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1	4	5.1 Project Summary	Proposals must clearly specify the contract type.	Zilkha: Please confirm that individual proposals may contain multiple options for the contract type and pricing options for either a PPA or PSE ownership without requiring multiple proposal packages be submitted for each option.	Individual proposals may contain multiple options for contract type. Multiple proposal packages are not required. Section 5.1 of the RFP has been amended to clearly articulate this flexibility.
2	5	5.2 Project Description	Power Curve at sea level and average project site air density in 0.5 m/s increments (Excel spreadsheet and in written proposal) [2 <sup>nd</sup> to last bullet point]	Zilkha: Industry standards for wind turbine power curves (including IEC standards) are based on whole m/s increments. Most often, wind turbines are tested and verified by 3rd parties and correspondingly, turbines are also warranted in whole m/s units. Please confirm that whole m/s power curves are acceptable as a submittal in response to this section.	This requirement has been amended to require the power curve in 1.0 m/s increments.
3	6	5.3.1 Wind Data	Monthly and annual representative hub-height wind frequency distributions at intervals of 0.5 m/s. Provide these tables in the written proposal and separately as an Excel file. [2 <sup>nd</sup> to last bullet point]	Zilkha: Wind distributions are generally generated in whole m/s formats mainly for the reasons given above in Comment #2. Average wind speeds are often calculated in mph units for purposes of comparison and correlation, however, for purposes of wind energy calculation, the distributions are most often	Wind frequency distributions at 1.0 m/s intervals are acceptable. The RFP has been amended to reflect this change.

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				calculated in whole m/s bins and multiplied by the turbine's power curve also in the same increments. Please confirm that whole m/s wind distributions are acceptable.	
4	8	5.5 Legal and Financial	Identification and contact information for all legal advisors, financial advisors and capital providers (debt and equity) for the project to the extent now known or anticipated.	Zilkha: "Investment Advisor" is referenced several places in the RFP and is not a title of any person in our company. We presume that this person would be the lead negotiator and decision maker for PPA negotiations. Please verify that this is the case.	The use of the term "Investment Advisor" in the RFP refers to third-party advisors, such as investment bankers or other advisors assisting in the placement of debt or equity financing. This clarification has been made in the document at the term's first usage.
5	12	8.3 No Reassignment	All proposals shall state that in the event respondent and PSE negotiate and execute Definitive Agreements based on respondent's proposal, the Definitive Agreements and obligations thereunder shall not be sold, transferred or assigned or pledged as security or collateral for any obligation without the prior written permission of PSE.	Zilkha: Generally under financing agreements for power projects, lenders will require unfettered access and assignment of a PPA in the event of a default of the borrower. It should be noted that the language in this paragraph requiring PSE's prior written permission of any reassignment will have to be altered to satisfy lenders and allow the Project to be financed. For example, such written permission shall be not unreasonably withheld and a set of criteria may have to be	The Prototype Power Purchase Agreement permits assignment in the event of financing, and has been amended to provide that any project lender who steps into the contract also assumes the obligations under that contract. Except for assignment for financing purposes, other transfer and assignment cannot occur without PSE's prior written consent, which consent shall not be unreasonably withheld. PSE is especially concerned about the assignment of bid packages.

