

P96000103947

**Florida Department of State
Division of Corporations
Public Access System**

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H05000044714 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850) 205-0380

From:

Account Name : C T CORPORATION SYSTEM
Account Number : FCA000000023
Phone : (850) 222-1092
Fax Number : (850) 222-9428

**BASIC AMENDMENT
ESI VANSYCLE LP, INC.**

Certificate of Status	0
Certified Copy	0
Page Count	09
Estimated Charge	\$35.00

RECEIVED

05 FEB 22 PM 4:38

DIVISION OF CORPORATIONS

FILED
05 FEB 22 AM 10:26
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Electronic Filing Menu

Corporate Filing

Public Access Help

Amey
TS 2/23/05

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
ESI VANSYCLE LP, INC.
(A Florida Corporation)

FILED
05 FEB 22 AM 10:26
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE I

The name of the corporation is ESI Vansycle LP, Inc. (the "Corporation").

ARTICLE II

The Articles of Incorporation of the Corporation are hereby amended as follows:

- (a) Article III is hereby amended in its entirety as follows:

*ARTICLE III

The sole purposes of the Corporation are (i) to hold a limited partner interest in and be a limited partner of ESI Vansycle Partners, L.P., a Delaware limited partnership (the "Limited Partnership"); (ii) to exercise all rights and powers, and undertake, be liable for and perform all duties, liabilities and obligations, of the limited partner of the Limited Partnership provided or arising under the agreement of limited partnership of the Limited Partnership, any other agreement or instrument to which the Corporation or the Limited Partnership is or may become a party or by which its properties or assets may be bound, any applicable law or regulation, or otherwise; and (iii) to engage in such activities and acquire such assets as are necessary or desirable to accomplish the foregoing and to enter into any lawful transaction incidental to or in furtherance of the foregoing. The Corporation shall not engage in any business, and shall have no purpose, unrelated to the foregoing."

- (b) Article VII is hereby amended in its entirety as follows:

*ARTICLE VII

(a) The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the Bylaws of the Corporation. Immediately following the filing of these Articles of Amendment, the number of directors shall be increased to a total of five. Such number may be increased or decreased from time to time in the

manner provided in the Bylaws of the Corporation, subject to compliance with the provisions of this Article VII during the Covered Period.

(b) From and after February 28, 2005 and for so long thereafter as the Limited Partnership is a guarantor of the 5.608% Senior Secured Bonds due March 10, 2024 of FPL Energy National Wind, LLC (such period the "Covered Period"), at least two (2) of the directors of the Corporation shall be Independent Directors. The initial Independent Directors shall be the Persons named as such by the Board of Directors of the Corporation.

(c) If an Independent Director should resign during the Covered Period, the Corporation shall use its reasonable best efforts to nominate another person as Independent Director, *provided* that during the interim period in which the Corporation does not have two Independent Directors, the Corporation may not vote to take any action described in Article IX below. No position of Independent Director shall be eliminated during the Covered Period, even if vacated.

(d) The directors of the Corporation shall be required, in the exercise of their reasonable business judgment, to consider the interests of the creditors of the Corporation in taking all corporate action.

(e) As used herein, the following capitalized terms shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing. The term "control" shall have the meaning assigned to it in Section 2(a)(9) under the Investment Company Act of 1940, as amended.

"Independent Director" means an individual who is not at, and has not been within the five years prior to, the time of his or her appointment and will not be serving as: (i) an officer, director, general partner, manager, employee, or an owner of any equity securities of the Corporation or any of its Affiliates (other than an owner of a *de minimis* amount of the equity securities of any Affiliate of the Corporation which has a class of securities registered under the Securities Exchange Act of 1934, as amended); (ii) a customer of, or supplier or service provider (including professionals) that receives any of revenues from activities with the Corporation or any Affiliate of the Corporation, such that such individual's annual revenues derived from the Corporation and Affiliates of the Corporation exceeds 1% of such individual's aggregate annual revenues; (iii) a person or other entity controlling or under the common control of any such equity owner, supplier, customer, or service provider; or (iv) a spouse, parent, sibling, child or

grandchild of any person described in (i), (ii) or (iii); *provided*, however, that a person shall not be disqualified from being an Independent Director solely by reason of serving as an independent director, independent manager or independent member of another single purpose entity that is an Affiliate of the Corporation.

"Person" means a natural person, partnership (whether general or limited), trust, estate, association, corporation, limited liability company, unincorporated organization, custodian, nominee or any other individual or entity in its own or any representative capacity.

Article VIII: (c) The following provisions shall be added immediately following

"ARTICLE IX

During the Covered Period, the Corporation shall not institute proceedings for the Corporation or the Limited Partnership to be adjudicated as bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation or the Limited Partnership, or file a petition with respect to the Corporation or the Limited Partnership or consent to a petition with respect to the Corporation or the Limited Partnership seeking reorganization or relief under any applicable Federal or state laws relating to bankruptcy or insolvency, or appoint or consent to the appointment of receiver, liquidator, custodian, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Limited Partnership or a substantial part of their respective properties, or make any assignment for the benefit of creditors, or except as required by law, admit in writing the inability to pay its debts generally as they become due, or take any action as corporation in furtherance of any such action without the affirmative vote of all of the members of the Board of Directors, including two Independent Directors, and no executive committee of the Board of Directors shall have any authority to take such action on behalf of the Board of Directors without the affirmative vote of all of the members of the Board of Directors, including two Independent Directors.

