

**Florida  
Power**  
CORPORATION

**JAMES P. FAMA**  
SENIOR COUNSEL

April 12, 1993

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, Florida 32399-0870

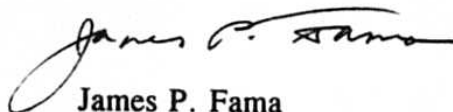
Re: Application for Determination of Need for an Intrastate Natural Gas  
Pipeline; Docket #920807-GP

Dear Mr. Tribble:

Enclosed for filing, please find an original and fifteen copies of Florida  
Power Corporation's prefiled direct testimony of S. Watsey and J.T. Pollard.

Please acknowledge your receipt of the above filing on the enclosed copy  
of this letter and return to the undersigned. Thank you for your assistance.

Sincerely,

  
James P. Fama

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
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RCH \_\_\_\_\_  
SEC \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

JPF/kmj  
Enclosure

cc: All Parties

DOCUMENT NUMBER-DATE  
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**CERTIFICATE OF SERVICE**

**DOCKET NO. 920807-GP**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Prefiled Direct Testimony of S. Watsey and J.T. Pollard was furnished by U.S. Mail this 12th day of April, 1993 to the following:

Bram D.E. Canter, Esquire  
Haben, Culpepper, Dunbar  
& French, P.A.  
306 N. Monroe Street  
Tallahassee, Florida 32302

James P. Sale, Esquire  
ANR Southern Pipeline Co.  
9 E. Geenway Plaza  
Houston, Texas 77046-0995

Mr. Daniel F. Collins  
Mr. Richard W. Miller  
ANR Southern Pipeline Company  
2000 M Street N.W., Suite 300  
Washington, D.C. 20036

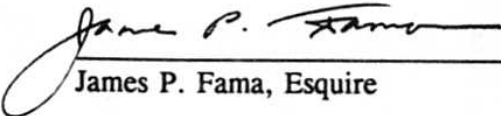
Gary C. Smallridge, Esquire  
Florida Department of  
Environmental Regulation  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

William L. Hyde, Esquire  
Peeples, Earl & Blank  
250 S. Monroe Street  
Suite 350  
Tallahassee, Florida 32301

Martha Carter Brown, Esquire  
Florida Public Service Comm.  
111 E. Gaines Street  
Tallahassee, Florida 32399

Wayne L. Schiefelbein, Esquire  
Gatlin, Woods, Carlson & Cowdery  
1709-D Mahan Drive  
Tallahassee, Florida 32308

Anthony V. Policastro  
Assistant County Attorney  
Room 203  
7530 Little Road  
New Port Richey, Florida 34654

  
James P. Fama, Esquire

1  
2 Before the  
3 Florida Public Service Commission

4 In re: Petition of Florida Power )  
5 Corporation for Determination of )  
6 Need for Electrical Power Plant and )  
7 Related Facilities )  
8 \_\_\_\_\_ )  
9

Docket No. 920807-GP

Filed: April 12, 1993

10  
11 DIRECT TESTIMONY  
12 OF  
13 JAMES T. POLLARD  
14

15  
16  
17 I. INTRODUCTION AND QUALIFICATIONS  
18

19 Q. Please state your name and business address.

20 A. My name is James T. Pollard. My business address is Florida Power  
21 Corporation, 3201 34th Street South, St. Petersburg, Florida 33733.  
22

23 Q. By whom are you employed, and in what capacity?

24 A. I am employed by Florida Power Corporation ("FPC") as Director of  
25 Information Services. I am also Vice President of two wholly owned  
26 subsidiaries of FPC, Power Energy Services Corporation ("PESCORP") and  
27 Power Interstate Energy Services Corporation ("PIESCORP").  
28

29 Q. Please describe your educational background.

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James T. Pollard

1 A. I received a B.S. degree in Business Finance from the University of Utah in  
2 1972. I am currently enrolled in the Executive MBA Program at the  
3 University of South Florida.  
4

5 Q. Please describe your employment history and experience.

6 A. From October, 1968, to May, 1973, I was employed as Programmer Analyst  
7 by Mountain Fuel Supply Company, a natural gas company located in Salt  
8 Lake City, Utah. From May, 1973, to October, 1976, I served the State of  
9 Wyoming as State Administrator, Data Services. In October, 1976, I returned  
10 to Mountain Fuel Supply Company as Director of Data Processing.  
11

12 In July, 1979, I took a leave of absence from Mountain Fuel Gas Supply  
13 Company to join Pollard Transportation, Inc., an energy services  
14 transportation company, of which I was co-owner with my father. When that  
15 company was sold in August, 1980, I returned to Mountain Fuel Supply  
16 Company as General Manager of Retail Operation. In this position I  
17 supervised 500 employees and had responsibility for sales, advertising,  
18 customer services, conservation programs, public relation, legislative relations  
19 and customer accounting. I was a member of the senior management team  
20 of the company and reported directly to the Chief Executive Officer. I  
21 participated in strategic planning, budgeting and performance analysis.  
22



1 In November, 1984, I joined the Southern California Gas Company in Los  
2 Angeles, California, as Vice President of Information Systems. Southern  
3 California Gas Company is the largest natural gas distribution utility in the  
4 United States, with over 4.5 million customers and annual revenues in excess  
5 of \$3 billion.

6  
7 In November, 1987, I moved from Southern California Gas Company to its  
8 parent Company, Pacific Enterprises, where I served as Vice President of  
9 Information Systems. Pacific Enterprises is a diversified company with annual  
10 revenues of approximately \$6 billion, and over 40,000 employees.

11  
12 In August, 1988, I returned to Southern California Gas Company as Senior  
13 Vice President with responsibility for customer services, division operations,  
14 public affairs and national affairs. I reported to the Chief Executive Officer  
15 and supervised four Vice Presidents who reported to me. I participated as a  
16 member of the senior management team in all aspects of management and  
17 direction of the business and operations of Southern California Gas Company  
18 including strategic planning, budgeting, financial and operational performance  
19 analysis, and personnel development.

20  
21 I left Southern California Gas Company to join FPC in September, 1990. As  
22 Director of Information Services I report to the Senior Vice President and

1 Chief Financial Officer and supervise a department of 270 employees and 90  
2 full time contractors and have an annual budget to \$52 million.

3

4 During 1991 and 1992, I was a member FPC's Natural Gas Task Force, which  
5 was charged with implementing FPC's natural gas strategy, as described in the  
6 prepared direct testimony of Mr. Stephen Watsey. As member of the task  
7 force, I participated in the evaluation of the various alternatives available to  
8 FPC for natural gas transportation services, and in the recommendation of the  
9 task force to the management of FPC to contract for transportation service  
10 on the SunShine and SITCO Pipelines.

11

12 Q. What are your responsibilities as Vice President of PESCOP and  
13 PIESCORP?

14 A. FPC formed PESCOP and PIESCORP in February, 1993, to hold an equity  
15 position in the SunShine Pipeline and the SunShine Interstate ("SITCO")  
16 Pipeline, respectively. As Vice President, I participate in the management of  
17 their investments in these two natural gas pipelines, and serve as a member  
18 of the management committees of SunShine Pipeline Partners and SunShine  
19 Interstate Pipeline Partners, the general partnerships that own these two pipelines.

20

21 Q. Have you ever testified before this or any other governmental agency?

1    **A.**    I have not previously testified before this agency. However, I have testified  
2           before the Public Service Commissions of Utah, Colorado, Wyoming and  
3           California. I have also testified before the legislatures of Utah, Wyoming and  
4           California, the United States House of Representatives, and the United States  
5           Senate. Finally, I have testified before the United States Departments of  
6           Labor, Justice, and the Interstate Commerce Commission.

7

8    **Q.**    On whose behalf are you testifying in this proceeding?

9    **A.**    I am testifying on behalf of FPC, which will be a shipper on the SunShine  
10          Pipeline and the SITCO Pipeline.

11

12

13

14

## II. SUMMARY AND PURPOSE

15

16   **Q.**    What is the purpose of your testimony?

17   **A.**    I will describe how and why FPC determined to contract for firm  
18          transportation service for its gas supplies over the SunShine Pipeline, and why  
19          FPC supports SunShine Pipeline's application for a Certificate of Need in this  
20          proceeding.

21

22   **Q.**    Please summarize your testimony.

1    A    As Mr. Watsey explains in his testimony, in 1991 FPC determined (i) to fuel  
2           its future generation capacity with natural gas, and (ii) that the existence of  
3           pipeline-to-pipeline competition would provide FPC the best opportunity to  
4           obtain gas transportation at the lowest reasonable cost, and on the best terms  
5           and conditions. FPC then proceeded to engage in negotiations with potential  
6           providers of transportation service in the competitive atmosphere created by  
7           FPC's willingness to commit its gas transportation requirements as the anchor  
8           load for a second pipeline to serve Florida. FPC was able to negotiate an  
9           agreement for its gas transportation requirements on the SunShine Pipeline  
10          that provided a total bundle of rates, terms and conditions of service superior  
11          to the offerings of alternative transporters.

12  
13         These activities have culminated in a gas transportation arrangement that  
14         provides superior present and long-term benefits for FPC's ratepayers.  
15         Further, the competitive atmosphere created by the potential existence of a  
16         second Florida pipeline has resulted in benefits to other shippers on the  
17         SunShine pipeline and shippers on the proposed Phase III expansion of the  
18         Florida Gas Transmission Company ("FGT") system and their customers. The  
19         pipeline-to-pipeline competition that will result from the existence of two  
20         major natural gas pipelines serving Florida markets will provide long-term  
21         benefits to FPC's ratepayers and all Florida gas consumers.

22



1 Q. How is the remainder of your testimony organized?

2 A. My testimony contains three additional sections. Section III describes FPC's  
3 precedent agreements for transportation service on the SunShine Pipeline and  
4 the SITCO Pipeline, and why FPC chose the SunShine Pipeline over  
5 alternative gas transportation arrangements. Section IV describes the benefits  
6 to FPC and its ratepayers, and the benefits to other Florida gas shippers and  
7 their customers that have resulted from the competitive atmosphere created  
8 by the entry of the SunShine Pipeline into the marketplace. Section V  
9 contains a brief summary and conclusion.

10

11 III. FPC'S PRECEDENT AGREEMENTS FOR TRANSPORTATION  
12 SERVICE ON THE SUNSHINE PIPELINE

13

14 Q. What are FPC's requirements for gas transportation service?

15 A. The Florida Public Service Commission ("FPSC") has issued a Certificate of  
16 Need (Order 25805, February 21, 1992) for two 235-MW natural gas-fired  
17 generating units that FPC will construct in Polk County to meet the growing  
18 needs of its customers (Docket No. 910759-EI). These units will each require  
19 firm transportation service for 45,000 MMBtus of gas per day, beginning in  
20 August, 1998 and August, 1999, respectively. The anticipated gas usage for  
21 FPC's Anclote units, when they are converted to burn gas, is an annual  
22 average of 128,000 MMBtus per day.

1 Q. Has FPC entered into a contract for its gas transportation service  
2 requirements?

3 A. Yes. In February, 1993, FPC executed a precedent agreement with ANR for  
4 transportation service on the SunShine Pipeline. A copy of this agreement is  
5 attached to my testimony as Exhibit \_\_\_\_ (JTP-1). In order to secure  
6 transportation service upstream of SunShine, to access a wide variety of  
7 sources of supply, FPC entered into a related precedent agreement with ANR  
8 for service on its proposed SunShine Interstate Pipeline ("SITCO"). A copy  
9 of this precedent agreement is attached to my testimony as Exhibit \_\_\_\_ (JTP-  
10 2). Subsequently, these two precedent agreements were superseded by  
11 precedent agreements with ANR dated April 8, 1993, for similar  
12 transportation service on the SunShine Pipeline and the SITCO Pipeline;  
13 copies of these precedent agreements are attached to my testimony as  
14 Exhibits \_\_\_\_ and \_\_\_\_ (JTP-3 and JTP-4), respectively.  
15

16 Q. What are the principal features of FPC's precedent agreement with the  
17 SunShine Pipeline for transportation service?

18 A. FPC has obtained the right to firm transportation service for the quantities of  
19 gas it will need for its Anclote Plant and its Polk County units, when such  
20 service will be needed. The transportation service for Anclote includes a  
21 component of flexible firm capacity for the Anclote load. The rate for FPC's  
22 firm service is "capped" at a level that helps protect the economics of using

1 gas as a generation fuel for the full twenty-five (25) years of the initial term  
2 of the service agreement. The conditions precedent to FPC's obligations, and  
3 those to the obligations of the SunShine Pipeline, provide FPC reasonable  
4 assurance that, should the project prove infeasible, FPC can obtain alternate  
5 transportation service by the time it will be required. FPC's firm capacity  
6 rights can be used to access multiple delivery points, and can be assigned to  
7 other shippers when not required by FPC. FPC also has the right to cause the  
8 expansion of the SunShine Pipeline to meet FPC's future gas supply needs.  
9

10 **Q. What role did the availability of these terms of transportation service play in**  
11 **FPC's choice to commit to the SunShine Pipeline?**

12 **A.** A very significant role. FPC was able to obtain rights with respect to its  
13 transportation capacity that provide substantial assurance that FPC's gas  
14 supply needs will be met for twenty-five (25) years, and longer should FPC  
15 choose. At the same time, FPC has sufficient flexibility with respect to how  
16 it can make use of its transportation capacity to assure the economy and  
17 efficiency of that capacity. When the benefits afforded by these terms of  
18 service were added to the extremely competitive rate for the service offered  
19 by the SunShine Pipeline, the choice as among competing transporters was  
20 clear. No other gas transporter offered a total package of transportation  
21 service, flexibility, rates and other features that were as good as the terms of

1           the precedent agreements FPC signed with the SunShine and SITCO  
2           Pipelines.

