

STATE OF FLORIDA

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(850) 413-6199

# Public Service Commission

September 17, 2013

Mr. Ken Plante, Coordinator  
Joint Administrative Procedures Committee  
Room 680, Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1400

RECEIVED - FPSC  
13 SEP 17 AM 8:29  
COMMISSION  
CLERK

Re: Docket No. 130235-EQ – Petition for declaratory statement regarding co-ownership of electrical cogeneration facilities in Hendry County by Southeast Renewable Fuels, LLC.

Dear Mr. Plante:

The Florida Public Service Commission received a Petition for Declaratory Statement from Southeast Renewable Fuels, LLC, on September 12, 2013. A copy of the Petition is enclosed. A notice was published in the Florida Administrative Register on September 17, 2013. Please do not hesitate to contact me at (850) 413-6224 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosanne Gervasi".

Rosanne Gervasi  
Senior Attorney  
Office of the General Counsel

RG

cc: Office of the Commission Clerk  
Enclosure

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition of Southeast Renewable Fuels, LLC, for a Declaratory Statement Regarding Co-Ownership Of Electrical Cogeneration Facilities in Hendry County )  
 ) DOCKET NO. \_\_\_\_\_-EQ  
 )  
 ) FILED: September 12, 2013  
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**PETITION FOR DECLARATORY STATEMENT BEFORE  
THE FLORIDA PUBLIC SERVICE COMMISSION**

Southeast Renewable Fuels, LLC ("Southeast Renewables," "Southeast," or "Petitioner"), pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code ("F.A.C."), hereby files this Petition for Declaratory Statement ("Petition") through which Southeast respectfully requests that the Florida Public Service Commission ("Commission" or "PSC") declare the status of the ownership arrangements and transactions described herein under the Commission's statutes regarding the regulation of utilities in Florida.

In summary, Southeast Renewables and a business partner who wishes to remain anonymous (the "Confidential Partner") are developing industrial facilities in Hendry County, Florida, that will produce ethanol, carbon dioxide, and potentially other products from renewable energy resources. Those industrial facilities will include a cogeneration facility that will produce electricity and useful thermal energy for use in the ethanol and carbon dioxide production facilities. Southeast and

the Confidential Partner will co-own the electrical generation components of the cogeneration facility, and will obtain electricity produced by the co-owned electrical generating equipment for use in their respective industrial facilities. Accordingly, Southeast and the Confidential Partner are sometimes referred to herein as the "Joint Owners" of the electrical generating equipment, which is also referred to as the "Power Plant." Southeast Renewables will own and operate the ethanol production plant ("Ethanol Plant"), and the Confidential Partner will own and operate the Carbon Dioxide Plant (or "CO<sub>2</sub> Plant"). Consistent with applicable precedents of the Commission, Southeast believes and concludes that the contemplated transactions, including the co-ownership of the electrical generating equipment in the cogeneration facility, will not subject either of them to regulation by the Commission as a public utility, and respectfully seek the Commission's declaration that their conclusion is correct as a matter of law, together with certain related declarations.

#### **PROCEDURAL BACKGROUND**

1. The agency whose declaratory statement is sought by this Petition is as follows.

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

2. The names, addresses, and telephone numbers of the Petitioner is as follows.

Southeast Renewable Fuels, LLC  
6424 NW 5th Way  
Ft. Lauderdale, Florida 33309  
(954) 492-1588  
E-mail: [Apepper@serenewablefuels.com](mailto:Apepper@serenewablefuels.com)

3. The names, addresses, and contact information of the Petitioner's representatives, to whom copies of all orders, notices, pleadings, and other documents filed or issued in this proceeding should be delivered, are as follows.

Robert Scheffel Wright  
[schef@gbwlegal.com](mailto:schef@gbwlegal.com)  
John T. LaVia, III  
[jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com)  
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,  
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Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416

**DECLARATORY STATEMENTS REQUESTED**

4. On the facts set forth in this Petition, and based on the analysis set forth below, Southeast Renewables respectfully requests that the Commission issue an order declaring that:

- a. The receipt and use of electricity by Southeast and the Confidential Partner from the jointly owned electrical generating equipment, as described herein, will not result in or be deemed to constitute an unlawful sale of electricity;
- b. The receipt and use of electricity by Southeast and the Confidential Partner from the jointly owned electrical generating equipment, as described herein, will not cause either Southeast or the Confidential

Partner to be deemed a "public utility" as that term is defined in Section 366.02(1), Florida Statutes; and

- c. The receipt and use of electricity by Southeast and the Confidential Partner from the jointly owned electrical generating equipment, as described herein, will not cause either Southeast or the Confidential Partner to be subject to regulation by the Commission.

