, Southeast and the Confidential Partner contemplate that there will be limits on the frequency of any changes, probably annually or semi-annually. Further, the definitive JVA will provide explicitly that neither of the Joint Owners can use more than its percentage ownership share as measured by either kilowatts of demand or kilowatt-hours of electrical energy, at any time.

e. Will there be terms fixed at the outset, or will any change in ownership require new negotiation?

Southeast Renewable Fuels Response

Although the details have not been determined, Southeast and the Confidential Partner contemplate that the terms for purchasing additional ownership interests in the Power Plant (i.e., increasing a Joint Owner's percentage of its undivided ownership in the Power Plant) will be specified in the JVA at the outset of the joint

ownership arrangement. The specified terms may include fixed prices, e.g., a schedule of prices for additional capacity that would apply in each year, or they might include an objectively defined formula for determining the price in any year. Thus, any change in ownership would not require any new negotiations.

f. Will this allocation be based on capacity or total energy production?

Southeast Renewable Fuels Response

Southeast and the Confidential Partner contemplate that their respective undivided ownership interests will be based on the capacity of the Power Plant, and would represent the maximum capacity that either Joint Owner could utilize at any moment. This is the only way to ensure that one Joint Owner is not receiving power from the other Joint Owner's share of the Power Plant at any time. See Southeast Renewable Fuels' response to Staff's Request No. 2.a above.

g. How is this percentage expected to be determined? Is it expected to vary on an instantaneous, daily, weekly, monthly, or yearly basis?

Southeast Renewable Fuels Response

See responses to 2.a and 2.d above. The undivided ownership interests, whether measured in kilowatts or in percentages, will be determined in the Joint Venture Agreement, subject to periodic revision as may be provided in the JVA. The actual percentages of the Power Plant's output that each Joint Owner will use from instant to instant, or from hour to hour, or from month to month, will vary, but neither Joint Owner will ever be able to use more of the Power Plant's capacity than its undivided ownership interest percentage. In the example above, the CO2 Plant will not be able to draw more power from the Power Plant than its percentage ownership interest, e.g., 1,500 kW, and thus it will be unable to use more than 1,500 kWh per hour of electric energy produced by the Power Plant.

3. In Paragraph 11 of the Petition, Southeast states that the electrical generation capacity of the project is initially expected to be 25 megawatts (MW), that the Ethanol Plant will have a maximum electric demand of approximately 10 MW, and that the Carbon Dioxide Plant will have a maximum electric demand of approximately 1.5 MW. Since the total output of the generating unit will be more than twice the total of the maximum demand of both owners, how will the ownership of the portion of the generating unit representing the remaining 13.5 MW be divided?

#### Southeast Renewable Fuels Response

Initial Note: The statement that the Ethanol Plant would have a maximum electric demand of 10 MW was inadvertently incorrect; the correct value, based on the best information available at this time, is that the Ethanol Plant will have a maximum demand of approximately 5.5 MW.

The details of the Joint Venture Agreement have not been finalized, nor have the Parties - Southeast and the CO2 Plant - decided on exactly what their ownership interest percentages are going to be; those ownership interests will be negotiated and specified in the JVA. Whatever those ownership interests are, they will apply to the Power Plant's total capacity, and not specifically to the "portion of the generating unit representing the remaining" balance of the Power Plant's capacity above the sum of Southeast's and the CO2 Plant's loads. In other words, using the possible Southeast 94%, CO2 Plant 6% example, Southeast would own an undivided ownership interest entitling it to use up to 23,500 kW of the Power Plant's capacity and also giving it ownership of up to 94 percent of the Plant's output; however, if the CO2 Plant owns an ownership interest entitling it to 1,500 kW of the Plant's capacity and the corresponding amount of electrical energy produced, it will be entitled to the full 1,500 kW, and the full 1,500 kWh per hour of electrical energy produced. As explained in Southeast's response to Request No. 4 below, if the CO2 Plant owns an undivided ownership interest of 1,500 kW, and in a given hour it used only 1,000 kWh, and the Power Plant was operating at full capacity, the CO2 Plant would receive both the 1,000 kWh that it was using to run its operations, and also 500 kWh worth of the revenues from sales in that hour. Following this example, if, the Power Plant was operating at full load and the CO2 Plant was using its full 1,500 kW (1,500 kWh per hour) entitlement, then the CO2 Plant would get its 1,500 kWh for its own use, but it would not share in any of the

revenues from sales to utilities because it would be using its entire ownership interest to serve its own needs.

Southeast believes that this is irrelevant to the declaratory statements requested, because under any scenario, as explained in Southeast's response to Staff's Request No. 2.a above, neither of the Joint Owners will be able to use more power from the Power Plant than its undivided ownership interest percentage.

4. What will happen if the demand of one of the owners is consistently less than the stated maximum? For example, after twelve months of operation, the Carbon Dioxide Plant never reached 1.5 MW of demand, but instead peaked at 1.1 MW. What impact would this situation have on the ownership of the generating unit?