3

4   **Q.   How did FPC determine to contract for its gas transportation service with**  
5           **ANR and the SunShine and SITCO Pipelines?**

6   **A.   The natural gas task force reviewed and analyzed the proposals for**  
7           transportation service submitted by FGT, ANR and United. This analysis  
8           revealed that the combination of rates and terms and conditions of service  
9           offered by ANR on the SunShine and SITCO Pipelines was better for FPC  
10          and its ratepayers that the offerings of either FGT or United. The  
11          SunShine/SITCO offering was competitive with the other two offerings on the  
12          basis of rates alone. The additional flexibility of levels of service (and related  
13          obligations to pay reservation charges) and opportunities for expanded  
14          capacity rights in the future, as well as the long-term benefits of pipeline-to-  
15          pipeline competition that could only be achieved if FPC provided the anchor  
16          load for a second pipeline, made the ANR offering superior.

17

18   **Q.   Was there any other factor that affected FPC's choice of the SunShine and**  
19           **SITCO Pipelines to provide its gas transportation requirements?**

20   **A.   Yes, there were two additional significant factors. The first is the fact that**  
21           **SunShine will be an intrastate pipeline, exempt from regulation by the Federal**



1       Energy Regulatory Commission ("FERC") under Section 1(c) of the Natural  
2       Gas Act, the so-called "Hinshaw Exemption."

3

4   **Q.   Why was this a significant factor?**

5   **A.   FPC strongly believes that FPSC regulation will take account of the interests**  
6       of Florida gas consumers, such as FPC (and its customers), which would not  
7       always be the case if FPC's gas transporter was completely subject to FERC  
8       regulation. The FERC must take into account the interests of a much wider  
9       range of gas consumers all over the United States. In the past this has often  
10      precluded careful consideration of the needs and interests of a single state or  
11      region.

12

13   **Q.   You mentioned two additional factors; what was the second factor?**

14   **A.   FPC was able to obtain a "most favored nation" provision in its precedent**  
15      agreements with ANR, which was not offered by FGT. As the anchor load  
16      for the new SunShine and SITCO Pipelines, FPC knew it would have to  
17      commit to a transportation arrangement before any other shipper. This  
18      provision enables FPC to obtain for its ratepayers the benefits of any better  
19      terms other shippers are able to negotiate with ANR.

20

21      This provision has already operated to the benefit of FPC's ratepayers. The  
22      precedent agreements between ANR and Peoples Gas Company ("Peoples")

1 for transportation service on the SunShine and SITCO Pipelines contained  
2 provisions for seasonal flexibility for some of the capacity. This provision suits  
3 Peoples' demand profile and provides the opportunity to use capacity during  
4 the summer months that was not used in the winter months, but for which  
5 reservation charges were paid, thus avoiding paying reservation charges for  
6 unused capacity. Under the most favored nation clause, ANR was required  
7 to and did make similar arrangements available to FPC, allowing FPC to  
8 better tailor its Anclote capacity rights to the usage profile of that facility.

9  
10 **Q. Did FPC's Natural Gas Task Force take any other steps in the process that**  
11 **led to the determination to recommend that FPC contract for service on the**  
12 **SunShine and SITCO Pipelines?**

13 **A. Yes, we did. We engaged a pipeline engineering consultant, John J. Hibbs &**  
14 **Associates, to provide a technical evaluation of the design and cost estimates**  
15 **of ANR, United, and FGT. The resulting analysis confirmed the design**  
16 **proposal and cost estimates of the SunShine Pipeline, although Hibbs**  
17 **concluded that the cost estimate was conservative, i.e. that the estimate was**  
18 **quite possibly overstated. Hibbs also confirmed the design and cost estimates**  
19 **for the FGT Phase III project, but concluded that the capital cost of that**  
20 **project had probably been underestimated, so that actual construction cost**  
21 **would probably be higher.**

22

1 IV. PRESENT AND LONG TERM BENEFITS OF COMPETITION

2

3 Q. Did pipeline-to-pipeline competition have any impact on the terms and  
4 conditions that FPC obtained with respect to its transportation service on the  
5 SunShine Pipeline?

6 A. Yes, it clearly did. The terms of service, including rates, initially offered FPC  
7 by the SunShine Pipeline were very good. These terms improved significantly  
8 in the face of offers of transportation service to FPC by United SunCoast  
9 Pipeline, and by Florida Gas Transmission Company ("FGT") for its Phase III  
10 expansion. In the case of offers of service by FGT, they improved  
11 progressively during 1992 from the terms FGT initially offered for Phase III  
12 transportation service. I believe that shippers on FGT's Phase III obtained  
13 better terms than they would have had FGT not faced competition from the  
14 SunShine Pipeline. I also believe that, as in the case of FPC, other shippers  
15 on the SunShine Pipeline have obtained or will obtain better terms for their  
16 transportation service than would have been the case without competition  
17 from FGT.

18

19 Q. Were these benefits realized only by FPC?

20 A. Obviously this is not the case. FGT has significantly improved the rates and  
21 terms and conditions of services it offered to shippers on its proposed Phase  
22 III project between the time those shippers initially executed precedent

1 and/or service agreements and the time FGT entered into a settlement with  
2 shippers who had committed to Phase III (August, 1992), as evidenced by the  
3 record in FERC Docket No. GP92-182-000. It is clear that the existence of  
4 the competitive atmosphere created by both the SunCoast and SunShine  
5 Pipeline projects was responsible, in substantial part, for the benefits realized  
6 by the Phase III shippers, even after their initial commitment to the Phase III  
7 project. Those shippers were able to leverage whatever opportunities they  
8 had to cancel their Phase III commitments into better rates and terms of  
9 service because there were competitive alternative projects to which they  
10 could have turned.

11  
12 **Q. Have all of the benefits of pipeline to pipeline competition already been**  
13 **realized by Florida shippers and their customers?**

14 **A. No, there will be long-term benefits as well. The market for natural gas in**  
15 **Florida is expected to continue to grow. FPC and other shippers will need**  
16 **additional transportation service, which will cause the negotiation of new**  
17 **transportation contracts, and probably result in the renegotiation of their**  
18 **existing agreements. The existence of two competing pipelines, which by then**  
19 **will undoubtedly be interconnected at several locations, will permit shippers**  
20 **to have competing proposals to service these requirements. Florida will no**  
21 **longer be the only major gas market essentially served by only one major**



1 pipeline, and the benefits of competition will flow to the people of Florida for  
2 many years to come.

3

4 V. SUMMARY AND CONCLUSION

5

6 Q. Please summarize your testimony.

7 A. By 1999, FPC will need 218,000 MMBtus per day of gas transportation  
8 capacity to meet its fuel requirements for its Andote Plant and its two Polk  
9 County generating units. FPC has used this transportation load to provide the  
10 foundation for the construction of a second, competitive pipeline to serve its  
11 requirements as well as other present and future Florida natural gas demands.  
12 In the competitive atmosphere created by the existence of the  
13 SunShine/SITCO Pipelines as a realistic alternative to further expansion of  
14 the FGT pipeline system, FPC was able to enter into contracts for  
15 transportation service at the lowest reasonable cost and with superior  
16 conditions of service. This package of transportation services was available  
17 only from the SunShine Pipeline.

18

19 Just as importantly, FPC was able to introduce long-term competitive forces  
20 into the gas pipeline business that will continue to provide benefits to its  
21 ratepayers and other gas consumers in Florida. Other shippers and potential  
22 shippers on the SunShine Pipeline have obtained and will obtain rates and

1 terms of service that are better than those they could have obtained in the  
2 absence of pipeline-to-pipeline competition. We recommend that the FPSC  
3 promptly issue a Certificate of Need for the SunShine Pipeline.  
4

5 Q. Does this conclude your testimony?

6 A. Yes, it does.  
7  
8

PRECEDENT AGREEMENT

This Precedent Agreement ("Agreement"), made this 15<sup>th</sup> day of February 1993, by and between FLORIDA POWER CORPORATION, a Florida corporation ("Shipper"), and ANR SOUTHERN PIPELINE COMPANY, a Delaware corporation ("ANR Southern") (hereinafter Shipper and ANR Southern are sometimes referred to individually as "Party" or collectively as the "Parties").

W I T N E S S E T H:

WHEREAS, ANR Southern intends to design, construct, own and operate a natural gas pipeline and appurtenant facilities (the "Florida Facilities") for the transportation of natural gas within the State of Florida, which Florida Facilities shall extend from the terminus of a proposed interstate natural gas pipeline and appurtenant facilities in Florida (the "ANR Southern Interstate Facilities") also to be constructed and owned by ANR Southern to various locations within the State of Florida;

WHEREAS, ANR Southern plans to provide natural gas transportation service through the Florida Facilities wholly within the State of Florida, subject to the provisions of Florida law governing natural gas pipelines and the rules and regulations of any agencies of the government of the State of Florida (collectively, the "Florida Statutes") as a "Hinshaw" pipeline exempt from the regulatory jurisdiction of the Federal Energy Regulatory Commission or successor agency (FERC") pursuant to

the quantity of gas contemplated by Section 5.a.(i) of this Agreement on a firm daily basis;

- b. Transportation of an additional MDQ of 45,000 MMBtus ("Shipper's First Polk County Gas Supply") to Shipper's first power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1998 or the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of such transportation on a firm basis; and
- c. Transportation of an additional MDQ of 45,000 MMBtus ("Shipper's Second Polk County Gas Supply ") to Shipper's second power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1999 or the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of providing such transportation on a firm basis.

All of the increments of FT Service set out in subsections a., b. and c. of this Section 1 shall be provided: (i) pursuant to the terms and provisions of this Agreement and (ii) pursuant to a service agreement substantially in the form attached hereto as Exhibit A (the "Service Agreement"). There shall be added to the MDQ for each increment of Shipper's FT Service additional capacity sufficient to transport additional quantities of gas required by ANR Southern as fuel and for lost and unaccounted for gas related



Section 1(c) (the "Hinshaw Exemption") of the Natural Gas Act ("NGA");

WHEREAS, Shipper desires to receive firm transportation service ("FT Service") on and across the Florida Facilities, which firm transportation service shall be rendered in accordance with the terms and conditions of the Service Agreement (defined below), and the gas tariff for the Florida Facilities (the "Florida Gas Tariff") on file with the Florida Public Service Commission or successor agency ("FPSC") in substantially the same form and substance as the Pro Forma Tariff attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, Shipper and ANR Southern agree as follows:

1. Firm Service Obligation. Subject to the terms and conditions of this Agreement and to such terms and conditions as may be or become applicable to ANR Southern's transportation service pursuant to the Florida Statutes, ANR Southern hereby agrees to provide to Shipper FT Service through the Florida Facilities as follows:

- a. Transportation of a maximum daily quantity ("MDQ") of 120,000 MMBtus ("Shipper's Ancloste Gas Supply"), to Shipper's Ancloste Plant located in Pasco County, Florida, commencing on the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of transporting

to each such increment of FT Service. Shipper's FT Service shall be from the point of receipt of Shipper's Anclothe Gas Supply, First Polk County Gas Supply and Second Polk County Gas Supply into the Florida Facilities to the points of delivery, which point of receipt and points of delivery are specified in Exhibit B attached hereto, provided, that Shipper shall have the right, in its sole discretion, to nominate all or any portion of the aggregate of the MDQs set out in subsections a., b. and c. of this Section 1 for delivery at any point or points of delivery specified in Exhibit B pursuant to the nomination procedures applicable to the FT Service in ANR Southern's Florida gas tariff; and provided further, that any nominated quantity above Shipper's firm MDQ (plus gas used for fuel and lost and unaccounted for gas) applicable to the nominated delivery point shall not have priority of service over any firm service for other shippers at such delivery point but will have priority over interruptible transportation service at that delivery point. ANR Southern shall deliver Shipper's First Polk County Gas Supply and Second Polk County Gas Supply to the applicable delivery point at a pressure of not less than 400 psi. ANR Southern shall, upon request by Shipper, deliver to Shipper's delivery points a minimum of eighty-five percent (85%) of Shipper's MDQ during any fourteen (14) consecutive hour period during any twenty-four (24) hour period; provided, however, that such fourteen (14) hour periods on consecutive days will be separated by not less than ten (10) hours. ANR Southern's obligation to provide such fourteen (14) hour service is subject to receipt of sufficient gas supplies for Shipper's account, and to force majeure or other capacity curtailments in accord with ANR Southern's Florida gas tariff.

2. Rates. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Contract Year" shall mean each twelve (12) month period beginning on the date described in Section 1.a. or any anniversary date thereof.

"Currently Effective Rate Per MMBtu" shall mean for each of the ANR Southern Interstate Facilities and the Florida Facilities, the rate applicable to FT Service for Shipper, from time to time.

"GNP Price Deflator" shall mean the GNP implicit price deflator computed and published by the United States Department of Commerce, Bureau of Economic Analysis in the "Survey of Current Business" or such successor index as the United States Department of Commerce or successor agency or department shall develop as a replacement index.

"Rate" or "Rates" (whether the initial letter is capitalized or not) shall mean the unit rates directly attributable to any transportation service provided by ANR Southern to Shipper under this Agreement, and shall not include fuel, lost and unaccounted for gas, the Regulatory Assessment Fee ("RAF") paid to the State of Florida or other generally applicable surcharges required to be charged and collected.