**STATUTES AND ORDERS RELEVANT TO THE  
REQUESTED DECLARATORY STATEMENT**

5. The statutes relevant and applicable to the requested declaratory statement are as follows.

- a. Section 120.565, Florida Statutes, which provides in pertinent part as follows:

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

- b. Section 366.02(1), Florida Statutes, which provides in its entirety as follows:

366.02 Definitions.—As used in this chapter:

(1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and

existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

6. Although the precise question posed here has never been expressly addressed by the Commission, several Commission orders are relevant to the requested declaratory statements as to the status of Southeast and the Confidential Partner as joint owners of electrical generating equipment and joint users of that equipment's electrical output, including the following.

- a. In Re: Petition of PW Ventures, Inc. for Declaratory Statement in Palm Beach County, "Order Denying Declaratory Statement," PSC Docket No. 870446-EU (Fla. Pub. Serv. Comm'n, October 22, 1987), aff'd sub nom., PW Ventures v. Nichols, 533 So. 2d 281 (Fla. 1988) ("PW Ventures").
- b. In Re: Petition of Timber Energy Resources, Inc., for a Declaratory Statement Concerning Sales as "Private Utility" Status, "Order Granting Petition for Declaratory Statement," PSC Docket No. 861621-EU, Order No. 17251 (Fla. Pub. Serv. Comm'n, March 5, 1987) ("Timber Energy Resources").
- c. In Re: Petition of Seminole Fertilizer Corporation for a Declaratory Statement Concerning the Financing of a Cogeneration Facility, 90 FPSC 11:126 ("Seminole Fertilizer").

- d. In Re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, "Declaratory Statement," PSC Docket No. 860725-EU, Order No. 17009 (Fla. Pub. Serv. Comm'n, December 22, 1986) ("Monsanto").
- e. In Re: Petition for a Declaratory Statement Concerning Financing and Ownership Structure of a Cogeneration Facility in Polk County, by Polk Power Partners, L.P., "Order Granting Petition for Declaratory Statement in the Negative," PSC Docket No. 931190-EQ, Order No. 94-0197-DS-EQ (Fla. Pub. Serv. Comm'n, February 16, 1994) ("Polk Power Partners").

**HOW THE STATUTES, RULES, AND ORDERS MAY SUBSTANTIALLY AFFECT  
THE PETITIONER'S INTERESTS**

7. Pursuant to Rule 28-105.002(5), F.A.C., the Petitioner provides the following statement as to how the above-cited statutes and orders may substantially affect the interests of Southeast and its Confidential Partner. Chapter 366, Florida Statutes, establishes and prescribes the Commission's jurisdiction over "public utilities," as that term is defined in Section 366.02(1), Florida Statutes; such "public utilities" are subject to extensive regulation by the Commission. The above-cited orders have explained and defined the Commission's jurisdiction over certain transactions involving the supply of electricity; the Commission has held that self-service or self-supply is not jurisdictional, such that entities engaged in a self-service arrangement are not subject to the Commission's

regulatory jurisdiction.<sup>1</sup> However, the Commission has never addressed the precise question presented here, which is whether joint owners of electrical generating equipment may serve their respective electricity needs from such jointly owned equipment without being deemed to be a "public utility" subject to the Commission's jurisdiction. The substantial interests of Southeast and its Confidential Partner will be directly affected by the Commission's interpretation of Chapter 366 and the above-cited orders, in that the Commission's declaration of their status will determine whether they are subject to the Commission's regulation or not, which in turn will determine whether they can pursue the joint ownership business arrangement by which they plan to self-serve their electrical requirements at the renewable energy complex where the Ethanol Plant and the CO<sub>2</sub> Plant will be located. The Commission's declarations could even determine whether certain major facilities within the renewable energy complex, e.g., the carbon dioxide recovery and refinement plant, are developed at all.