"ARTICLE X

(a) Notwithstanding anything to the contrary contained herein, during the Covered Period, the Corporation will, except as contemplated or permitted by the Financing Documents:

- (i) maintain its books and records and bank accounts separate from those of any other Person (except that, for accounting and reporting purposes, the Corporation may be included in the consolidated financial statements of an equity owner of the Corporation in accordance with GAAP);

- (ii) maintain an arm's length relationship with its stockholders, other Affiliates and any other party furnishing services to it;
- (iii) conduct its business in its own name (or any other trade name that will not be reasonably likely to cause confusion as to its separate existence) and through its own authorized officers and agents;
- (iv) prepare and maintain its financial statements, accounting records and other entity documents separate from those of any other Person (except for inclusion in consolidated financial statements of an equity owner, as described in clause (i) above);
- (v) except as contemplated by the provisions of clause (vii) below, pay its own liabilities out of its own funds and assets;
- (vi) observe all limited liability Corporation formalities necessary to maintain its identity as an entity separate and distinct from its stockholders and all of its other Affiliates;
- (vii) participate in the fair and reasonable allocation, and pay its share, of any and all overhead expenses and other common expenses for facilities, goods or services provided to multiple entities;
- (viii) use its own stationery, invoices and checks (except when acting in a representative capacity, in which event such capacity shall be disclosed);
- (ix) hold and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person (except for inclusion in consolidated financial statements of an equity owner, as described in clause (i) above);
- (x) deposit all of its funds in checking accounts, savings accounts, time deposits or certificates of deposit in its own name or invest such funds in its own name;
- (xi) hold its assets in its own name;
- (xii) maintain a sufficient number of employees (which may be zero) for its contemplated business and pay the salaries or other compensation of such employees from its own funds; and

- (xiii) maintain adequate capital for the conduct of its business.

(b) Notwithstanding anything to the contrary contained herein, during the Covered Period, the Corporation will not, except as contemplated or permitted by the Financing Documents:

- (i) seek or consent to any dissolution, winding up, liquidation, consolidation, merger or sale of all or substantially all of its assets;
- (ii) fail to correct any known misunderstanding regarding its separate identity;
- (iii) commingle its funds or other assets with those of any other Person;
- (iv) assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person (*provided* that this provision shall not be deemed to prohibit customary joint and several obligations or commercially reasonable indemnification obligations incurred in the ordinary course of business of the Corporation);
- (v) acquire obligations or securities of its stockholders (other than any note or other security of a stockholder held by the Corporation to provide adequate capital for operation of its business);
- (vi) pledge any of its assets for the benefit of any other Person;
- (vii) make any loans to any other Person, or buy or hold evidence of indebtedness issued by any other Person (except for Permitted Investments);
- (viii) identify its stockholders or any of its Affiliates as a division or part of it (except for inclusion in consolidated financial statements of an equity owner);
- (ix) engage (either as transferor or transferee) in any material transaction with any Affiliate other than for fair value and on terms similar to those obtainable in arms-length transactions with unaffiliated parties, or engage in any transaction with any Affiliate involving any intent to hinder, delay or defraud any entity;

- (x) engage in any business activity or operate for any purpose other than as stated in Article III hereof;
- (xi) have or create any subsidiaries or hold any equity interest in any other Person (except for Permitted Investments); or
- (xii) fail to file separate federal or state income tax returns, if required by applicable law.

(c) As used herein, the following capitalized terms shall have the meanings set forth below:

"GAAP" means generally accepted accounting principles.

"Indebtedness" has the meaning ascribed thereto in the Financing Documents.

"Financing Documents" means (i) the Trust Indenture, dated as of February 23, 2005, by and among FPL Energy National Wind, LLC and SunTrust Bank, as trustee (the "Indenture"), pursuant to which senior secured bonds of FPL Energy National Wind, LLC are issued; (ii) the promissory notes, bonds, mortgages, security agreements, pledge agreements, guarantees of Indebtedness under the Indenture, and other agreements, instruments and documents relating thereto; (iii) the Subsidiary Guarantee, the FPL Group Capital Guarantee, the FPL Group Guarantee, the Production Tax Credit Agreement, the Portfolio Indemnification Agreement, the Subordination Agreement, the Confirmation Agreement, any letter of credit or guarantee provided in connection with the reserve accounts in accordance with the terms of the Accounts Agreement in effect from time to time, any Additional Indebtedness Agreement and the Security Documents referred to in such Indenture; and (iv) any amendment or modification of any such agreement or document entered into in accordance with the provisions of the Indenture.

"Permitted Investments" has the meaning ascribed thereto in the Financing Documents.

"Person" means a natural person, partnership (whether general or limited), trust, estate, association, corporation, limited liability company, unincorporated organization, custodian, nominee or any other individual or entity in its own or any representative capacity.

***ARTICLE XI**

During the Covered Period, the Corporation shall not amend the provisions of Article III, Article VII(b), (c), or (d), Article IX, Article X(a) or (b), or the definitions of any of the defined terms used therein, or this Article XI

except in accordance with the applicable provisions of the Financing Documents."

ARTICLE III

The amendment was approved by a unanimous written consent of the board of directors of the Corporation and adopted on February 18, 2005, by written consent of FPL Energy National Wind, LLC as the holder of all of the shares of the Corporation entitled to vote thereon and shall become effective immediately upon filing of these Articles of Amendment.

[Remainder of this page intentionally left blank. Next page is signature page.]

IN WITNESS WHEREOF, the Corporation has caused these Articles of
Amendment to be executed by its duly appointed officer on February 18th, 2005.

ESI Vaneycle LP, Inc.

By: Charles S. Schultz
Name: Charles S. Schultz
Title: Secretary