Subject to the terms and conditions of this Agreement and the Service Agreement, and to such terms and conditions as may be or become applicable to ANR Southern's rates pursuant to the Florida Statutes, ANR Southern shall provide the FT Service, and Shipper shall pay for the FT Service as follows:

- a. Subject to Section 2.b. and Section 2.c., Shipper shall pay an initial rate for the FT Service expressed herein as a unit rate of not more than 52.5 ¢ per MMBtu, which shall be initially adjusted to reflect actual final costs of constructing the Florida Facilities and which may be subsequently adjusted from time to time pursuant to the Service Agreement or the applicable ratemaking procedures set forth in the Florida Statutes.
- b. Shipper shall not be required to pay any amount attributable to the rates set forth in 2.a. for the FT Service in excess of the maximum applicable rate provided for in ANR Southern's rate schedule applicable to the FT Service included in ANR Southern's Florida gas tariff, as that rate may be on file from time to time with the FPSC.
- c. Shipper shall not be required to pay an amount for both FT Service on the Florida Facilities and firm transportation service through the ANR Southern Interstate Facilities for transportation of Shipper's gas supplies to the delivery points on



the Florida Facilities in excess of the amounts set out in or calculated according to the following provisions of this Section 2.c. (the "Aggregate Rate Cap"). The Aggregate Rate Cap for the first Contract Year, expressed herein as a unit rate, shall be not more than 71.8 ¢ per MMBtu. For each subsequent Contract Year the Aggregate Rate Cap shall be recalculated by:

- (i) multiplying the Aggregate Rate Cap for the prior Contract Year by forty-five percent (45%);
- (ii) subtracting the product of Section 2.c.(i) from the Aggregate Rate Cap for the prior Contract Year;
- (iii) multiplying the product of Section 2.c.(i) by the lesser of (x) a fraction the numerator of which is the GNP Price Deflator for the calendar quarter immediately preceding such Contract Year and the denominator of which is the GNP Price Deflator for the corresponding calendar quarter of the immediately preceding Contract Year, or (y) 1.04; and

- (iv) adding the product derived pursuant to Section 2.c. (iii) and the remainder derived pursuant to Section 2.c.(ii).

Notwithstanding the foregoing calculations, ANR Southern agrees that during the first twenty (20) years of the Initial Term, the Aggregate Rate Cap shall never exceed 84.0 ¢ per MMBtu. If at any time during the term of the Service Agreement the sum of the Currently Effective Rates Per MMBtu for transportation on the Florida Facilities and the rates currently applicable to Shipper's FT Service through the ANR Southern Interstate Facilities (hereinafter the "Aggregate Rate") exceeds the Aggregate Rate Cap (the difference between the Aggregate Rate and the Aggregate Rate Cap being hereinafter referred to as the "Excess Rate"), then the Aggregate Rate shall be reduced by an amount equal to the Excess Rate.

- d. In addition to the rate provided for under Section 2.a. above, Shipper will compensate ANR Southern for the RAF paid to the State of Florida and any other charges applicable to Shipper under the then effective rate schedule applicable to the FT Service, plus the actual amounts of natural gas used for fuel and lost and unaccounted for gas: provided, however, that in no event shall Shipper be required to provide compensation for fuel and

lost and unaccounted for gas applicable to the ANR Southern Interstate Facilities and the Florida Facilities, in the aggregate, in an amount in excess of one and one-half percent (1.5%) of Shipper's MDQs at the delivery points specified in Exhibit B. However, in the event the Florida Facilities or the ANR Southern Interstate Facilities are expanded in the future such that it results in greater fuel usage than the combined 1.5% cap but combined lower rates, then the 1.5% fuel cap will be permitted an upward adjustment to actual usage so long as the overall impact is to keep the combined cost (rate plus fuel) less than or equal to the combined cost prior to system expansion.

- e. Subject to the limitations in this Section 2., the Service Agreement shall provide that ANR Southern shall have the unilateral right to file for changes in its maximum rates or any other provisions in its Florida gas tariff including, but not limited to, provisions relating to compensation for fuel and lost and unaccounted for gas applicable to the service hereunder, and that such changes shall be effective and applicable, subject to refund as determined by the FPSC, as the case may be, after the required notice or at the end of any suspension period ordered by FPSC and such maximum rates plus any provision for fuel and lost and unaccounted for

gas shall be effective under the Service Agreement. Notwithstanding the foregoing, Shipper shall have the right to intervene and protest any such rate filing by ANR Southern with respect to changes in ANR Southern's maximum rates, terms and conditions of service or any other provision in its currently effective gas tariff.

3. Terms of Service. Subject to the terms and conditions of this Agreement and to such terms and conditions as may be or become applicable to ANR Southern's transportation service pursuant to the Florida Statutes, ANR Southern agrees to provide the FT Service on the terms and conditions substantially similar to those set forth in the Service Agreement and the Pro Forma tariff attached hereto as Exhibit A.

4. Execution of Service Agreement. Concurrently with the fulfillment or waiver of all of the Conditions Precedent set forth below in Section 5, ANR Southern and Shipper shall execute and deliver the Service Agreement, to be effective as of the dates described in Sections 1 and 9. Shipper shall become liable for payment of reservation charges with respect to each increment of service under the Service Agreement on the dates described in Section 1 above, except that with respect to the increments of service described in Sections 1b. and 1.c. above, in the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of either or both of Shipper's proposed first and second power generation units at Shipper's Polk County site by the earlier of October 1,



1995 or fifteen (15) days prior to the scheduled vote of ANR Southern's Board of Directors on either (i) construction of the Florida Facilities or (ii) acceptance of the term sheet with respect to financing construction of the Florida Facilities, Shipper shall not be liable for the payment of reservation charges for FT Service for either or both of such increments of service, as the case may be, and ANR Southern and Shipper shall have the respective obligations set forth in Section 6.c. hereof.

5. Conditions Precedent.

a. The obligation of ANR Southern to provide FT Service to Shipper in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by ANR Southern, of each of the following conditions:

(i) On or before May 1 , 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in-service date of the Florida Facilities, to pay for firm transportation service through the Florida Facilities under service agreements having a maximum daily quantity, in the aggregate, equal to at least 219,00 MMBtus;

(ii) On or before February 1, 1995, ANR Southern shall have been issued and shall have

accepted all regulatory authorizations and approvals required under the Florida Statutes and all other necessary regulatory authorizations and approvals from federal, state, local and/or municipal agencies to construct, own and operate the Florida Facilities and offer the transportation service consistent with the terms of this Agreement, and all such authorizations and approvals shall have become final and subject to no further appeal; and

- (iii) On or before October 1, 1995, the ANR Southern Board of Directors shall have voted to construct the Florida Facilities in accordance with applicable voting procedures, and ANR Southern shall have accepted a term sheet with respect to, and obtained a commitment for, the financing of the construction of the Florida Facilities in such amount and on such terms and conditions as are acceptable to ANR Southern.

- b. The obligation of Shipper to accept and pay for the FT Service in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by Shipper, of the following conditions:

- (i) On or before May 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in service date of the Florida Facilities, to pay for firm transportation service through the Florida Facilities under service agreements having an aggregate maximum daily quantity of at least 219,000 MMBtus ; and
- (ii) On or before May 1, 1993 ANR Southern shall have filed an application for authority to construct and operate the Florida Facilities in accordance with the Florida Statutes; and
- (iii) On or before February 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required under the Florida Statutes to construct, own and operate the Florida Facilities and offer the transportation service consistent with the terms of this Agreement, except those authorizations and approvals normally obtained after the FPSC authorizations and approvals have been issued and accepted, and all such authorizations and approvals shall have become final and subject to no further appeal.

- c. If any of the Conditions Precedent in Section 5.b., as may be extended by Section 5.d., have not been fulfilled or waived by Shipper (the "Outstanding Conditions") thirty (30) days before the date upon which ANR Southern's Board of Directors is scheduled to vote on either (i) construction of the Florida Facilities, or (ii) acceptance of the term sheet with respect to financing construction of the Florida Facilities, ANR Southern's Board of Directors shall provide Shipper written notice at such time stating the date that ANR Southern's Board of Directors vote is scheduled to be taken. At least fifteen (15) days prior to the scheduled vote of ANR Southern's Board of Directors, Shipper shall be required to exercise, in writing, its right to terminate this Agreement or waive its right to terminate this Agreement with respect to any Outstanding Conditions. In the event that Shipper chooses not to waive its Outstanding Conditions and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after ANR Southern receives the notice, unless the Outstanding Conditions have been satisfied or have been waived by Shipper in writing during such five (5) day period.
- d. With respect to the dates in the Conditions Precedent set forth in Section 5.a.(ii) and Section 5.b.(iii), the Parties contemplate that ANR Southern shall have been issued and accepted all of the regulatory and environmental authorizations and approvals required from



the FPSC to construct, own and operate the Florida Facilities and offer the transportation service consistent with the terms of this Agreement (the "Regulatory Authorizations"), and the Parties further contemplate that the Regulatory Authorizations shall have become final and no longer subject to appeal as of the dates set forth in Section 5.a.(ii) and Section 5.b.(iii). ANR Southern agrees to provide Shipper a true copy of each and every Regulatory Authorization received by it with full particulars as to the date of its issuance and any material procedural dates with respect thereto, as promptly as practicable after its receipt by ANR Southern, but in no event later than three (3) business days thereafter. The Parties acknowledge and agree that the Regulatory Authorizations, as issued by the applicable regulatory authorities, may not be acceptable to ANR Southern and Shipper, or either ANR Southern or Shipper, or may be judicially challenged by third parties by rehearing petition before the FPSC, or by court appeal ("Third-Party Challenge"). ANR Southern further agrees to provide Shipper with notice of all such Third Party Challenges, if any, including such particulars as the date of filing and any material procedural dates with respect thereto as promptly as practicable after receipt of such notice by ANR Southern, but in no event less than three (3) business days thereafter.

If the Regulatory Authorizations contain material terms or conditions unacceptable to the Parties, or are subject to unacceptable risks associated with a Third Party Challenge that may have a material adverse effect on either Party, each Party shall advise the other Party of any objections to such material terms and conditions of the Regulatory Authorizations, or such unacceptable risks associated with any Third-party Challenge that may have a material adverse effect on either Party (collectively, the "Objections"), in writing, as soon as practicable but in no event later than fifteen (15) days after receipt by ANR Southern of the Regulatory Authorizations or notice of any Third-Party Challenge, as the case may be; provided that in all events Shipper shall have at least three (3) business days from the date it receives a copy of such Regulatory Authorizations or notice of Third-Party Challenges to advise ANR Southern of any Objections thereto. Each Party shall waive its rights under Section 5.a.(ii) and Section 5.b.(iii), as applicable, save and except for any reserved Objections; provided, however, no waiver shall be required until all Regulatory Authorizations have been issued by FPSC or the time for Third-Party Challenge has expired.

If ANR Southern has not accepted the Regulatory Authorizations, or ANR Southern has accepted the Regulatory Authorizations and there are reserved Objections, prior to the dates set forth in Section 5.a.(ii) and Section 5.b.(iii), the dates specified in

Section 5.a.(ii) and 5.b.(iii) shall be extended for a period of thirty (30) days, or such longer period as the Parties may agree in writing (the "Regulatory Extension Period"), to resolve any reserved Objection to the satisfaction of the Party raising such Objection, or until such time as the Party raising such Objection waives its reserved Objection. After the Regulatory Extension Period, if a reserved Objection has not been fulfilled or waived by the Party raising such Objection, such Party may elect to terminate this Agreement by giving written notice to the other Party. In the event that a Party chooses not to waive its reserved Objections and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after such other Party receives the notice, unless the reserved Objection has been fulfilled or has been waived by the Party raising the Objection in writing during such five (5) day period. In no event shall the extension of time provided in Section 5.d. result in the dates specified in Section 5.a.(ii) and Section 5.b.(iii) being later than April 15, 1995, and the extension of time provided in Section 5.d. is subject, in all respects, to the rights of ANR Southern to require that Shipper make an election as provided for in Section 5.c.

6. Covenants of the Parties.

- a. Upon the execution of this Agreement by the Parties, ANR Southern agrees that:

- (i) ANR Southern shall exert commercially reasonable efforts to obtain financing for the construction and operation of the Florida Facilities;
- (ii) With respect to the Florida Facilities, ANR Southern shall make applications for all necessary authorizations and approvals to construct and operate the Florida Facilities, including, without limitation, all authorizations and approvals required under the Florida Statutes and shall prosecute such applications with all reasonable diligence;
- (iii) ANR Southern shall exert commercially reasonable efforts to obtain all necessary authorizations and approvals required under the Florida Statutes for a Florida gas tariff consistent in all material respects with Exhibit A, that authorizes ANR Southern to provide to Shipper the FT Service at the rates set out in Section 2 above, or such other mutually acceptable rates, and providing for the assignment of firm capacity held by Shipper on the Florida Facilities to third parties as set forth in Exhibit A;



(iv) In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable service to similarly situated shippers for ultimate consumption of natural gas within the State of Florida through the Florida Facilities prior to the initial in service date of the Florida Facilities, on terms more favorable (in the reasonable judgment of ANR Southern to be exercised in good faith) than the initial rates and material terms and conditions of service applicable to Shipper provided for in this Agreement and the Service Agreement (the "Third Party Service"), ANR Southern shall promptly so notify Shipper, including in such notice an abstract of the initial rates and material terms and conditions of service applicable to Shipper related to the Third Party Service; provided, however, this provision shall in no way require ANR Southern to breach any confidentiality provision in any other precedent agreement. Shipper shall have the right, exercisable by notice to ANR Southern within thirty (30) days of receipt of ANR Southern's notice of such terms, to require that this Agreement and the Service Agreement be amended to include the initial rate and all material terms and conditions of service

applicable to Shipper in the respective contract related to the Third Party Service. Such amendment shall continue to be effective for a term coextensive with such Third Party Service. Except as specifically amended pursuant to this Section, the terms and conditions of this Precedent Agreement and the Service Agreement shall remain in effect, and in the event that the term of such amendment expires prior to the term of the FT Service pursuant to this Precedent Agreement and the Service Agreement, after the expiration of such amendment, all of the terms and provisions of this Precedent Agreement and the Service Agreement shall be effective for the remaining term of the FT Service. Shipper shall not be entitled to select less than the initial rate and all of the material terms and conditions of service applicable to Shipper contained in the abstract. The rights of Shipper under this Section 6.a.(iv) shall become effective, if and only to the extent that, such other precedent agreement or service agreement provides for comparable service to similarly situated shippers. In the event that the Third Party Service does not commence, for whatever reason, the rate,

terms and conditions of this Precedent Agreement and the Service Agreement originally agreed to by the Parties shall apply to the FT Service; and

- (v) ANR Southern shall provide two (2) years prior written notice to Shipper as to the expected in-service date of that portion of the Florida Facilities that will transport Shipper's Anclote Gas Supply and will provide Shipper quarterly written progress reports, after the date of such notice, concerning the status of construction of such portion of the Florida Facilities.
- b. Upon the execution of this Agreement by the Parties, Shipper agrees that Shipper shall affirmatively support all governmental and regulatory authorizations and approvals sought by ANR Southern under the Florida Statutes for the construction and operation of the Florida Facilities required to transport Shipper's Anclote Gas Supply, First Polk County Gas Supply and Second Polk County Gas Supply, and shall take all actions consistent with Shipper's interests to assist ANR Southern in securing such governmental and regulatory authorizations.
- c. Upon the execution of this Agreement by the Parties, ANR Southern and Shipper agree that under the circumstances

described in the second sentence of Section 4. hereof,  
the following provisions shall apply:

- (i) In the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of Shipper's first and second power generation units at its Polk County site, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under Section 2 hereof for the natural gas supply for all of the gas fired electric power generation units to be constructed by Shipper in Shipper's service area, up to an aggregate MDQ of 90,000 MMBtus. In the event Shipper obtains the necessary regulatory and environmental authorizations for one but not both of such first and second power generation units, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under Section 2 hereof for an aggregate MDQ of up to 45,000 MMBtus. As applicable, the MDQs of 90,000 MMBtus or 45,000 MMBtus described in the immediately preceding sentences of this Section 6.c. shall hereinafter be referred to as the "Replacement Gas Supply". Each offer by

Shipper shall be made in writing and shall describe in reasonable detail the location of the proposed electric power generation unit or units, the MDQ of FT Service required and any other information pertinent to the nature and extent of such service.