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<sup>1</sup> For example, in Monsanto, the Commission held that a "yet-to-be-selected manufacturer/lessor" of cogeneration equipment would not "be deemed a public utility under Florida law." Monsanto at 2, 5. Similarly, in Seminole Fertilizer, the Commission declared that the proposed financing and ownership structure presented in that case would not cause the petitioner or a yet-to-be-formed partnership/lessor or the individual partners in that partnership to be subject to regulation by the Commission. Seminole Fertilizer at 2, 7.



**SUMMARY OF ANALYSIS AND REQUESTED DECLARATORY STATEMENTS**

8. Southeast Renewables and the Confidential Partner will jointly own - i.e., jointly hold title to - the electrical generating equipment that will serve their industrial facilities, the Ethanol Plant and the CO<sub>2</sub> Plant, respectively, with their respective ownership shares being at least as great as their respective maximum electrical requirements. Any electricity generated above the needs of Southeast and the Confidential Partner will be sold at wholesale to a Florida utility, e.g., Glades Electric Cooperative or Seminole Electric Cooperative. Because Southeast and the Confidential Partner will co-own the electrical generating equipment, their respective use of the electricity produced by that equipment is self-supply, or self-service, and does not involve either the supply of electricity to or for the public, or the retail sale of electricity by one party to another. Under the Commission's governing statutes and following the reasoning articulated in Commission orders addressing the regulatory status of parties where power was supplied by one party to a non-identical party, the proposed joint ownership arrangements do not result in a retail sale of electricity and do not otherwise invoke the regulatory jurisdiction of the Commission over public utilities. Accordingly, the Commission should grant the requested declaratory statements.

**NEED FOR THE DECLARATORY STATEMENT**

9. Southeast Renewables and the Confidential Partner are developing an integrated renewable energy production complex that will include, at a minimum, an electrical cogeneration facility, an ethanol production plant, i.e., the Ethanol Plant, and a carbon dioxide recovery and purification plant, i.e., the CO<sub>2</sub> Plant, on a site in Hendry County, Florida; these industrial facilities are referred to collectively as the "Project." The ethanol will be produced from, and the cogeneration facility will be fueled primarily by biomass derived from, sweet sorghum that will be grown in the general vicinity of the Project site on fallow or rotational sugar cane lands, as well as dedicated sorghum crop lands. Southeast's and the Confidential Partner's investments in this renewable energy complex are significant, and they need the Commission's declaratory statements requested in this Petition in order to assure Southeast, the Confidential Partner, and financing parties that the transactions will not result in unexpected regulatory consequences, i.e., regulation of Southeast or the Confidential Partner, by the Commission as a public utility.

**STATEMENT OF FACTS**

10. Southeast Renewables and the Confidential Partner are developing an integrated renewable energy production and byproducts manufacturing-processing complex in Hendry County,

Florida. The Project site is located on County Road 835 in eastern Hendry County. At a minimum, the Project will consist of an Ethanol Plant with production capacity of 60,000 gallons per day; a Carbon Dioxide Plant that will recover carbon dioxide from the Ethanol Plant's fermentation process and refine it into food grade CO<sub>2</sub>; renewable-fueled electrical generating equipment ("Power Plant"); and cogeneration equipment that will capture useful thermal energy in the form of steam for use in the Ethanol Plant and the CO<sub>2</sub> Plant. The Ethanol Plant will produce ethanol from sugars derived from sweet sorghum using a proven, standard sugar to ethanol conversion process. The sweet sorghum will be grown in the general vicinity of the Project site on fallow or rotational sugar cane lands, as well as dedicated lands. The Project is designed to double in capacity, for both ethanol and power production, and Southeast expects to proceed with doubling the Ethanol Plant's capacity within the first 24 months of operation. Ground was broken on the Project on March 4, 2013, and at least the Ethanol Plant and the electrical generating and cogeneration equipment are expected to be in commercial operation in early 2015.

11. The electrical generation capacity of the Project is initially projected to be 25 MW and will be capable of expansion to 50 MW (net of the generation equipment's parasitic load). The power block will utilize a conventional boiler in which

sorghum bagasse will be burned to produce steam, which will drive a steam turbine generator to produce electricity. The boiler will also use small amounts of propane, fuel oil, or natural gas as startup fuel. The Ethanol Plant will have a maximum electric demand of approximately 10 megawatts ("MW"), and the Carbon Dioxide Plant will have a maximum electric demand of approximately 1.5 MW.