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				established in the PPA to justify which conditions deem a real reason for not allowing a reassignment if a lender needs to step in, etc. We suggest that this paragraph be altered to reflect this requirement.	All these clarifications have been made in the RFP.
6	13	9. Credit Requirements	The respondent should be aware that PSE may require negative control in addition to any that may be included in the prototype power purchase agreement (Exhibit 1) or prototype term sheet (Exhibit 2) in any or all Definitive Agreements that respondent or PSE might execute in connection with respondent's proposal.	Zilkha: Please define "negative control".	Negative controls are covenants that would be included in the agreement that prohibit the respondent from certain specified business practices that could jeopardize the respondent's ability to perform its obligations under the agreement. Examples of negative controls are set forth in the prototype term sheet (Exhibit 2) under the heading "Transaction Covenants". This clarification has been added to the RFP.
7	17	11. Post Proposal Negotiations and Awarding of Contracts	As part of the continuing evaluation of the proposal, PSE may require the respondent to fund the fees and cost of a third party selected by PSE to review and verify the wind resource and energy estimates.	Zilkha: Should the respondent be required to fund third party review of any proposal, please confirm that respondent shall be afforded the opportunity to review the scope of work and cost proposal prepared by the third party reviewer prior to commencement of any review.	Although PSE has not made a final determination to require respondents to fund any third party expenses, if PSE opted to do so, the amount of such costs would be known at the time the request for funding was made and it is anticipated that the total expenditure would be less than \$20,000 per respondent. Any

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					<p>\$20,000 per respondent. Any such funded expenses would occur during the second phase of the evaluation process, not the post-proposal phase and, hence, this funding requirement has been moved to Section 10.3 of the RFP.</p>
8	17	12. RFP Schedule	March 19 – Execute Letter(s) of Intent	<p>Zilkha: Generally, a letter of intent is not enough of a commitment to base the significant amount of capital that is required to place a down payment on long lead time equipment such as the wind turbines, substation transformers, breakers, etc. which would be in the approximate \$25M to \$35M range for a 150 MW wind power project. We suggest that March 2004 be the target for a final, executed PPA for the Project to provide necessary level of commitment for such a large capital expenditure as well as to support PSE's desired project schedule.</p>	<p>PSE agrees that a letter of intent does not provide sufficient commitment for a project proponent to place significant capital at risk. However, to prudently evaluate proposals and negotiate definitive agreements, PSE expects that additional time will be required beyond March 19<sup>th</sup> and that the project schedule may need to be adjusted accordingly.</p>

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1	16	Section 2.3	Submission of Agreement for FERC acceptance.	FPL: FERC no longer requires that power purchase agreements (“PPAs”) be filed for acceptance.	While we understand that there may be no current requirement to file PPAs with FERC, PSE is willing to assume the responsibility, as between PSE and the developer, to make required filings (if any) with FERC.
2	16	Section 2.4	Purchaser to Obtain Transmission Service	<p>FPL: FPLE would expect that prior to executing the PSE PPA, Purchaser would have secured transmission services. FPLE would be willing to execute the PSE PPA with this provision in it but both parties would need to have the ability to terminate if transmission services are not obtained by a date certain. Additionally, the schedule would have to reflect that FPLE would not make significant capital commitments until transmission services are secured.</p> <p>Zilkha: The term "commercially reasonable" is very subjective. What is commercially reasonable for one may not be for another. Furthermore, the right to</p>	The PPA contemplates that PSE will obtain Transmission Service after the Delivery Point. PSE does not expect the Delivery Point to be off of PSE's system. For example, delivery to PSE at the Mid-C would be on PSE's system. For deliveries to PSE's system, particularly at the Mid-C, PSE expects Transmission Service to be available.

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				<p>terminate the PPA under this clause again constitutes a "termination for convenience" provision which makes the financing of the Project virtually impossible. There are possible solutions to this. For example, there could be the opportunity for Seller or another party to step in to secure the necessary transmission such that the PPA does not terminate and PPA obligations will be upheld if transmission is made available by either Purchaser or Seller.</p>	
3	16-17	Section 2.5	Termination Right of Purchaser for Seller's Failure of Timely Completion	<p>FPL: Purchaser should not be able to terminate for failure to complete a Major Milestone by the Major Milestone Deadline. FPLE is willing to consider a guaranteed date by which the project shall have achieved</p>	<p>PSE agrees, as reflected in Section 6.3.1, that the Guaranteed COD would be agreed to by both parties. PSE also agrees that failure to meet the Guaranteed COD would result in delay damages and that</p>