(ii) Within thirty (30) days after receipt by ANR Southern of any offer by Shipper to contract for FT Service for all or a portion of the Replacement Gas Supply, ANR Southern shall determine, in the exercise of its good faith judgement, whether providing Shipper FT Service for the MDQ of Replacement Gas Supply over the term offered by Shipper and pursuant to the terms and provisions of this Agreement or upon some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in the exercise of its good faith judgment, and shall so notify Shipper.

(iii) If ANR Southern determines that contracting with Shipper to provide FT Service for the offered Replacement Gas Supply on the terms and provisions of this Agreement or some other terms and conditions will provide



economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in its sole discretion, ANR Southern shall notify Shipper in writing as to the specific terms and conditions under which it is willing to provide the FT Service required by Shipper and the Parties shall negotiate in good faith with respect to a service agreement for the FT Service, but neither Party shall be required to enter into a contract for such FT Service except upon mutually agreeable terms and conditions.

- (iv) Shipper shall be obligated to continue to offer to contract with ANR Southern to provide FT Service pursuant to Section 6.c.(i)-(iii) above until the Parties have entered into service agreements covering MDQs of gas at least equal to the applicable Replacement Gas Supply, after which the obligations of the Parties under this Section 6.c. shall be deemed fully satisfied.

7. Expansion of the Florida Facilities. ANR Southern and Shipper agree as follows with respect to the future expansion of the Florida Facilities:

- a. In the event that Shipper shall require firm transportation service in addition to the FT Service provided for in Section 1. above (the "Additional FT Service") for an additional supply or supplies of natural gas to fuel Shipper's future gas requirements, Shipper shall, with respect to MDQs of Additional FT Service up to an aggregate MDQ of 300,000 MMBtus (inclusive of the MDQs of FT Service provided for under Sections 1. and 6.c. hereof) and Shipper may, with respect to any MDQs of Additional FT Service in excess of an aggregate MDQ of 300,000 MMBtus, tender a written offer to ANR Southern to contract for such Additional FT Service (including the amount of Additional FT Service required and supporting information in reasonable detail). If ANR Southern accepts such offer, ANR Southern shall provide such Additional FT Service pursuant to its then effective tariff, rate schedule or Service Agreement, as applicable. ANR Southern shall notify Shipper as to whether or not it accepts such offer to provide the Additional FT Service described in Shipper's offer within thirty (30) days after receipt of such offer.
- b. If ANR Southern determines that the Florida Facilities do not have the capacity to provide the Additional FT Service for which Shipper has offered to contract with ANR Southern, as promptly as practicable, ANR Southern shall determine the cost

of expanding the Florida Facilities in order to provide capacity (the "Additional Facilities") for the Additional FT Service and the rates applicable to Service over the Additional Facilities and provide such information to Shipper together with ANR Southern's decision as to whether or not ANR Southern will construct and operate the Additional Facilities and provide the Additional FT Service.

- c. If ANR Southern is willing to construct and operate the Additional Facilities and provide to Shipper the Additional FT Service, Shipper shall have sixty (60) days from the date of its receipt of notification of such fact by ANR Southern to commence negotiations for a formal agreement with respect to such Additional FT Service.
- d. If ANR Southern is not willing to construct and operate the Additional Facilities and provide the Additional FT Service to Shipper, or if the Parties are unable to agree upon the terms and provisions of a service agreement with respect to such Additional FT Service, Shipper may elect, within sixty (60) days of receipt of notification of ANR Southern's unwillingness to construct the Additional Facilities or of the Shipper's notice to ANR Southern of the termination of negotiations for a service agreement, (i) to pay the cost of constructing the Additional Facilities (which shall

be owned by Shipper but operated and maintained by ANR Southern or its nominee pursuant to a mutually acceptable operation and maintenance agreement) or (ii) agree to pay the otherwise applicable rate plus the incremental rate designed to recover all costs associated with the Additional Facilities. If Shipper exercises such election so that Additional Facilities are constructed, ANR Southern shall negotiate with Shipper in good faith for formal agreements with respect to FT Service over such Additional Facilities and the incremental rate for such FT Service, or the operation and maintenance of such Additional Facilities and the incremental rate and for such FT Service, as the case may be; provided, however, in the event the Parties are unable to agree upon the terms of service applicable to the construction of the Additional Facilities by ANR Southern, Shipper shall have the right to proceed under the provisions of the clause (i) of the first sentence of this Section 7.d.

- e. ANR Southern and Shipper agree to cooperate with and assist one another for the purpose of obtaining any governmental and regulatory authorizations and approvals for the construction, operation and maintenance of the Additional Facilities and the use thereof for the purpose of providing Shipper with the Additional FT Service.

8. Interruptible Transportation Service. Concurrent with the execution of a Service Agreement for the FT Service, ANR Southern and Shipper shall execute and deliver an interruptible transportation service agreement for up to 210,000 MMBtu per day in a form mutually agreed upon by the Parties. The interruptible transportation service agreement between ANR Southern and Shipper shall provide that at any time interruptible transportation service is available on the Florida Facilities, Shipper shall be entitled to, and ANR Southern shall offer, a proportionate share of the interruptible transportation capacity available as expressed by a fraction, the numerator of which is Shipper's MDQ as provided in its Service Agreement and the denominator of which is the aggregate firm MDQs for all FT Service over the Florida Facilities. Shipper shall advise ANR Southern whether or not it intends to receive all or any portion of such interruptible transportation service offered. If, and only if, ANR Southern fails to offer such interruptible capacity to Shipper as provided in this Section 8, and such interruptible capacity is used to provide interruptible transportation service to similarly situated shippers through the Florida Facilities for ultimate consumption of gas within the State of Florida, and Shipper does not have actual or constructive knowledge of the availability of interruptible transportation capacity, then ANR Southern's transportation charge to Shipper for firm service rendered pursuant to this Agreement during the period such interruptible transportation capacity was not made available to Shipper shall be equal to the lowest weighted average transportation rate including rates for interruptible service paid by such similarly situated shipper multiplied by Shipper's MDQ as provided in this Agreement.



In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable interruptible transportation service to similarly situated shippers for ultimate consumption of natural gas within the State of Florida, at rates more favorable than the rates offered to Shipper by ANR Southern pursuant to the preceding paragraph, such rates shall be offered to Shipper with respect to the volumes and term of service set forth in such precedent agreement or service agreement, as applicable, with such similarly situated shipper. Shipper shall not be entitled to such rate unless Shipper transports the natural gas for its ultimate consumption within the State of Florida.

9. Effective Date, Initial Term and Termination. This Agreement shall become effective when executed by both ANR Southern and Shipper, and shall remain in effect for an initial term of twenty five (25) years from the date that FT Service for Shipper's Anclote Gas Supply commences (the "Initial Term"), and from year to year thereafter unless either Party gives notice of termination to the other Party at least one (1) year prior to the expiration of the Initial Term or any anniversary date thereof, subject however to the earlier termination as hereinafter provided.

- a. In the event that any of the conditions set forth in Section 5.b. of this Agreement have not been fulfilled or waived by the required date as may be modified by Section 5.c., then Shipper may terminate this Agreement by giving written notice to ANR Southern not later than five (5) business days after the nonoccurrence of such condition by

the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by Shipper in writing.

b. In the event that the conditions set forth in Sections 5.a.(i) or Section 5.a.(iii) of this Agreement have not been fulfilled or waived by the required date, then ANR Southern may terminate this Agreement by giving written notice to Shipper not later than five (5) business days after the non-occurrence of any such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by ANR Southern in writing.

c. In the event that the conditions set forth in Section 5.a. (ii) or Section 5.b. (iii) of this Agreement have not been fulfilled or waived by the required date, as may be modified by Section 5.c. or Section 5.d., as applicable, then ANR Southern or Shipper, as the case may be, may terminate this Agreement pursuant to Section 5.d.

10. Assignment. This Agreement shall be binding upon ANR Southern, Shipper and their successors and assigns; provided,

however, neither Party shall assign this Agreement or any rights or obligations hereunder without first obtaining the written consent of the other Party (which consent shall not be unreasonably withheld or delayed) and any regulatory authorizations reasonably deemed necessary by ANR Southern, unless such assignment is to an Affiliate of such Party desiring to make assignment; provided, however, any assignment by Shipper to an Affiliate of Shipper shall not relieve Shipper of any obligations, liabilities and responsibilities under this Agreement. Nothing contained herein shall prevent either Party from pledging, mortgaging or assigning its rights as security for its indebtedness and either Party may assign to the pledgee or mortgagee (or to a trustee for a holder of such indebtedness) any monies due or to become due under any Service Agreements. For purposes of this Agreement, the term "Affiliate" shall mean when used with respect to an entity, any other entity (i) which directly or indirectly (through one or more intermediaries) controls, or is controlled by, or is under common control with, such first mentioned person or entity or (ii) which beneficially owns, holds or controls fifty percent (50%) or more of the interest of such first mentioned entity. The term "control" means the possession, either directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through ownership of stock, as general partner, by contract or credit arrangement or otherwise.

11. Modification or Waiver. No modification or waiver of the terms and provisions of this Agreement shall be made except by the execution by the Parties of a written amendment to this Agreement.

12. Notices. All notices, requests, demands, instructions and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or mailed by certified mail, postage prepaid and return receipt requested or by telex or telecopier, as follows:

If to ANR Southern:

ANR Southern Pipeline Company  
Coastal Tower  
Nine Greenway Plaza  
Houston, Texas 77046  
Attention: Mr. E. J. Burgin  
Telephone No. (713) 877-3388  
Facsimile No. (713) 877-3714

If to Shipper:

Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Attention: Mr. Stephen Watsey, C.P.M.  
Telephone No. (813) 866-4382  
Facsimile No. (813) 866-4941

or to such other place within the United States of America as either Party may designate as to itself by written notice to the other. All notices given by personal delivery or mail shall be effective on the date of actual receipt at the appropriate address. Notice given by telex or telecopier shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning of the next business day after receipt if received after the recipient's normal business hours.

13. Limitation of Liability. Shipper agrees that any liability relating to and any and all claims against ANR Southern shall be limited to the assets of ANR Southern, and Shipper waives its rights to proceed against any of ANR Southern's Affiliates.



Execution of this Agreement does not bind any Affiliate of ANR Southern or require any Affiliate to undertake any obligation in connection with this Agreement. Shipper and ANR Southern agree that neither party shall be liable to the other for incidental, consequential or indirect damages under this Agreement, whether arising in contract, tort or otherwise.

14. No Third Party Rights or Obligations. This Agreement shall not create any rights in third parties, and no provision hereof shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than ANR Southern and Shipper.

15. Survival. All of the terms and provisions of this Agreement shall survive the execution by the Parties of a Service Agreement, except those terms and provisions hereof that are inconsistent with the terms and provisions of such Service Agreement.

16. Governing Law. THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA, EXCLUDING ANY CONFLICT OF LAW RULE WHICH WOULD REFER ANY MATTER TO THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF FLORIDA.

17. Counterpart Execution. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which shall constitute but one and the same agreement.



18. Partial Invalidity. Except as otherwise expressly stated herein, in the event any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable by a court or regulatory agency of competent jurisdiction by reason of a statutory change or enactment, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement.

19. Confidentiality. Except as provided hereinbelow, neither ANR Southern nor Shipper, nor their respective Affiliates, directors, officers, and employees, advisors and representatives shall disclose to any third party the terms and conditions of this Agreement, including the information and agreements set forth on the Exhibits, without the other Party's written consent to such disclosure. This provision shall not apply to such disclosures that, in the opinion of ANR Southern's or Shipper's counsel, as the case may be, are required by state or federal laws, rules or regulations (in which case, the Party making such disclosure shall advise the other Party prior to disclosure and, if requested by the other Party, shall use every effort to maintain the confidentiality of this Agreement, including, without limitation, seeking a protective order). The disclosure of any information pertaining to this Agreement within ANR Southern's or Shipper's internal organization (including Affiliates) and within the organization of any third party to which disclosure is authorized by ANR Southern or Shipper shall be limited to such personnel whose duties require their review or counsel with respect to this Agreement and the Party making such disclosure shall instruct such personnel to maintain the confidentiality of this Agreement.