12. Southeast Renewables will seek certification of the Project as a Qualifying Facility pursuant to applicable rules of the Federal Energy Regulatory Commission. The Qualifying Facility will include the electrical generating equipment; related electrical transmission, distribution, switching, and control equipment; and the cogeneration equipment by which useful thermal energy is recovered from the electrical generating equipment and used in producing ethanol and carbon dioxide.

Ownership & Operation of the Electrical Generation and Cogeneration Equipment

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

will also own the title to the electricity produced from its share of the generating equipment. It is likely that, much of the time, the generating equipment will generate more power than the Joint Owners will use for their own respective needs, and any excess power will be sold to a utility such as Glades Electric Cooperative or Seminole Electric Cooperative.

Southeast and the Confidential Partner will enter into a Joint Venture Agreement (not yet developed) that will provide for the specifics of the arrangement and other provisions appropriate for such business arrangements, but the ownership and title provisions will be as stated above.

14. The electrical generation equipment will be operated by an Operation and Management Company, which will be engaged by a contract with, and paid by, Southeast and the Confidential Partner.

Ownership and Operation of Industrial Facilities (Excluding Electrical Generation & Cogeneration Equipment)

15. Southeast Renewable Fuels, LLC will own and operate the Ethanol Plant, including the bagasse production equipment. The Confidential Partner will own and operate the Carbon Dioxide Plant.

Employment and Economic Development Impacts

16. Assuming that the Ethanol Plant is operating at its initial capacity of 60,000 gallons per day and the Power Plant

is operating at its initial capacity of 25 MW, the Project itself will have approximately 50 direct full-time equivalent positions, and indirect employment is expected to be approximately 150-200 full-time equivalent positions. The Carbon Dioxide Plant is projected to have approximately 10 full-time equivalent positions, and to create additional indirect employment in the region of approximately 10 full-time equivalent positions.

17. The Project - the Ethanol Plant, the Carbon Dioxide Plant, the Power Plant and the cogeneration facilities - will also produce additional tax revenues for Hendry County and the State, and the direct economic activity of the Project will have multiplier-type impacts on employment and economic activity in the region. The total investment in the combined facilities is confidential at this time, but is projected to be well over \$175 million.

**DECLARATORY STATEMENTS REQUESTED**

18. On the facts set forth in this Petition, and based on the analysis set forth below, Southeast Renewables respectfully requests that the Commission issue an order declaring that:

- a. The receipt and use of electricity by Southeast and the Confidential Partner from the jointly owned electrical generating equipment, as described herein, will not result in or be deemed to constitute an unlawful sale of electricity;

- b. The receipt and use of electricity by Southeast and the Confidential Partner from the jointly owned electrical generating equipment, as described herein, will not cause either Southeast or the Confidential Partner to be deemed a "public utility" as that term is defined in Section 366.02(1), Florida Statutes; and
- c. The receipt and use of electricity by Southeast and the Confidential Partner from the jointly owned electrical generating equipment, as described herein, will not cause either Southeast or the Confidential Partner to be subject to regulation by the Commission.

#### ANALYSIS

19. The Commission regulates "public utilities" pursuant to Chapter 366, Florida Statutes. As applicable to the declaratory statements requested in this Petition, the operative language of Section 366.02(1), Florida Statutes, defines a "public utility" as

every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state.

(Emphasis supplied.)

20. In its orders explaining what would or would not render a would-be "supplier" of electricity a "public utility" within the meaning of the statute, the Commission has clearly stated that self-service is non-jurisdictional. Monsanto at 4 ("A customer can clearly chose to serve himself, and 'so long as a customer serves himself without the involvement of regulated utilities, the Commission has no interest in the matter.'")

(citation omitted); see also, PW Ventures at 15 ("Had Pratt and Whitney embarked on this venture under its own auspices, no jurisdictional question would be presented, as jurisdiction attaches to the supply of electricity to another but not to oneself.") In the cases presented to it for decision, the Commission has focused on how closely related the supplier-producer entity and the consumer entity were, i.e., on how closely the proposed transaction was to self-service. See, e.g., Seminole Fertilizer at 6 ("The Commission finds that the lessee/QF (Seminole) and partnership/lessor (Seminole Sub L.P.) are so "related" that the arrangement surmounts the jurisdiction boundary identified in PW Ventures, Inc.")