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				<p>commercial operations “Guaranteed COD”) as follows:</p> <ul style="list-style-type: none"> <li>• the Guaranteed COD would be agreed to by both parties;</li> <li>• failure to achieve commercial operations by the Guaranteed COD would result in delay damages (subject to a cap);</li> <li>• Purchaser would not be able to terminate the PSE PPA during the period that Seller would be paying delay damages; and</li> <li>• Seller would be able to declare the project in commercial operation once 90% of the turbines representing the nameplate capacity have been commissioned. Once the Project is declared in commercial operation, delay damages would no longer be applicable.</li> </ul>	<p>Purchaser would not be able to terminate the PPA during the period that Seller would be paying delay damages. However, PSE maintains that other major milestones are significant for determining the continuing feasibility of the project and should be subject to a termination right. Changes are marked in the PPA to reflect additional major milestones and a termination right if Seller fails to meet a "Guaranteed Major Milestone Deadline". In addition, PSE is willing to eliminate the distinction between "Commercial Operation Date" and "Commercial Operation Date for Determining Delay Damages," as reflected in the revised PPA. Revisions in Section 6.3.2 of the PPA also address the apparent inconsistency between previously numbered Section 2.5 and Section 6.3.2 of the PPA.</p>
4	17	Section 2.6	Termination Right for Chance in Circumstances	FPL: This provision is in essence a termination for	PSE understands that Seller may need greater certainty of the

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				<p>convenience. This is simply not market.</p> <p>Zilkha: This section includes a one-way "termination for convenience" right for PSE which makes financing of any wind power project virtually impossible. We recommend that this section be removed entirely, or a time limit be inserted which allows for termination by either party before a specific, agreed-upon date after which termination for convenience is not permitted by either party.</p>	<p>financial effect of PSE's exercise of its termination right pursuant to this provision. Accordingly, the modified version of this provision contemplates an agreed-upon schedule of termination amounts, based on the year in which termination occurs. Such termination amount may include, e.g., Seller's reasonable financing costs for the Project.</p>
5	17	Section 2.7	Automatic Termination for Failure to Receive Due Diligence Report	<p>FPL: The requirement of a Due Diligence Report (undefined in the PPA) would lead to increased costs and undue delays. Again, we would suggest that you choose a counterparty with a proven track record.</p>	<p>"Due Diligence Report" was defined in the PPA, though out of alphabetical order. PSE does not anticipate that the preparation and submission of a due diligence report would present any material burden or delay. An amount of due diligence will need to be accomplished by Seller or its lender, or both; any report prepared for these purposes may be sufficient to satisfy the</p>



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					requirements of this provision.
6	17	Section 3.1	Purchase and Sale of Energy	<p>FPL: Please note that this provisions contemplates the sale of energy only while Section 3.3.2 contemplates the sale of capacity and energy. We believe that an energy only PPA simplifies the document and is more appropriate for an intermittent source such as wind.</p> <p>Zilkha: This section conflicts with section 2.4. It should be made clear that either Seller or Purchaser shall make transmission services available for the Project. A potential option is to cover both scenarios. Either scenario should not allow for a "termination for convenience" provision.</p>	<p>PSE is willing to convert the PPA to an energy -only transaction. Appropriate revisions appear in the PPA.</p> <p>PSE sees no conflict. Section 2.4 provides for transmission from the Delivery Point, a Purchaser responsibility. Section 3.1 provides for transmission to the Delivery Point, a Seller responsibility.</p>
7	18	Section 3.2.1(c)	Requirement of Energy to meet renewable resource generation standards	<p>FPL: We would sell all the energy and associated environmental attributes to PSE but we are hesitant to commit to meeting standards by third party agencies.</p>	<p>PSE believes that setting an environmental standard for electricity generated by the Project is helpful for dealing in any credit market for environmental attributes. PSE is willing to mutually agree on an</p>