20. Regulatory Status. The Parties hereby acknowledge that this Agreement contemplates, in all respects, that the Florida Facilities will be constructed, operated and regulated as an intrastate pipeline exempt from the regulatory jurisdiction of FERC pursuant to the Hinshaw Exemption. In the event that ANR Southern should, for any reason, lose, become ineligible or otherwise fail to qualify for the Hinshaw Exemption, then ANR Southern and Shipper nevertheless agree to (i) remain bound by the terms and conditions of this Agreement, and (ii) negotiate in good faith any revisions to this Agreement made necessary by ANR Southern's change in regulatory status.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in multiple originals by their duly authorized officers as of the date first written above.

ANR Southern PIPELINE COMPANY

By: 

FLORIDA POWER CORPORATION

By: 

## Exhibit "A"

PRO FORMA  
GAS TARIFF  
ORIGINAL VOLUME NO. 1  
OF  
SUNSHINE PIPELINE COMPANY  
FILED WITH  
FLORIDA PUBLIC SERVICE COMMISSION  
  
COMMUNICATIONS CONCERNING TARIFF  
SHOULD BE ADDRESSED TO:  
  
PRESIDENT,  
Sunshine Pipeline Company

PRECEDENT AGREEMENT

This precedent Agreement ("Agreement"), made this 15<sup>th</sup> day of February 1993, by and between FLORIDA POWER CORPORATION, a Florida corporation ("Shipper") and ANR SOUTHERN PIPELINE COMPANY, a Delaware corporation ("ANR Southern") (hereinafter shipper and ANR Southern are sometimes referred to individually as a "Party" or collectively as the "Parties").

W I T N E S S E T H:

WHEREAS, ANR Southern intends to design, construct, own and operate a natural gas pipeline (the "ANR Southern Interstate Facilities") that extends from a point in the vicinity of Mobile Bay to an interconnection in the state of Florida with the proposed intrastate facilities which ANR Southern intends to construct, own and operate within the state of Florida;

WHEREAS, ANR Southern plans to design, construct, own, and operate a natural gas pipeline and appurtenant facilities (the "Florida Facilities") for the transportation of natural gas within the state of Florida, which Florida Facilities shall extend from the interconnection with the ANR Southern Interstate Facilities in Florida to various locations within the state of Florida; and

WHEREAS, Shipper desires to receive firm transportation service (the "FT Service") on and across the ANR Southern Interstate Facilities pursuant to the terms of the Service Agreement (defined below) and a Federal Energy Regulatory Commission or successor agency ("FERC") Gas Tariff to be filed with

FERC in substantially the same form and substance as the Pro Forma Tariff attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, shipper and ANR Southern agree as follows:

1. Firm Service Obligation. Subject to the terms and conditions of this Agreement, and terms and conditions which may be imposed by the FERC, ANR Southern hereby agrees to provide to Shipper FT service through the ANR Southern Interstate Facilities as follows:

- a. Transportation of a maximum daily quantity ("MDQ") of 120,000 MMBtus ("Shipper's Anclote Gas Supply") for delivery to the Florida Facilities for ultimate delivery to Shipper's Anclote Plant located in Pasco County, Florida, commencing on the date the ANR Southern Interstate Facilities and any required upstream and downstream facilities are capable of providing such transportation on a firm daily basis;
- b. Transportation of an additional MDQ of 45,000 MMBtus ("Shippers's First Polk County Gas Supply") for delivery to the Florida Facilities for ultimate delivery to shipper's first power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1998 or the



date the ANR Southern Interstate Facilities and any upstream and downstream facilities are capable of providing such transportation on a firm basis; and

- c. Transportation of an additional MDQ of 45,000 MMBtus ("Shipper's Second Polk County Gas Supply") for delivery to the Florida Facilities for ultimate delivery to Shipper's second power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1999 or the date the ANR Southern Interstate Facilities and any required upstream and downstream facilities are capable of providing such transportation on a firm basis.

All of the increments of FT Service set out in subsections a., b. and c. of this Section 1 shall be provided: (i) pursuant to the terms and provisions of this Agreement and (ii) pursuant to a service agreement substantially in the form of the service agreement contained in Exhibit "A" (the "Service Agreement"). All of the FT Service shall be from the points of receipt on the ANR Southern Interstate Facilities to the interconnection with the Florida Facilities, which points of receipt and point of delivery are specified in Exhibit "B" attached hereto. Upon the request of Shipper pursuant to the nomination procedures applicable to FT Service in the then effective FERC Gas Tariff of ANR Southern, ANR Southern shall deliver to the Florida Facilities a minimum of eighty-five percent (85%) of shippers's MDQ during any fourteen (14) consecutive hour period during any twenty-four (24) hour

period; provided, however, that such fourteen (14) hour periods on consecutive days will be separated by not less than ten (10) hours. ANR Southern's obligation to provide such fourteen (14) hour service is subject to receipt of sufficient gas supplies for Shipper's account, and to force majeure or other capacity curtailments in accord with ANR Southern's FERC Gas Tariff.

2. Rates. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Contract Year" shall mean each twelve (12) month period beginning on the date described in Section 1.a. or any anniversary date thereof.

"Currently Effective Rate Per MMBtu" shall mean for each of ANR Southern Interstate Facilities and the Florida Facilities, the rate applicable to FT service for Shipper, from time to time.

"GNP Price Deflator" shall mean the GNP implicit price deflator computed and published by the United States Department of Commerce, Bureau of Economic Analysis in the "Survey of Current Business", or such successor index as the United States Department of Commerce or successor agency or department shall develop as a replacement index.

"Rate" or "Rates" (whether the initial letter is capitalized or not) shall mean the unit rates directly

attributable to any transportation service provided by ANR Southern to Shipper under this Agreement, and shall not include fuel, lost and unaccounted for gas, Annual Charge Adjustment ("ACA"), Gas Research Institute ("GRI") or other generally applicable surcharges required to be charged and collected.

Subject to the terms and conditions of this Agreement and the Service Agreement, and to such terms and conditions which may be imposed by the FERC, ANR Southern shall provide the FT Service, and Shipper shall pay for the FT Service, as follows:

- a. Subject to Section 2.b. and Section 2.c., Shipper shall pay an initial rate for the FT Service expressed herein as a unit rate of not more than 14.8 ¢ per MMBtu, which shall be initially adjusted to reflect actual final costs of constructing the ANR Southern Interstate Facilities and which may be subsequently adjusted from time to time pursuant to FERC ratemaking procedures.
- b. Shipper shall not be required to pay any amount attributable to the rates for the FT Service in excess of the maximum applicable effective rate provided for in ANR Southern's rate schedule applicable to the FT Service included in ANR Southern's FERC Gas Tariff, as that rate may be on file from time to time.

c. Shipper shall not be required to pay an amount for both FT Service on the ANR Southern Interstate Facilities and firm transportation service through the Florida Facilities (sometimes hereinafter individually or collectively referred to as the "pipeline" or "pipelines") for transportation of Shipper's gas supplies to the delivery points on the Florida Facilities in excess of the amounts set out in or calculated according to the following provisions of this Section 2.c. (the "Aggregate Rate Cap"). The Aggregate Rate Cap for the first Contract Year, expressed herein as a unit rate, shall be not more than 71.8 ¢ per MMBtu. For each subsequent Contract Year the Aggregate Rate Cap shall be defined as and shall be recalculated by:

- (i) multiplying the Aggregate Rate Cap for the prior Contract Year by forty-five percent (45%);
- (ii) subtracting the product of Section 2.c.(i) from the Aggregate Rate Cap for the prior Contract Year;
- (iii) multiplying the product of section 2.c.(i) by the lesser of (x) a fraction the numerator of which is the GNP Price Deflator for the calendar quarter immediately preceding such Contract Year and the denominator of which is



the GNP Price Deflator for the corresponding calendar quarter of the immediately preceding Contract Year, or (y) 1.04; and

- (iv) adding the product derived pursuant to Section 2.c.(iii) and the remainder derived pursuant to section 2.c.(ii).

Notwithstanding the foregoing calculations, ANR Southern agrees that during the first twenty (20) years of the Initial Term, the Aggregate Rate Cap shall never exceed 84.0 ¢ per MMBtu. If at any time during the term of the Service Agreement the sum of the Currently Effective Rates per MMBtu applicable to the ANR Southern Interstate Facilities and the rates currently applicable to Shipper's FT Service through the Florida Facilities (hereinafter the "Aggregate Rate") exceeds the Aggregate Rate Cap (the difference between the Aggregate Rate and the Aggregate Rate Cap being hereinafter referred to as the "Excess Rate"), then the Aggregate Rate shall be reduced by an amount equal to the Excess Rate.

- d. In addition to the rate provided for under Section 2.a. above, Shipper will compensate ANR Southern for any other charges applicable to Shipper under the then effective rate schedule applicable to the FT Service plus the actual amounts of natural gas used for fuel and lost and unaccounted for gas: provided, however,



that in no event shall Shipper be required to provide compensation for fuel and lost and unaccounted for gas applicable to the ANR Southern Interstate Facilities and the Florida Facilities, in the aggregate, in an amount in excess of one and one-half percent (1.5%) of Shipper's MDQs at the delivery points specified in Exhibit B. However, in the event the Florida Facilities or the ANR Southern Interstate Facilities are expanded in the future such that it results in greater fuel usage than the combined 1.5% cap but combined lower rates, then the 1.5% fuel cap will be permitted an upward adjustment to actual usage so long as the overall impact is to keep the combined cost (rate plus fuel) less than or equal to the combined cost prior to system expansion.

- e. Subject to the limitations in this Section 2., ANR Southern shall have the unilateral right to file for changes in its maximum rates or any other provisions in its FERC Gas Tariff and the Service Agreement including, but not limited to, provisions relating to compensation for fuel and lost and unaccounted for gas applicable to the service hereunder, and that such changes shall be effective and applicable, subject to refund as determined by the FERC, after the required notice or at the end of any suspension period ordered by the FERC, and such maximum rates plus any provision for fuel and lost and unaccounted for gas shall be effective under the Service Agreement.

Notwithstanding the foregoing, shipper shall have the right to intervene and protest any such rate filing by ANR Southern with respect to changes in ANR Southern's maximum rates, terms and conditions of service or any other provision in its currently effective gas tariff.

3. Terms of Service. Subject to the terms and conditions of this Agreement, ANR Southern agrees to provide the FT Service on substantially the same terms and conditions as those set forth in the Service Agreement and the Pro Forma FERC Gas Tariff attached hereto as Exhibit A.

4. Execution of Service Agreement. Concurrently with the fulfillment or waiver of all of the Conditions Precedent set forth below in Section 5, ANR Southern and Shipper shall execute and deliver the Service Agreement, to be effective as of the dates described in Section 1 above. Shipper shall become liable for payment of reservation charges with respect to each increment of service under the Service Agreement on the dates described in Section 1. above, except that with respect to the increments of service described in Sections 1b. and 1.c. above, in the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of either or both of Shipper's proposed first and second power generation units at Shipper's Polk County site by the earlier of August 31, 1994 or fifteen (15) days prior to the scheduled vote of ANR Southern's Board of Directors on either (i) construction of the ANR Southern Interstate Facilities or (ii) acceptance of the term sheet with respect to financing construction of the ANR Southern

Interstate Facilities, Shipper shall not be liable for the payment of reservation charges for FT Service for either or both of such increments of service, as the case may be, and ANR Southern and shipper shall have the respective obligations set forth in Section 6.c. hereof.

5. Conditions Precedent.

a. The obligation of ANR Southern to provide FT Service to Shipper in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by ANR Southern, of each of the following conditions:

(i) On or before May 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in-service date of the ANR Southern Interstate Facilities, to pay for firm transportation service through the ANR Southern Interstate Facilities under service agreements having a maximum daily quantity, in the aggregate, equal to at least 324,500 MMBtus;

(ii) On or before October 1, 1995, all of the Conditions Precedent in section 5 of the Precedent Agreement by and between Shipper and ANR Southern for transportation on the Florida

Facilities shall have been fulfilled or waived by the appropriate party;

(iii) On or before March 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required by the FERC and all other necessary authorizations and approvals from federal, state, local, and/or municipal agencies, to construct, own and operate the ANR Southern Interstate Facilities and provide Shipper FT service consistent with the terms of this Agreement, except those authorizations and approvals normally obtained after the FERC authorizations and approvals have been issued and accepted, and all such authorizations and approvals shall have become final and subject to no further appeal; and

(iv) On or before October 1, 1995, the Board of Directors of ANR Southern shall have voted to construct the ANR Southern Interstate Facilities and perform the services contemplated by this Agreement, and ANR Southern shall have accepted a term sheet with respect to, and have obtained a commitment for the financing of, the construction of the ANR Southern Interstate Facilities in such amount and on such terms and conditions as are acceptable to ANR Southern.

b. The obligation of Shipper to accept and pay for the FT Service in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by shipper, of the following conditions:

- (i) Each of the Conditions Precedent in Section 5 of the Precedent Agreement by and between shipper and ANR Southern for transportation on the Florida Facilities shall have been fulfilled or waived by the appropriate party by the respective dates set out in said Section 5; and
- (ii) On or before May 1, 1993, ANR Southern shall have filed with the FERC an application for authority to construct and operate the ANR Southern Interstate Facilities and to provide Shipper FT Service under the terms of this Agreement and the Service Agreement;
- (iii) On or before March 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required by the FERC to construct, own and operate the ANR Southern Interstate Facilities and offer the transportation service consistent with the terms of this Agreement, and all such authorizations and approvals



shall have become final and subject to no further appeal.