21. Thus, in this case, where the electricity is produced by generating equipment that is jointly owned by Southeast and the Confidential Partner in proportions that are at least as great as to their respective maximum electrical demands, and where Southeast and the Confidential Partner respectively own - hold title to - the electricity produced from the jointly owned equipment in those proportions, there is only the self-supply of electricity owned by Southeast to Southeast's Ethanol Plant and electricity owned by the Confidential Partner to the Confidential Partner's CO<sub>2</sub> Plant, and separately, possible wholesale sales of excess electricity produced by the Power Plant to a utility such as Glades Electric Cooperative. There



is no retail sale, by any definition, and no supply of electricity by one entity to another, and accordingly, the Commission should declare that the Joint Owners are engaged in self-service and thus exempt from the Commission's regulation as public utilities.

22. The Commission has articulated the principle that self-service is not jurisdictional on multiple occasions. For example, in Monsanto, the Commission stated the following:

A customer can clearly choose to serve himself and "so long as a customer serves himself without the involvement of regulated utilities, the Commission has no interest in the matter."

Monsanto, Order No. 17009 at 4-5.

23. Similarly, in Seminole Fertilizer, the Commission stated that:

The Commission finds no retail sale in the above presentation of facts. The petition presents a scenario where there is, on the one hand, Seminole's self-service generation; and, on the other hand, there is sale of energy to a utility via the limited partnership.

Seminole Fertilizer, Order No. 23729 at 6-7.

24. To the same effect, the Commission's reasoning in several of its orders has focused on whether the supply of electricity by one entity to another involved sufficient "relatedness" between the supplier-producer and the consumer to qualify as non-jurisdictional self-service. By inference, then, where the producer and consumer are identical, this reasoning

leads to the same conclusion expressly articulated in Monsanto and Seminole Fertilizer, i.e., that where the supplier-producer and consumer are the same, there is no retail sale, no "supplying electricity . . . to or for the public," and the Commission's jurisdiction does not attach. For example, in Monsanto, the Commission addressed a case where the owner of the electrical generating equipment would not be the same as the consumer, who would lease the equipment, stating as follows:

Since it is clear from Monsanto's petition that it will not hold legal title to every piece of equipment constituting the proposed cogeneration facility, will a prohibited retail sale occur between the lessor of the QF and Monsanto? Based upon the terms of Monsanto's proposed lease agreement, we conclude that no sale will occur. Monsanto is leasing equipment which produces electricity rather than buying electricity that the equipment generates.

25. Similarly, in PW Ventures, the Commission stated that "The Commission's jurisdiction does not turn on the size of the territory or the number of customers but, more simply, on the supply of electricity to an unrelated entity." PW Ventures, Order No.18302-A at 4. The obvious inference is that self-supply is non-jurisdictional, and even supply to a related entity can be non-jurisdictional, as the Commission determined in Monsanto and Seminole Fertilizer. Again similarly, in Polk Power Partners, the Commission held proposed leasing arrangements to be jurisdictional, stating the following:

In P.W. Ventures, Order No. 18302-A, we held that the supply of electricity to an unrelated entity invoked our jurisdiction. Here, Polk argues that in supplying electricity to an unrelated lessee of its ethanol plant, Polk is, in effect, merely supplying its own facility which is leased out on a "utilities included" basis.

\* \* \*

. . . in Monsanto, generation equipment was leased and the lessee then produced and consumed the power generated. There was no sale of the power to an unrelated entity. Similarly, in Seminole, transactions between Seminole, a QF/lessee, and Seminole Sub L.P., the partnership/lessor, were found not to be transactions between unrelated entities, such as would have invoked our jurisdiction. In effect, no sale of electricity to the public was present.

Polk Power Partners at 3. Again, the Commission focused on the supply of electricity to an unrelated entity as being the test for jurisdiction, clearly implying that provision of electricity by an entity to itself from electrical generating equipment owned by that entity is not jurisdictional.

26. Indicia of Relatedness - Risks of Ownership. In evaluating the relatedness of supplying and consuming entities, the Commission has also examined whether the risks of ownership were borne by the consuming entity as an indicator of relatedness, which would render the transaction non-jurisdictional, or separateness, which would render the supplier a public utility subject to the Commission's jurisdiction. In Monsanto, the Commission determined the relationship between the

lessor-owner of the generating equipment and the lessee-consumer of the electricity to be non-jurisdictional, stating as follows:

All the risks of operation of the facility are retained by Monsanto. The only risks shifted to the lessor under the proposed arrangement are the risks associated with . . . (1) tax law changes . . . (2) the inability of the lessor to utilize the ITC's and depreciation benefits . . . and (3) lack of residual value in the equipment after the expiration of the initial term [of the lease].