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					alternative reasonable standard, and the PPA is modified accordingly.
8	19	Section 3.3.2	Purchase Price After Commercial Operation Date	FPL: See comment to Section 3.1.	See response regarding Section 3.1.
9	19	Section 3.3.4	Prior Notice of Test Power Deliveries and Commercial Operation Date	FPL: FPLE would agree to give a ninety day preliminary notice of the expected COD but would need flexibility to revise such date.	PSE is willing to accommodate the expressed concern by giving Seller the opportunity to revise the Commercial Operation Date at 90-Day, 60-Day and 30-Day intervals prior thereto. The PPA is revised accordingly.
10	20	Section 3.4	Allocation of Taxes	FPL: Please refer to Section 2.2(e) of the FPLE PPA.	The referenced provision in FPL's PPA form essentially shifts the tax responsibility entirely to Purchaser. PSE believes that the more equitable distribution of tax liability is as expressed in Section 3.4, where Seller bears the burden before and at the Delivery Point, and Purchaser bears the burden thereafter.
11	20	Section 3.5.2	Curtailment due to Operational Concerns	FPL: FPLE would expect PSE to pay for curtailed energy at the Contract Rate plus lost production tax credits on an after tax basis. Please refer to	PSE believes that the likelihood of curtailment as provided for is low, particularly considering that the Delivery Point may be at the Mid-C. This low risk may

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				the definitions of “After Tax Basis” and Section 2.4 of the FPLE PPA.	be factored in to FPL's proposal.
12	20-21	Section 4.1	Design, Permitting, Construction, Financing, Operation and Maintenance of the Project	FPL: This provision is not market. Some of these requirements would result in substantially increased costs and others are simply not available.	It appears to PSE that FPL's specific concern is regarding the warranty in clause (b), that the Turbines will operate at the stated wind speed. PSE is willing to address such concern in discussions regarding the design of the Turbines for particular wind speeds.
13	21-23	Section 4.2	Right to Monitor	FPL: We believe that progress reports and site visits during construction are adequate to enable PSE to stay informed on the progress of construction.	PSE does not intend to place any undue burden on Seller in connection with Project activities, and we are willing to be flexible in this regard. However, this will be a highly visible asset for PSE, and an appropriate amount of PSE involvement will be necessary.
14	23	Section 5.1.1(b)	Calculation of Delivered Energy; Invoices	FPL: As we cannot agree to Section 7.2, this provision is not applicable.	See response regarding Section 7.2.
15	24	Section 5.1.3	Disputed Invoices	FPL: Either Party should be able to dispute an invoice.	Seller issues invoices in the first instance; therefore a right in Seller to dispute an invoice (which it issued) seems

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					inappropriate. PSE would consider specific provisions suggested by any bidder regarding the correction of invoices, if the bidder believes them to be necessary.
16	25	Section 5.1.4	Setoffs and Deductions	FPL: Allowing set off would adversely impact the financeability of the project.	PSE does not understand why any adverse financing impact should arise from this provision. Setoff is available at law, and PSE does not intend to waive setoff as a remedy. However, if FPL believes it to be helpful for financing purposes, this provision may be deleted.
17	25	Section 6.1	Review of Seller's Interconnection Agreement	FPL: This would be a very inefficient process and could negatively impact the schedule.	To improve the efficiency of the process, PSE is willing to limit its review to the final draft of the Generation Interconnection Agreement. The PPA is revised accordingly.
18	26	Section 6.2.1	Operation and Maintenance	FPL: As drafted, this provision seems more appropriate for a thermal plant and does not seem to reflect the realities of a wind project. It does not reflect how maintenance for wind projects are managed. We would like to	PSE expects that Seller's plans for maintenance of the Project may be set forth in an annual plan. PSE is willing to discuss this matter further.