- (iv) On or before May 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in-service date of the ANR Southern Interstate Facilities, to pay for firm transportation service through the ANR Southern Interstate Facilities under service agreements having a maximum daily quantity, in the aggregate, equal to at least 324,500 MMBtus;

- c. If any of the Conditions Precedent set out or incorporated by reference in Section 5.b., as may be extended by Section 5.d., have not been fulfilled or waived by Shipper (the "Outstanding Conditions") thirty (30) days before the date upon which ANR Southern's Board of Directors is scheduled to approve (i) construction of the ANR Southern Interstate Facilities, or (ii) acceptance of the term sheet with respect to financing construction of the ANR Southern Interstate Facilities, ANR Southern's Board of Directors shall provide Shipper written notice at such time stating the date that ANR Southern's Board of Directors vote is scheduled to be taken. At least fifteen (15) days prior to such vote of ANR Southern's Board of Directors, Shipper shall be required to exercise, in writing, its right to terminate this Agreement or waive its right to terminate this

Agreement with respect to any Outstanding Conditions. In the event that Shipper chooses not to waive its Outstanding Conditions and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after ANR Southern receives the notice, unless the Outstanding Conditions have been satisfied or have been waived by Shipper in writing during such five (5) day period.

- d. With respect to the dates in the Conditions Precedent set forth in Section 5.a.(iii) and Section 5.b.(iii), the Parties contemplate that ANR Southern shall have been issued and accepted all of the regulatory and environmental authorizations and approvals required from the FERC to construct, own and operate the ANR Southern Interstate Facilities and offer the transportation service consistent with the terms of this Agreement (the "Regulatory Authorizations"), and the Parties further contemplate that the Regulatory Authorizations shall have become final and no longer subject to appeal as of the dates set forth in Section 5.a.(iii) and Section 5.b.(iii). ANR Southern agrees to provide shipper a true copy of each and every Regulatory Authorization received by it with full particulars as to the date of its issuance and any material procedural dates with respect thereto as promptly as practicable after its receipt by ANR Southern, but in no event later than three (3) business days thereafter. The Parties acknowledge and

agree that the Regulatory Authorizations may not be acceptable to ANR Southern and Shipper, or either ANR Southern or Shipper, or may be judicially challenged by third parties by rehearing before the FERC or by court appeal ("Third-Party Challenge"). ANR Southern further agrees to provide Shipper with notice of all such Third Party Challenges, if any, including such particulars as the date of filing and any material procedural dates with respect thereto as promptly as practicable after receipt of such notice by ANR Southern, but in no event less than three (3) business days thereafter.

If the Regulatory Authorizations contain any terms or conditions unacceptable to the Parties, or are subject to unacceptable risks associated with a Third-Party Challenge that may have a material adverse effect on either Party, each Party shall advise the other Party of any objections to the terms and conditions of the Regulatory Authorizations, or any unacceptable risks associated with any Third-Party Challenge that may have a material adverse effect on either Party (collectively, the "Objections"), in writing, as soon as practicable, but in no event later than fifteen (15) days after receipt by ANR Southern of the Regulatory Authorizations or notice of any Third-Party Challenges, as the case may be; provided that in all events Shipper shall have at least three (3) business days from the date it receives a copy of such

Regulatory Authorizations or notice of Third Party-Challenges to advise ANR Southern of any Objections thereto Shipper and ANR Southern shall waive their rights under Section 5.a.(iii) and Section 5.b.(ii), save and except any reserved Objections; provided, however, no waiver shall be required until all Regulatory Authorizations have been issued by FERC or the time for Third-Party Challenge has expired.

If ANR Southern has not accepted the Regulatory Authorizations, or ANR Southern has accepted the Regulatory Authorizations and there are reserved Objections, prior to the dates set forth in Section 5.a.(iii) and Section 5.b.(iii), the dates specified in Section 5.a.(iii) and 5.b.(iii) shall be extended for a period of thirty (30) days, or such longer period as the Parties may agree in writing (the "Regulatory Extension Period"), to resolve any reserved Objection to the satisfaction of the Party raising such Objection, or until such time as the Party raising such Objection waives its reserved Objection. After the Regulatory Extension Period, if a reserved Objection has not been fulfilled or waived by the Party raising such Objection, such Party may elect to terminate this Agreement by giving written notice to the other Party. In the event that a Party chooses not to waive its reserved Objections and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after such

other Party receives the notice, unless the reserved Objection has been fulfilled or has been waived by the Party raising the Objection in writing during such five (5) day period. In no event shall the extension of time provided in Section 5.d. result in the dates specified in Section 5.a.(iii) and Section 5.b.(ii) being later than April 15, 1995, and the extension of time provided in Section 5.d. is subject, in all respects, to the rights of ANR Southern to require that Shipper make an election as provided for in Section 5.c.

6. Covenants of the Parties.

a. Upon the execution of this Agreement by the Parties, ANR Southern agrees that:

(i) ANR Southern shall exert commercially reasonable efforts to obtain financing for the construction and operation of the ANR Southern Interstate Facilities;

(ii) With respect to the ANR Southern Interstate Facilities, ANR Southern shall make applications for all necessary authorizations and approvals to construct and operate the ANR Southern Interstate Facilities, and shall prosecute such applications with all reasonable diligence;



- (iii) ANR Southern shall exert commercially reasonable efforts to obtain all necessary authorizations for the release and assignment of firm capacity held by Shipper on the ANR Southern Interstate Facilities to third parties in accordance with FERC Order No. 636 (the "Capacity Release Program"), subject to terms and conditions for such Capacity Release Program as set forth in Exhibit A;
- (iv) In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable service to similarly situated shippers for ultimate consumption of natural gas within the State of Florida through the ANR Southern Interstate Facilities prior to the initial in-service date of the ANR Southern Interstate Facilities, on terms more favorable (in the reasonable judgment of ANR Southern to be exercised in good faith) than the initial rates and material terms and conditions of service applicable to shipper provided for in this Agreement and the Service Agreement (the "Third Party Service"), ANR Southern shall promptly so notify Shipper, including in such notice an abstract of the initial rates and material terms and conditions of service applicable to Shipper related to the Third Party Service; provided,

however, this provision shall in no way require ANR Southern to breach any confidentiality provision in any other precedent agreement. Shipper shall have the right, exercisable by notice to ANR Southern within thirty (30) days of receipt of ANR Southern's notice of such terms, to require that this Agreement and the Service Agreement be amended effective as of the date such Third Party Service commences to include the initial rate and all material terms and conditions of service applicable to Shipper in the respective contract related to the Third Party Service. Such amendment shall continue to be effective for a term coextensive with such Third Party Service. Except as specifically amended pursuant to this Section, the terms and conditions of this Precedent Agreement and the Service Agreement shall remain in effect, and in the event that the term of such amendment expires prior to the term of the FT Service pursuant to this Precedent Agreement and the Service Agreement, after the expiration of such amendment, all of the terms and provisions of this Precedent Agreement and the Service Agreement shall be effective for the remaining term of the FT Service. Shipper shall not be entitled to select less than the initial rate and all of the material terms and

conditions of service applicable to Shipper contained in the abstract. The rights of Shipper under this Section 6.a.(iv) shall become effective, if and only to the extent that, such other precedent agreement or service agreement provides for comparable service to similarly situated shippers. In the event that the Third Party Service does not commence, for whatever reason, the rate, terms and conditions of this Precedent Agreement and the Service Agreement originally agreed to by the Parties shall apply to the FT Service;

- (v) ANR Southern shall provide two (2) years' prior written notice to Shipper as to the expected in-service date of that portion of the Florida Interstate Facilities that will transport Shipper's Anclote Gas Supply, and will provide Shipper quarterly written progress reports, after the date of such notice, concerning the status of construction of such portion of the Florida Interstate Facilities.

- b. Upon the execution of this Agreement by the Parties, Shipper agrees that Shipper shall affirmatively support all governmental and regulatory authorizations and approvals sought by ANR Southern for the

construction and operation of the ANR Southern Interstate Facilities required to transport Shipper's Anclothe Gas Supply, First Polk County Gas Supply and Second Polk County Gas Supply, and shall take all actions consistent with Shipper's interests to assist ANR Southern in securing such governmental and regulatory authorizations.

c. Upon the execution of this Agreement by the Parties, ANR Southern and Shipper agree that under the circumstances described in the second sentence of Section 4. hereof, the following provisions shall apply:

- (i) In the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of Shipper's first and second power generation units at its Polk County site, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under section 2. hereof for the natural gas supply for all of the gas fired electric power generation units to be constructed by Shipper in Shipper's service area, up to an aggregate MDQ of 90,000 MMBtus. In the event Shipper obtains the necessary regulatory and environmental authorizations for one but not both of such first and second power generation

units, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under Section 2. hereof for an aggregate MDQ of up 45,000 MMBtus. As applicable, the MDQs of 90,000 MMBtus or 45,000 MMBtus described in the immediately preceding sentences of this Section 6.c. shall hereinafter be referred to as the "Replacement Gas Supply." Each offer by Shipper shall be made in writing and shall describe in reasonable detail the location of the proposed electric power generation unit or units, the MDQ of FT Service required and any other information pertinent to the nature and extent of such service.

- (ii) Within thirty (30) days after receipt by ANR Southern of any offer by Shipper to contract for FT Service for all or a portion of the Replacement Gas Supply, ANR Southern shall determine, in the exercise of its good faith judgment, whether providing Shipper FT Service for the MDQ of Replacement Gas Supply over the term offered by Shipper and pursuant to the terms and provisions of this Agreement or upon some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in the



exercise of its good faith judgment, and shall so notify Shipper.

(iii) If ANR Southern determines that contracting with Shipper to provide FT Service for the offered Replacement Gas Supply on the terms and provisions of this Agreement or some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in its sole discretion, ANR Southern shall notify Shipper in writing as to the specific terms and conditions under which it is willing to provide the FT Service required by Shipper and the Parties shall negotiate in good faith with respect to a Service Agreement for the FT Service, but neither Party shall be required to enter into a contract for such FT Service except upon mutually agreeable terms and conditions.

(iv) Shipper shall be obligated to continue to offer to contract with ANR Southern to provide FT Service pursuant to Section 6.c.(i)-(iii) above until the Parties have entered into service agreements covering MDQs of gas at least equal to the applicable Replacement Gas Supply, after which the obligations of the

Parties under this Section 6.c. shall be deemed fully satisfied.

7. Expansion of the ANR Southern Interstate Facilities. ANR Southern and Shipper agree as follows with respect to the future expansion of the ANR Southern Interstate Facilities:

- a. In the event that Shipper shall require firm transportation service in addition to the FT Service provided for in Section 1. above (the "Additional FT Service") for an additional supply or supplies of natural gas to fuel Shipper's future gas requirements, Shipper shall, with respect to MDQs of Additional FT Service up to an aggregate MDQ of 300,000 MMBtus (inclusive of the MDQs of FT Service provided for under Sections 1. and 6.c. hereof), and Shipper may, with respect to any MDQs of Additional FT Service in excess of an aggregate MDQ of 300,000 MMBtus, tender a written offer to ANR Southern to contract for such Additional FT Service (including the amount of Additional FT Service required and supporting information in reasonable detail). If ANR Southern accepts such offer, ANR Southern shall provide such Additional FT Service pursuant to its then effective FERC Gas Tariff. ANR Southern shall notify Shipper as to whether or not it accepts such offer to provide the Additional FT Service described in Shipper's offer within thirty (30) days after receipt of such offer.

- b. If ANR Southern determines that the ANR Southern Interstate Facilities do not have the capacity to provide the Additional FT Service for which Shipper has offered to contract with ANR Southern, as promptly as practicable, ANR Southern shall determine the cost of expanding the ANR Southern Interstate Facilities in order to provide capacity (the "Expanded Facilities") for the Additional FT Service and the rates applicable to service over the Expanded Facilities, and provide such information to Shipper together with ANR Southern's decision as to whether or not ANR Southern will construct and operate the Expanded Facilities and provide the Additional FT Service.
- c. If ANR Southern is willing to construct and operate the Expanded Facilities and provide to Shipper the Additional FT Service, Shipper shall have sixty (60) days from the date of its receipt of notification of such fact from ANR Southern to commence negotiations for a formal agreement with respect to such Additional FT Service.
- d. If ANR Southern is not willing to construct and operate the Expanded Facilities and provide the Additional FT Service to Shipper, or if the Parties are unable to agree upon the terms and provisions of a service agreement with respect to such Additional FT Service, Shipper may elect, within sixty (60) days of receipt of notification of ANR Southern's

unwillingness to construct the Additional Facilities or of the Shipper's notice to ANR Southern of the termination of negotiations for a service agreement, (i) to pay the cost of constructing the Expanded Facilities (which shall be owned by Shipper but operated and maintained by ANR Southern or its nominee pursuant to a mutually acceptable operation and maintenance agreement) or (ii) agree to pay the otherwise applicable rate plus the incremental rate designed to recover all costs associated with the Expanded Facilities. If Shipper exercises such election so that Expanded Facilities are constructed, ANR Southern shall negotiate with Shipper in good faith for formal agreements with respect to FT Service over such Expanded Facilities and the incremental rate for such FT Service, or the operation and maintenance of such Expanded Facilities, as the case may be; provided, however, in the event the Parties are unable to agree upon the terms of service applicable to the construction of the Additional Facilities by ANR Southern, Shipper shall have the right to proceed under the provisions of the clause (i) of the first sentence of this Section 7.d.

- e. ANR Southern and Shipper agree to cooperate with and assist one another for the purpose of obtaining any governmental and regulatory authorizations and approvals for the construction, operation and maintenance of the Expanded Facilities and the use

thereof for the purpose of providing Shipper with the Additional FT Service.