Monsanto at 3.

27. The Commission also addressed the risk allocation criterion in PW Ventures, where there was no relationship between PW Ventures, Inc., the proposed electricity supplier, and Pratt and Whitney, the proposed consumer of the power, stating as follows:

The gist of PW Ventures' argument is that the Commission should not insist on jurisdiction when Pratt and Whitney chose to accomplish through a third party what it could have accomplished on its own. But there is a significant difference between assumption of the financial and production risks associated with a cogeneration project and simply purchasing electricity.

PW Ventures at 5.

28. Here, Southeast and the Confidential Partner would be the owners of the electrical generating equipment and would, accordingly, bear all risks of ownership. This fact further confirms that the proposed arrangements and transactions do not involve jurisdictional supply of electricity to or for the public.

29. Related Case - Timber Energy Resources. In Timber Energy Resources, the petitioner, Timber Energy Resources, Inc., owned an industrial park near Telogia, Florida, in which the petitioner owned and operated a qualifying small power production facility that generated electricity, some of which was sold to Florida Power Corporation. Having excess power available, the petitioner sought the Commission's declaration that it could sell electricity to tenants of its industrial park without becoming a public utility. Timber Energy Resources at 1. The petitioner argued that the limitation of service to only those tenants was supplying electricity to something other than the public. Id. at 2-3. The Commission disagreed, holding that the tenants would be customers in a "traditional utility-customer relationship with their provider of electrical energy," and thus that this relationship would be subject to the Commission's regulation. Id. at 3.

30. The arrangements presented by Southeast and the Confidential Partner are clearly different from those in Timber Energy Resources. In Timber Energy Resources, there was one supplier of electricity that owned the generating equipment, and that one supplier proposed to sell power to various unrelated tenants of its industrial park. Here, in contrast, Southeast and the Confidential Partner will own the electrical generating equipment and the electricity produced by that equipment in

proportion to their ownership interests, and as such, the Joint Owners will be supplying themselves.

31. In Timber Energy Resources, the Commission also noted an additional policy reason for finding jurisdiction: the fulfillment of the Commission's basic function, which is to protect captive customers from potential abuses of monopoly power. Id. at 3. Here, there is no need for protection from monopoly power, because the Joint Owners will be both the owner-suppliers and the consumers of electricity produced by the electrical generating equipment that they own.

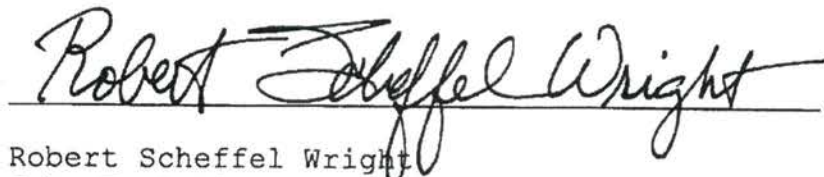
#### **CONCLUSIONS AND RELIEF REQUESTED**

32. As explained above, the arrangement proposed by Southeast Renewables and the Confidential Partner is joint ownership of electrical generating equipment, in which each Joint Owner would own an undivided ownership interest in generating equipment at least as great as its maximum electrical requirements and in which each would own the electricity produced by its share of the generating equipment. On these facts, there is only self-supply or self-service of electricity by the Joint Owners to their respective electricity-consuming industrial facilities, and the sale of excess power to a utility such as Glades Electric Cooperative or Seminole Electric Cooperative. Accordingly, the proposed arrangements and transactions do not render either Southeast or the Confidential

Partner a public utility subject to the Commission's jurisdiction under Chapter 366, Florida Statutes, and the Commission should issue the requested declaratory statements.

WHEREFORE, Southeast Renewable Fuels, LLC, respectfully requests that the Florida Public Service Commission enter its order granting the declaratory statements set forth above.

Respectfully submitted this 12th day of September, 2013.

A handwritten signature in cursive script that reads "Robert Scheffel Wright". The signature is written in black ink and is positioned above a horizontal line.

Robert Scheffel Wright  
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Attorneys for Southeast Renewable Fuels, LLC