Southeast Renewable Fuels Response

The answer to the second question in this data request is that there would be no impact on the ownership of the Power Plant if one of the Joint Owners consistently used less than its ownership interest amount. If the demand and energy usage of one of the joint owners is consistently less than the amount of its undivided ownership interest, the only thing that will happen is that the Joint Owner who is using below its share will receive a correspondingly increased share of revenues from selling excess power to a utility, assuming that such sales were being made. Each Joint Owner will own its proportionate share of the electrical energy produced by the Power Plant and will also own its proportionate share of the electrical energy being sold to a utility, such that, if there is more energy being sold to a utility, there will be more revenues and each Joint Owner will be entitled to its share of revenues based on the difference between its ownership interest and its usage in the given hour, provided, of course, that neither party can ever get paid for such sales for an amount of electric energy greater than the difference between its ownership interest and the amount of that interest that it used for its own internal purposes. For example, if the CO2 Plant owns an undivided ownership interest of 1,500 kW, and in a given hour it used only 1,000 kWh, and the Power Plant was operating at full capacity, the CO2 Plant would receive 500 kWh worth of the revenues from sales in that hour.

5. If either Southeast or the Confidential Partner's need for energy exceeds its allocation from the generator, how will it serve this extra load?

Southeast Renewable Fuels Response

In this scenario, the Joint Owner who needed additional energy would have to obtain that energy by purchasing it as "supplementary power" (also referred to as "supplemental power") from Glades Electric Cooperative.

6. How will the company operating the generating equipment be compensated by Southeast and the Confidential Partner?

Southeast Renewable Fuels Response

The details of the compensation structure for the O&M Company have not been finalized, but Southeast and the Confidential Partner contemplate that the O&M Company would be compensated on a pre-determined monthly or annual fee basis for the service of operating and maintaining the Power Plant, and that there would not be payments to the O&M Company for specific amounts of energy produced by the Power Plant or consumed by either of the co-owners. That is, the Joint Owners do not contemplate any sort of arrangement where the O&M Company would be compensated on the basis of electricity produced for use by, or consumed by, either of the Joint Owners.

a Will compensation be a fixed sum or tied to energy production?

Southeast Renewable Fuels Response

The details of the compensation structure for the O&M Company have not been finalized, but Southeast and the Confidential Partner contemplate that the O&M Company would be compensated on a pre-determined monthly or annual fee basis (subject to periodic changes based on changes in market conditions or periodic renewals of the contract with the O&M Company) for the service of operating and maintaining the Power Plant, and that there would not be payments to the O&M Company for specific amounts of energy produced by the Power Plant for consumption by either of the Joint Owners.

b Will compensation be evenly split between the two parties, divided according to their ownership shares, or by some other percentage?

Southeast Renewable Fuels Response

The details of the compensation structure for the O&M Company have not been finalized, but Southeast and the Confidential Partner contemplate that their respective shares of the payments made to the O&M Company would be based on their respective ownership percentages of the Power Plant on a capacity basis (e.g., 94% paid by

Southeast and 6% paid by CO2 Plant if the CO2 Plant decides to own only 1,500 kW of the Power Plant's capacity, or whatever other ownership percentages are negotiated by the Joint Owners and specified in the JVA), with the possibility that some of the O&M cost responsibility could be billed and paid on the basis of the electric energy each consumed. For example, the JVA might provide that the fixed O&M costs, e.g., the monthly fee to the O&M Company, would be split on the possible initial 94%-6% ownership percentage basis, and that variable costs (bagasse, startup fuel, chemicals, water, etc.) that vary directly according to the amount of electricity produced would be split on the basis of each Joint Owner's respective share of energy produced (including both energy consumed by the Joint Owners and any energy sold to utilities).

7. Will Southeast and the Confidential Partner separately negotiate the sale of any energy produced beyond their needs, or will the company operating the generating equipment make such decisions unilaterally?

Southeast Renewable Fuels Response

Assuming that this question refers to potential sales of power to utilities, while the details of the JVA have not been finalized, Southeast and the CO2 Plant contemplate that any sales to utilities would be made pursuant to standard offer contracts (firm or as-available), or through negotiated contracts for the sale of firm or as-available energy, and that any negotiations with purchasing utilities would most likely be done through an agent, subject to the approval of the Joint Owners as will be provided for in the JVA. It is possible that the CO2 Plant and Southeast could agree in the JVA that Southeast would be the agent for all power sales to utilities.

8. In Paragraph 11 of the Petition, Southeast states that the electrical generation capacity will be capable of expansion to 50 MW. Will the anticipated expansion of the generating unit change the facts set forth in the Petition?

Southeast Renewable Fuels Response

In Southeast's view, the anticipated expansion will not change any of the facts set forth in the Petition that are relevant to the declaratory statements requested. It will still be true that each Joint Owner will own an undivided ownership interest in the Power Plant that is greater than or equal to its maximum usage or load imposed on the Power Plant.



9. If the generating unit's output is increased to 50 MWs, what will be Southeast and the Confidential Partner's respective ownership percentages?