8. Interruptible Transportation Service. Concurrent with the execution of the Service Agreement for the FT Service, ANR Southern and Shipper shall execute and deliver an interruptible transportation service agreement for up to 210,000 MMBtu per day in a form mutually agreed upon by the Parties. The interruptible transportation service agreement between ANR Southern and Shipper shall provide that at any time interruptible transportation service is available on the ANR Southern Interstate Facilities, Shipper shall be entitled to, and ANR Southern shall offer, a proportionate share of the interruptible transportation capacity available as expressed by a fraction, the numerator of which is Shipper's MDQ as provided in the Service Agreement and the denominator of which is the aggregate firm MDQs for all FT Service over the ANR Southern Interstate Facilities. Shipper shall advise ANR Southern whether or not it intends to receive all or any portion of such interruptible transportation service offered. If, and only if, ANR Southern fails to offer such interruptible capacity to Shipper as provided in this Section 8, and such interruptible capacity is used to provide interruptible transportation service to similarly situated shippers through the ANR Southern Interstate Facilities for ultimate consumption of gas within the State of Florida, and Shipper does not have actual or constructive knowledge of the availability of interruptible transportation capacity, then ANR Southern's transportation charge to Shipper for firm service rendered pursuant to this Agreement during the period such interruptible transportation capacity was not made available to



Shipper shall be equal to the lowest weighted average transportation rate including rates for interruptible service paid by such similarly situated shipper multiplied by Shipper's MDQ as provided in this Agreement.

In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable interruptible transportation service to a similarly situated shipper through the ANR Southern Interstate Facilities, which volumes are transported through the Florida Facilities for ultimate consumption of natural gas within the State of Florida, at rates more favorable than rates offered to Shipper by ANR Southern, such rates shall be offered to Shipper with respect to the volumes and term of service set forth in such precedent agreement or service agreement, as applicable, with such similarly situated shipper. Shipper shall not be entitled to such rate unless Shipper transports the natural gas for its ultimate consumption within the State of Florida.

9. Effective Date, Initial Term and Termination. This Agreement shall become effective when executed by both ANR Southern and Shipper, and shall remain in effect for an initial term of twenty five (25) years from the date that FT Service for Shipper's Anclote Gas Supply commences (the "Initial Term"), and from year to year thereafter unless either Party gives notice of termination to the other Party at least one (1) year prior to the expiration of the Initial Term or any anniversary date thereof, subject however to the earlier termination as hereinafter provided.

- a. In the event that any of the conditions incorporated by reference in Section 5.b.(i) of this Agreement have not been fulfilled or waived by the required date, as may be modified by Section 5.c., then Shipper may terminate this Agreement by giving written notice to ANR Southern not later than five (5) business days after the non-occurrence of such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by Shipper in writing.
- b. In the event that the conditions set forth in Section 5.a.(i), Section 5.a.(ii) or Section 5.a.(iv) of this Agreement have not been fulfilled or waived by the required date, then ANR Southern may terminate this Agreement by giving written notice to Shipper not later than five (5) business days after the non-occurrence of any such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by ANR Southern in writing.
- c. In the event that the conditions set forth in Section 5.a.(iii) or Section 5.b.(ii) of this Agreement have not been fulfilled or waived by the required date, as

may be modified by Section 5.c. or Section 5.d., as applicable, then ANR Southern or Shipper, as the case may be, may terminate this Agreement pursuant to Section 5.d.

10. Assignment. This Agreement shall be binding upon ANR Southern, Shipper and their successors and assigns; provided, however, neither Party shall assign this Agreement or any rights or obligations hereunder without first obtaining the written consent of the other Party (which consent shall not be unreasonably withheld or delayed) and any regulatory authorizations reasonably deemed necessary by ANR Southern. An assignment to an Affiliate of such Party desiring to make the assignment may be made without prior written consent subject to the receipt of any necessary governmental authorizations; provided, however, any assignment by Shipper to an Affiliate of Shipper shall not relieve Shipper of any obligations, liabilities and responsibilities under this Agreement. Nothing contained herein shall prevent either Party from pledging, mortgaging or assigning its rights as security for its indebtedness and either Party may assign to the pledgee or mortgagee (or to a trustee for a holder of such indebtedness) any monies due or to become due under any Service Agreements. For purposes of this Agreement, the term "Affiliate" shall mean when used with respect to an entity, any other entity (i) which directly or indirectly (through one or more intermediaries) controls, or is controlled by, or is under common control with, such first mentioned person or entity or (ii) which beneficially owns, holds or controls fifty percent (50%) or more of the interest of such first mentioned entity. The term "control" means the possession, either directly

or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through ownership of stock, as general partner, by contract or credit arrangement or otherwise.

11. Modification or Waiver. No modification or waiver of the terms and provisions of this Agreement shall be made except by the execution by the Parties of a written amendment to this Agreement.

12. Notices. All notices, requests, demands, instructions and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or mailed by certified mail, postage prepaid and return receipt requested or by telex or telecopier, as follows:

If to ANR Southern:

ANR Southern Pipeline Company  
Coastal Tower  
Nine Greenway Plaza  
Houston, Texas 77046  
Attention: Mr. E. J. Burgin  
Telephone No. (713) 877-3388  
Facsimile No. (713) 877-3714

If to Shipper:

Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Attention: Mr. Stephen Watsey, C.P.M.  
Telephone No. (813) 866-4382  
Facsimile No. (813) 866-4941

or to such other place within the United States of America as either Party may designate as to itself by written notice to the other. All notices given by personal delivery or mail shall be effective on the date of actual receipt at the appropriate address. Notice given by telex or telecopier shall be effective upon actual receipt if received during recipient's normal business hours or at

the beginning of the next business day after receipt if received after the recipient's normal business hours.

13. Limitation of Liability. Shipper agrees that any liability relating to and any and all claims against ANR Southern shall be limited to the assets of ANR Southern, and Shipper waives its rights to proceed against any of ANR Southern's Affiliates. Execution of this Agreement does not bind any Affiliate of ANR Southern or require any Affiliate to undertake any obligation in connection with this Agreement. Shipper and ANR Southern agree that neither party shall be liable to the other for incidental, consequential or indirect damages under this Agreement, whether arising in contract, tort or otherwise.

14. No Third Party Rights or Obligations. This Agreement shall not create any rights in third parties, and no provision hereof shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than ANR Southern and Shipper.

15. Survival. All of the terms and provisions of this Agreement shall survive the execution by the Parties of a Service Agreement, except those terms and provisions hereof that are inconsistent with the terms and provisions of such Service Agreement.

16. Governing Law. THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT OF LAW RULE WHICH WOULD



REFER ANY MATTER TO THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF TEXAS.

17. Counterpart Execution. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which shall constitute but one and the same agreement.

18. Partial Invalidity. Except as otherwise expressly stated herein, in the event any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable by a court or regulatory agency of competent jurisdiction by reason of a statutory change or enactment, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement.

19. Confidentiality. Except as provided hereinbelow, neither ANR Southern nor Shipper, nor their respective Affiliates, directors, officers, and employees, advisors and representatives shall disclose to any third party the terms and conditions of this Agreement, including the information and agreements set forth on the Exhibits, without the other Party's written consent to such disclosure. This provision shall not apply to such disclosures that, in the opinion of ANR Southern's or Shipper's counsel, as the case may be, are required by state or federal laws, rules or regulations (in which case, the Party making such disclosure shall advise the other Party prior to disclosure and, if requested by the other Party, shall use every effort to maintain the confidentiality of this Agreement, including, without limitation, seeking a

protective order). The disclosure of any information pertaining to this Agreement within ANR Southern's or Shipper's internal organization (including Affiliates) and within the organization of any third party to which disclosure is authorized by ANR Southern or Shipper shall be limited to such personnel whose duties require their review or counsel with respect to this Agreement and the Party making such disclosure shall instruct such personnel to maintain the confidentiality of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in multiple originals by their duly authorized officers as of the date first written above.

ANR SOUTHERN PIPELINE COMPANY

By: \_\_\_\_\_

FLORIDA POWER CORPORATION

By: \_\_\_\_\_

Copies Available Upon Request

## Exhibit "A"

PRO FORMA

FERC GAS TARIFF

ORIGINAL VOLUME NO. 1

OF

SUNSHINE INTERSTATE TRANSMISSION COMPANY

FILED WITH

FEDERAL ENERGY REGULATORY COMMISSION

COMMUNICATIONS CONCERNING TARIFF

SHOULD BE ADDRESSED TO:

PRESIDENT,  
Sunshine Interstate Transmission Company

Sunshine Interstate Transmission Company  
FERC Gas Tariff  
Original Volume No. 1

Original Sheet No.

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Issued by:  
Issued on:

Effective:

Sunshine Interstate Transmission Company  
FERC Gas Tariff  
Original Volume No. 1

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PRECEDENT AGREEMENT

This Precedent Agreement ("Agreement"), made this 8<sup>th</sup> day of April 1993, by and between FLORIDA POWER CORPORATION, a Florida corporation ("Shipper"), and ANR SOUTHERN PIPELINE COMPANY, a Delaware corporation ("ANR Southern") (hereinafter Shipper and ANR Southern are sometimes referred to individually as "Party" or collectively as the "Parties").

W I T N E S S E T H:

WHEREAS, ANR Southern intends to design, construct, own and operate a natural gas pipeline and appurtenant facilities (the "Florida Facilities") for the transportation of natural gas within the State of Florida, which Florida Facilities shall extend from the terminus of a proposed interstate natural gas pipeline and appurtenant facilities in Florida (the "ANR Southern Interstate Facilities") also to be constructed and owned by ANR Southern to various locations within the State of Florida;

WHEREAS, ANR Southern plans to provide natural gas transportation service through the Florida Facilities wholly within the State of Florida, subject to the provisions of Florida law governing natural gas pipelines and the rules and regulations of any agencies of the government of the State of Florida (collectively, the "Florida Statutes") as a "Hinshaw" pipeline exempt from the regulatory jurisdiction of the Federal Energy Regulatory Commission or successor agency (FERC") pursuant to Section 1(c) (the "Hinshaw Exemption") of the Natural Gas Act ("NGA");

WHEREAS, Shipper desires to receive firm transportation service ("FT Service") on and across the Florida Facilities, which firm transportation service shall be rendered in accordance with the terms and conditions of the Service Agreement (defined below), and the gas tariff for the Florida Facilities (the "Florida Gas Tariff") on file with the Florida Public Service Commission or successor agency ("FPSC") in substantially the same form and substance as the Pro Forma Tariff attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, Shipper and ANR Southern agree as follows:

1. Firm Service Obligation. Subject to the terms and conditions of this Agreement and to such terms and conditions as may be or become applicable to ANR Southern's transportation service pursuant to the Florida Statutes, ANR Southern hereby agrees to provide to Shipper FT Service through the Florida Facilities as follows:

- a. FT Service for a maximum daily quantity ("MDQ") of 100,000 MMBtus on a year-round basis ("Shipper's Primary Anclote Gas Supply") for delivery to Shipper's Anclote Plant located in Pasco County, Florida, commencing on the later of (i) February 1, 1995, or (ii) the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of providing such transportation service on a firm daily basis (the "Primary FT Service");
- b. Additional FT Service (the "Flexible FT Service") for an MDQ of 20,000 MMBtus on a year-round basis for delivery to Shipper's Anclote Plant

commencing on the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of providing FT Service for Shipper's Primary Anclote Gas Supply on a firm daily basis, subject to flexible nominations by Shipper as follows:

- (1) Shipper shall have the right to tender to ANR Southern for FT Service on a daily basis during the months of October, November, December, January, February, March and April (the "Winter Season"), a daily quantity of natural gas of between zero MMBtu and 40,000 MMBtus so long as the aggregate of such daily tenders during the Winter Season does not exceed the product of 20,000 MMBtus and the number of days in the Winter Season (the "Winter Contract Quantity"); and
- (2) if Shipper has, during the Winter Season, tendered to ANR Southern less than the Winter Contract Quantity, ANR Southern agrees to accept tenders by Shipper of the balance of the Winter Contract Quantity for FT Service, subject to the limitations set out in (i) and (ii) below, and to credit against the rate applicable to such FT Service the rate paid by Shipper on account of the unused Winter Contract Quantity:
  - (i) during the month of May (in addition to tenders by Shipper of not less than 120,000 MMBtus per day, not less than 165,000 MMBtus per day commencing with the in-service date of FT Service for Shipper's First Polk County Gas Supply, and not less than 210,000 MMBtus per day commencing with the in-service date of FT Service for

Shipper's Second Polk County Gas Supply) on a pro rata basis with tenders by other shippers for interruptible transportation service, and

- (ii) during the months of June, July, August and September (in addition to tenders by Shipper of not less than 120,000 MMBtus per day, not less than 165,000 MMBtus per day commencing with the in-service date of FT Service for Shipper's First Polk County Gas Supply, and not less than 210,000 MMBtus per day commencing with the in-service date of FT Service for Shipper's Second Polk County Gas Supply), to the extent capacity sufficient to accommodate the transportation of such additional tenders is available on the Florida Facilities after accommodating all other firm and interruptible tenders on the ANR Southern Interstate Facilities.

- c. Additional FT Service during the months of May, June, July, August and September (the "Summer Season") for an MDQ of 20,000 MMBtus, for delivery to Shipper's Anclote Plant commencing on the date the Florida Facilities and any required upstream facilities are capable of providing FT Service for Shipper's Primary Anclote Gas Supply on a firm daily basis (the "Summer FT Service").
- d. Transportation of an additional MDQ of 45,000 MMBtus ("Shipper's First Polk County Gas Supply") to Shipper's first power generation unit to be

constructed at its Polk County site, commencing on the later of August 1, 1998 or the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of providing such FT Service on a firm basis; and

- e. Transportation of an additional MDQ of 45,000 MMBtus ("Shipper's Second Polk County Gas Supply") to Shipper's second power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1999 or the date the Florida Facilities and any required facilities upstream of the Florida Facilities are capable of providing such FT Service on a firm basis.

The MDQs identified in paragraphs a. through e. above are hereinafter referred to collectively as "Shipper's Gas Supply". The later of (i) and (ii) in paragraph a., August 1, 1998 in paragraph d. and August 1, 1999 in paragraph e. above are hereinafter referred to as the "Commencement Date" for the particular FT Service described in each such paragraph.