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				discuss this further.	
19	26	Section 6.2.3	Coordination of Project Operation	FPL: We agree except that we would propose that instead of Exhibit I, we would jointly establish an operating committee with representatives of both parties that would develop such procedures jointly. We are somewhat puzzled by the last sentence. It seems to suggest that we schedule maintenance when the wind is not blowing. If that is the purpose, then our interests are aligned and the sentence is unnecessary.	PSE is willing to consider jointly developed operating procedures; however, we currently expect such procedures to be consistent with those reflected in Exhibit I. PSE is also willing to discuss the last sentence of this section, which imposes only a good faith standard on Seller's cooperation with Purchaser's scheduling requests.
20	26-28	Section 6.3	Commercial Operation Date Guarantee and Delay Payments	FPL: See comments to Section 2.5. We would suggest that a guarantee meeting the requirements of Section 7.4.4 should also be acceptable.	See comments regarding Section 2.5.
21	28	Section 7.1	Seasonal Output Guarantee	FPL: This is not available because year to year there is too much seasonal variability. While this kind of provision has been seen in a few circumstances, it is a key driver in raising the cost of financing and has resulted in contract and	PSE believes that FPL's concerns may be taken into consideration when proposing a Guaranteed Summer Output and a Guaranteed Winter Output. Moreover, PSE is willing to consider, as an alternative to seasonal guarantees, an annual

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				operational difficulties.	output guaranty, which may provide that if Seller failed to perform within a specified bandwidth, Purchaser would receive an agreed-upon liquidated damages payment (or Purchaser's payment obligations would otherwise be reduced). Such a guaranty may also include a termination right in Purchaser for egregious failures by Seller to perform within the annual bandwidth.
22	28	Section 7.2	Hourly Guarantee	FPL: The technology to enable us to provide this is not currently available at a reasonable price.	PSE is interested in receiving a near real-time forecast of the Project's output. PSE would be willing to discuss what kind of guarantee, close to an hourly guarantee, would be available at a reasonable price.
23	28-29	Section 7.3	Project Availability Guarantee	FPL: FPLE would agree to a mechanical availability guarantee that would commence on the second contract year at 92%, increase to 93% for the third contract year, increase to 94% for the fourth year, increase to 95% for the fifth through the twentieth contract years and decrease 1% per year thereafter	PSE is willing to discuss alternative arrangements and appropriate incentives for Seller to maintain the mechanical availability of the Turbines.

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				for the rest of the Term. Computation for mechanical availability is proposed by FPL.	
24	29-30	Section 7.4	Seller Guaranty, Additional Security and Financial Statements	FPL: FPLE would not agree to a ratings trigger. FPLE would prefer to a net worth test.	PSE is willing to consider an earnings to interest expense ratio trigger in lieu of a credit ratings trigger. Revisions in this regard appear in the PPA.
25	32-33	Section 8.4	Real Time and Other Project Data	FPL: This provision is written too broadly. FPLE would agree to disclose data reasonably requested by PSE but subject to appropriate confidentiality requirements.	PSE is willing to discuss alternatives to this section, so long as PSE obtains meaningful access to material Project information. PSE would agree to maintain certain Project information confidential, subject to a mutually agreed-upon confidentiality agreement. The PPA is revised accordingly.
26	33	Section 9.2.1	Review Rights	FPL: PSE would be able to audit records in order to verify accuracy of invoices but FPLE would not agree to have PSE audit all its records. We believe it is appropriate for PSE to reimburse FPLE for its reasonable costs.	PSE is willing to limit its review to that which is necessary to ascertain the accuracy of Seller's invoices. The PPA is revised accordingly. We believe that the costs Seller incurs in such reviews are in the normal course of business and therefore should be borne by Seller.