Southeast Renewable Fuels Response

That is not known at this time, because the expansion may be driven by increases in the electrical requirements of one or both of the Joint Owners, or by a mutual desire to expand the Power Plant to produce more renewable energy for sale to Florida utilities, or possibly other factors and business considerations, or the Joint Owners may simply wish to change their ownership shares so as to effect a different allocation of the proceeds from sales to utilities, such that they might change their respective undivided ownership interests at the time of the contemplated expansion. Under any scenario, however, the relevant facts represented in the Petition will not change: each party's undivided ownership interest will be at least as great as its maximum power requirements, and each of Southeast and the CO2 Plant will also own the title to the electricity produced from its share of the Power Plant.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic delivery this 31st day of October, 2013, on the following:

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Attorney



NORMALLY  
CLOSED



NORMALLY  
CLOSED



Glades Transmission



TWO-WAY FEED



TRANSMISSION  
BREAKER

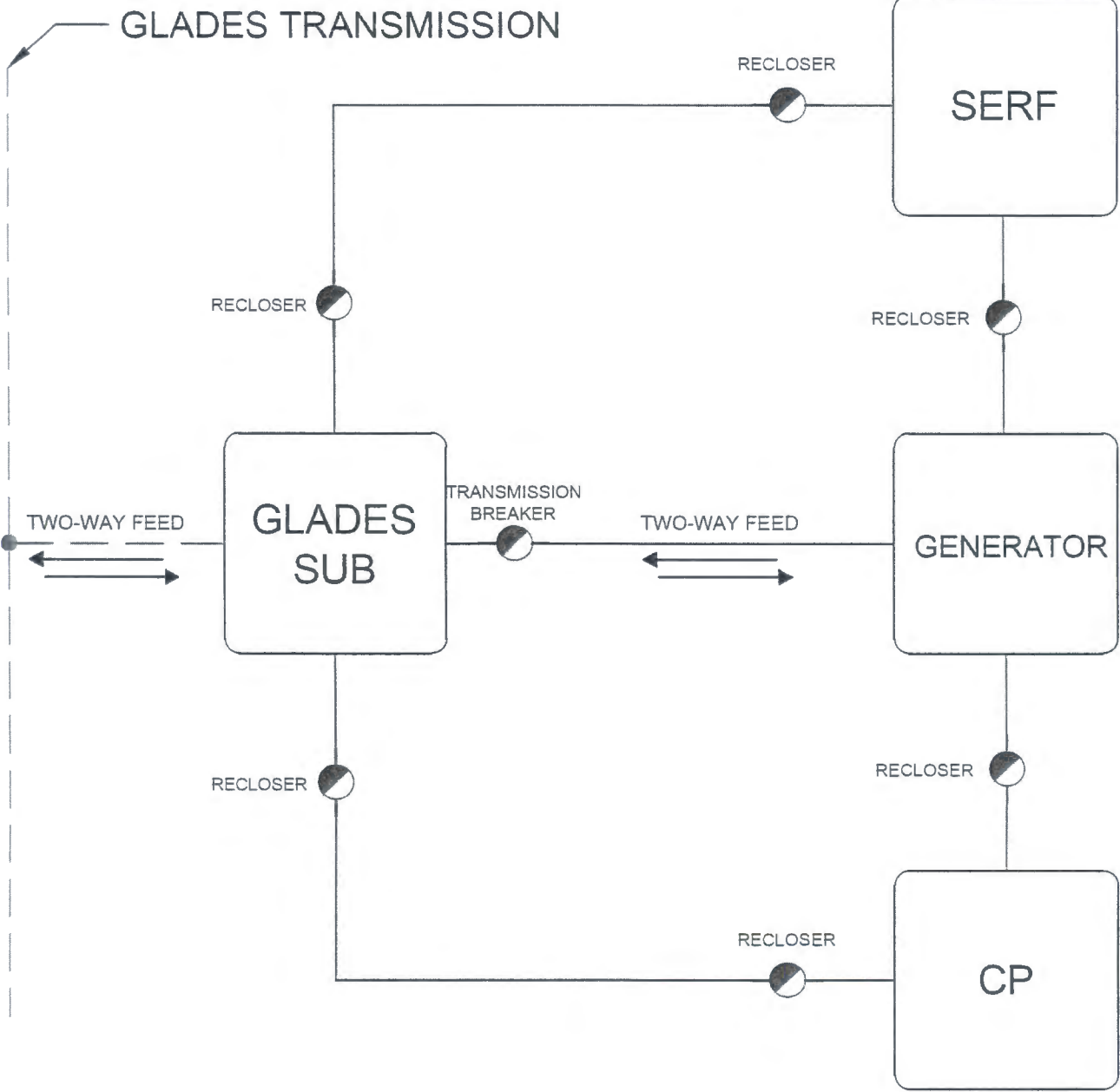
TWO-WAY FEED

Parties/Staff Handout  
Internal Affairs/Agenda  
on 12/3/13  
Item No. 4

GENERATOR ONLY

NOV 2013

NOTES:  
REV1



NOTE: All feeds have the potential to be at transmission or distribution voltages.

GENERATOR: FULL CAPACITY

NOV 2013

NOTES:

REV2