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27	34	Section 10.1	Release and Indemnity	FPL: Please refer to Section 6.1 and 6.2 of the FPLE PPA.	PSE is willing to include a bilateral general indemnity, as reflected in revisions to the PPA. However, PSE does not agree that a patent indemnity by PSE would be appropriate, particularly considering that the Project technology is not transferred to any extent to PSE. The PPA is revised in Section 17.1 to include a representation and warranty regarding Seller's possession of rights to produce and sell Energy without infringement.
28	34	Section 10.2.1	Insurance During Construction	FPL: This provision calls for property coverage during the course of construction for the full replacement value of the property. We insure on a foreseeable loss basis, not full replacement value. Also, this section does not allow for sublimits which will be in effect for earthquake, tornado and flood. The language as shown in Section 10.2.2 (b) would be appropriate here.	PSE's risk management has carefully reviewed FPL's comment. Insuring during the construction period on a foreseeable loss basis may be an acceptable approach, so long as the limits stated in such coverages are sufficient to provide full replacement value for the lost or damaged property.
29	34-36	Section 10.2.2	Insurance During Commercial	FPL: The final paragraph of	While PSE is willing to receive



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			Operation	Section 10.2.2 (unnumbered) calls for several excerpts from the actual policies. It is not unusual for the policies to come in months after binding. This should be amended to indicate we will provide a certificate, not pages from the policy.	certificates of insurance, it must be able to confirm that the required policy endorsements have been made. For this reason, we require in Section 10.2.2 receipt of certain policy pages and endorsements.
30	37-39	Article 12	Defaults and Remedies	FPL: Please refer to Section 3.4 and 3.5 of the FPLE PPA.	PSE is willing to discuss the differences that FPL perceives between Article 12 and Sections 3.4 and 3.5 of the FPLE PPA.
31	40-41	Sections 15.1 and 15.2	Assignment	FPL: Please refer to Section 8.2 of FPLE PPA.	PSE is willing to discuss the differences FPL perceives between Sections 15.1 and 15.2 and Section 8.2 of the FPLE PPA.
32	41-42	Section 15.4.1	Purchaser's Options	FPL: Rights of first refusal such as these are not generally accepted in the marketplace because they seriously depress the market value of the assets.	PSE understands the market effect of rights of first refusal, but considers such provisions necessary in connection with the prudent planning for resources to serve load.
33	42	Section 15.4.2	Power Purchase Option	FPL: We refer you to Section 2.2. Any right to extend the term should conform to this provision.	PSE does not see an inconsistency between Section 2.2 and Section 15.4.2. The PPA contemplates a Term, including any renewal term of

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					specified years, after which the power purchase option would apply.
34	43-44	Article 16	Financing Liens	FPL: We refer you to section 8.3 of the FPLE PPA.	PSE is willing to discuss the differences FPL perceives between Article 16 and Section 8.3 of the FPLE PPA. Please note certain revisions in Article 16 in this regard.
35	45	Section 17.1(g)	Seller Representation Regarding Qualifying Facility	<p>FPL: We believe that the project should be able to be an exempt wholesale generator instead of a qualifying facility.</p> <p>Zilkha: This section requires that the Project be certified as a "qualifying facility" (QF) which FERC rules limit the size of the Project to 80 MW. We recommend that this provision be removed to allow for the proposal of larger projects up to 150 MW or larger as defined under the RFP to allow PSE to take advantage of the significant economies of scale that such larger projects provide.</p>	PSE agrees with FPL and Zilkha and has appropriately annotated and revised Section 17.1(g).
36	45-46	Section 17.2	Purchaser's Representations and Warranties	FPL: Please add a representation regarding	In Section 18.15, the PPA provides for review by the

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			Warranties	regulatory approvals.	Washington Utilities and Transportation Commission as a condition to the transaction. This provision is consistent with existing orders on this matter applicable to power purchase agreements similar to the PPA.
37	48	Section 18.15	Governmental Authority	FPL: We would require WUTC approval and would want the right to terminate the PSE PPA if it is not obtained.	PSE believes that this section addresses FPL's concern. Either Party has the right to terminate if the described WUTC action occurs. See also PSE's response regarding Section 17.2.