The initial term of the FT Service described in paragraphs a., b., d. and e. above shall be twenty-five (25) years from the Commencement Date of FT Service for Shipper's Primary Anclote Gas Supply (the "Initial Term"). Shipper shall have the right to extend the term of this Agreement as to each FT Service described in paragraphs a., b., d. and e. above for one or more periods of ten (10) years at ANR Southern's then applicable maximum lawful rate (any such period being hereinafter referred to as a "Secondary Term") beyond the expiration of the Initial Term (or any Secondary Term) thereof by providing ANR Southern with written notice of the exercise of such right not less than two (2) years prior to the expiration of the Initial Term



thereof (or any Secondary Term for which this Agreement has been previously extended). Unless Shipper elects to extend the term of this Agreement with respect to a particular FT Service described in paragraphs a., b., d. or e. above, the Initial Term thereof (and any Secondary Term thereof for which Shipper has previously elected to extend the term of this Agreement) shall be automatically extended from year to year after its expiration; provided, however, either Party may terminate this Agreement with respect to a particular FT Service described in paragraphs a., b., d. or e. above by providing written notice to the other Party at least one (1) year prior to the expiration of either (i) the Initial Term thereof or (ii) any Secondary Term thereof, or any anniversary date of either.

The initial term of the Summer FT Service shall be ten (10) years from the Commencement Date thereof (the "Initial Summer Term"). The Initial Summer Term shall be automatically extended from year to year thereafter unless ANR Southern terminates this Agreement with respect to the Summer FT Service by providing written notice to Shipper, at least one (1) year prior to the expiration of the Initial Summer Term or any anniversary thereof, that there is insufficient capacity in the Florida Facilities or the ANR Southern Interstate Facilities to permit the continuation of the Summer FT Service. In the event ANR Southern gives notice of termination of this Agreement with respect to the Summer FT Service, as aforesaid, Shipper's Flexible FT Service shall be automatically converted to Primary FT Service at the same MDQ level, and Shipper shall have the right to convert the Summer FT Service to Primary FT Service and extend the term of this Agreement with respect to such converted Summer FT Service beyond the expiration of the Initial Summer Term (or any anniversary thereof) for a period coextensive with the Initial Term of the FT Service provided for in paragraphs a., b., d. and e. above (any such period being hereinafter referred to as a "Secondary Term") at ANR Southern's then applicable maximum lawful rate, subject to the provisions of

Section 2.c., by providing ANR Southern with written notice of the exercise of such right within ninety (90) days following Shipper's receipt of ANR Southern's notice of termination with respect to the Summer FT Service, in which case the provisions set forth above with respect to the term extensions and termination of this Agreement with respect to the FT Service described in paragraphs a., b., d. and e. above shall thereafter be applicable. Unless Shipper exercises its conversion right with respect to the Summer FT Service, such FT Service shall terminate at the expiration of the one year notice period.

All of the increments of FT Service set out in subsections a., b., c., d. and e. of this Section 1 shall be provided: (i) pursuant to the terms and provisions of this Agreement and (ii) pursuant to a service agreement substantially in the form attached hereto as Exhibit A (the "Service Agreement"). There shall be added to the MDQ for each increment of Shipper's FT Service additional capacity sufficient to transport additional quantities of gas required by ANR Southern as fuel and for lost and unaccounted for gas related to each such increment of FT Service. Shipper's FT Service shall be from the point of receipt of Shipper's Gas Supply into the Florida Facilities to the points of delivery, which point of receipt and points of delivery are specified in Exhibit B attached hereto, provided, that Shipper shall have the right, in its sole discretion, to nominate all or any portion of the aggregate of the MDQs set out in subsections a., b., c., d. and e. of this Section 1 for delivery at any point or points of delivery specified in Exhibit B pursuant to the nomination procedures applicable to the FT Service in ANR Southern's Florida Gas Tariff; and provided further, subject to the provisions set forth above with respect to the Flexible FT Service, that any nominated quantity above Shipper's firm MDQ (plus gas used for fuel and lost and unaccounted for gas) applicable to the nominated delivery point shall not have priority of service over any firm service for other shippers at such delivery point but will have priority over interruptible transportation service at that delivery point. ANR Southern

shall deliver Shipper's First Polk County Gas Supply and Second Polk County Gas Supply to the applicable delivery point at a pressure of not less than 400 psi. ANR Southern shall, upon request by Shipper, deliver to Shipper's delivery points a minimum of eighty-five percent (85%) of Shipper's MDQ during any fourteen (14) consecutive hour period during any twenty-four (24) hour period; provided, however, that such fourteen (14) hour periods on consecutive days will be separated by not less than ten (10) hours. ANR Southern's obligation to provide such fourteen (14) hour service is subject to receipt of sufficient gas supplies for Shipper's account, and to force majeure or other capacity curtailments in accord with ANR Southern's Florida Gas Tariff.

2. Rates. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Contract Year" shall mean each twelve (12) month period beginning on the date described in Section 1.a. or any anniversary date thereof.

"Currently Effective Rate Per MMBtu" shall mean for each of the ANR Southern Interstate Facilities and the Florida Facilities, the rate applicable to FT Service for Shipper, from time to time.

"GNP Price Deflator" shall mean the GNP implicit price deflator computed and published by the United States Department of Commerce, Bureau of Economic Analysis in the "Survey of Current Business" or such successor index as the United States Department of Commerce or successor agency or department shall develop as a replacement index.

"Rate" or "Rates" (whether the initial letter is capitalized or not) shall mean the unit rates directly attributable to any transportation service provided by ANR Southern to Shipper under this Agreement, and shall not include fuel, lost and unaccounted for gas, the Regulatory Assessment Fee ("RAF") paid to the State of Florida or other generally applicable surcharges required to be charged and collected.

Subject to the terms and conditions of this Agreement and the Service Agreement, and to such terms and conditions as may be or become applicable to ANR Southern's rates pursuant to the Florida Statutes, ANR Southern shall provide the FT Service, and Shipper shall pay for the FT Service as follows:

- a. Subject to Section 2.b. and Section 2.c., Shipper shall pay an initial rate for the FT Service expressed herein as a unit rate of not more than 52.5¢ per MMBtu, which shall be initially adjusted to reflect actual final costs of constructing the Florida Facilities and which may be subsequently adjusted from time to time pursuant to the Service Agreement or the applicable ratemaking procedures set forth in the Florida Statutes.
- b. Shipper shall not be required to pay any amount attributable to the rates set forth in 2.a. for the FT Service in excess of the maximum applicable rate provided for in ANR Southern's rate schedule applicable to the FT Service included in ANR Southern's Florida gas tariff, as that rate may be on file from time to time with the FPSC.

c. Shipper shall not be required to pay an amount for both FT Service on the Florida Facilities and firm transportation service through the ANR Southern Interstate Facilities for transportation of Shipper's gas supplies to the delivery points on the Florida Facilities in excess of the amounts set out in or calculated according to the following provisions of this Section 2.c. (the "Aggregate Rate Cap"). The Aggregate Rate Cap for the first Contract Year, expressed herein as a unit rate, shall be not more than 71.8 ¢ per MMBtu. For each subsequent Contract Year the Aggregate Rate Cap shall be recalculated by:

- (i) multiplying the Aggregate Rate Cap for the prior Contract Year by forty-five percent (45%);
- (ii) subtracting the product of Section 2.c.(i) from the Aggregate Rate Cap for the prior Contract Year;
- (iii) multiplying the product of Section 2.c.(i) by the lesser of (x) a fraction the numerator of which is the GNP Price Deflator for the calendar quarter immediately preceding such Contract Year and the denominator of which is the GNP Price Deflator for the corresponding calendar quarter of the immediately preceding Contract Year, or (y) 1.04; and
- (iv) adding the product derived pursuant to Section 2.c. (iii) and the remainder derived pursuant to Section 2.c.(ii).



Notwithstanding the foregoing calculations, ANR Southern agrees that during the first twenty (20) years of the Initial Term, the Aggregate Rate Cap shall never exceed 84.0 ¢ per MMBtu. If at any time during the term of the Service Agreement the sum of the Currently Effective Rates Per MMBtu for transportation on the Florida Facilities and the rates currently applicable to Shipper's FT Service through the ANR Southern Interstate Facilities (hereinafter the "Aggregate Rate") exceeds the Aggregate Rate Cap (the difference between the Aggregate Rate and the Aggregate Rate Cap being hereinafter referred to as the "Excess Rate"), then the Aggregate Rate shall be reduced by an amount equal to the Excess Rate.

- d. In addition to the rate provided for under Section 2.a. above, Shipper will compensate ANR Southern for the RAF paid to the State of Florida and any other charges applicable to Shipper under the then effective rate schedule applicable to the FT Service, plus the actual amounts of natural gas used for fuel and lost and unaccounted for gas: provided, however, that in no event shall Shipper be required to provide compensation for fuel and lost and unaccounted for gas applicable to the ANR Southern Interstate Facilities and the Florida Facilities, in the aggregate, in an amount in excess of one and one-half percent (1.5%) of Shipper's MDQs at the delivery points specified in Exhibit B. However, in the event the Florida Facilities or the ANR Southern Interstate Facilities are expanded in the future such that it results in greater fuel usage than the combined 1.5% cap but combined lower rates, then the 1.5% fuel cap will be permitted an upward adjustment to actual usage so long as the overall

impact is to keep the combined cost (rate plus fuel) less than or equal to the combined cost prior to system expansion.

- e. Subject to the limitations in this Section 2., the Service Agreement shall provide that ANR Southern shall have the unilateral right to file for changes in its maximum rates or any other provisions in its Florida gas tariff including, but not limited to, provisions relating to compensation for fuel and lost and unaccounted for gas applicable to the service hereunder, and that such changes shall be effective and applicable, subject to refund as determined by the FPSC, as the case may be, after the required notice or at the end of any suspension period ordered by FPSC and such maximum rates plus any provision for fuel and lost and unaccounted for gas shall be effective under the Service Agreement. Notwithstanding the foregoing, Shipper shall have the right to intervene and protest any such rate filing by ANR Southern with respect to changes in ANR Southern's maximum rates, terms and conditions of service or any other provision in its currently effective gas tariff.

3. Terms of Service. Subject to the terms and conditions of this Agreement and to such terms and conditions as may be or become applicable to ANR Southern's transportation service pursuant to the Florida Statutes, ANR Southern agrees to provide the FT Service on the terms and conditions substantially similar to those set forth in the Service Agreement and the Florida Gas Tariff attached hereto as Exhibit A.

4. Execution of Service Agreement. Concurrently with the fulfillment or waiver of all of the Conditions Precedent set forth below in Section 5, ANR Southern and Shipper shall execute and deliver the Service Agreement, to be effective as of the Commencement Date. Shipper shall become liable for payment of reservation charges with respect to each increment of service under the Service Agreement on the dates described in Section 1 above, except that with respect to the increments of service described in Sections 1.d. and 1.e. above, in the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of either or both of Shipper's proposed first and second power generation units at Shipper's Polk County site by the earlier of October 1, 1995 or fifteen (15) days prior to the scheduled vote of ANR Southern's Board of Directors on either (i) construction of the Florida Facilities or (ii) acceptance of the term sheet with respect to financing construction of the Florida Facilities, Shipper shall not be liable for the payment of reservation charges for FT Service for either or both of such increments of service, as the case may be, and ANR Southern and Shipper shall have the respective obligations set forth in Section 6.c. hereof.

5. Conditions Precedent.

- a. The obligation of ANR Southern to provide FT Service to Shipper in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by ANR Southern, of each of the following conditions:
  - (i) On or before August 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in-service date of the Florida Facilities,

to pay for firm transportation service through the Florida Facilities under service agreements having a maximum daily quantity, in the aggregate, equal to at least 219,00 MMBtus;

(ii) On or before March 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required under the Florida Statutes and all other necessary regulatory authorizations and approvals from federal, state, local and/or municipal agencies to construct, own and operate the Florida Facilities and offer the transportation service consistent with the terms of this Agreement, and all such authorizations and approvals shall have become final and subject to no further appeal; and

(iii) On or before October 1, 1995, the ANR Southern Board of Directors shall have voted to construct the Florida Facilities in accordance with applicable voting procedures, and ANR Southern shall have accepted a term sheet with respect to, and obtained a commitment for, the financing of the construction of the Florida Facilities in such amount and on such terms and conditions as are acceptable to ANR Southern.

b. The obligation of Shipper to accept and pay for the FT Service in accordance with the terms of this Agreement and the Service Agreement

is subject to the fulfillment, or waiver by Shipper, of the following conditions:

- (i) On or before August 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in service date of the Florida Facilities, to pay for firm transportation service through the Florida Facilities under service agreements having an aggregate maximum daily quantity of at least 219,000 MMBtus ; and
- (ii) On or before July 1, 1993 ANR Southern shall have filed all necessary applications for authority to construct and operate the Florida Facilities in accordance with the Florida Statutes; and
- (iii) On or before March 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required under the Florida Statutes to construct, own and operate the Florida Facilities and offer the transportation service consistent with the terms of this Agreement, except those authorizations and approvals normally obtained after the FPSC authorizations and approvals have been issued and accepted, and all such authorizations and approvals shall have become final and subject to no further appeal.



- c. If any of the Conditions Precedent in Section 5.b., as may be extended by Section 5.d., have not been fulfilled or waived by Shipper (the "Outstanding Conditions") thirty (30) days before the date upon which ANR Southern's Board of Directors is scheduled to vote on either (i) construction of the Florida Facilities, or (ii) acceptance of the term sheet with respect to financing construction of the Florida Facilities, ANR Southern's Board of Directors shall provide Shipper written notice at such time stating the date that ANR Southern's Board of Directors vote is scheduled to be taken. At least fifteen (15) days prior to the scheduled vote of ANR Southern's Board of Directors, Shipper shall be required to exercise, in writing, its right to terminate this Agreement or waive its right to terminate this Agreement with respect to any Outstanding Conditions. In the event that Shipper chooses not to waive its Outstanding Conditions and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after ANR Southern receives the notice, unless the Outstanding Conditions have been satisfied or have been waived by Shipper in writing during such five (5) day period.
- d. With respect to the dates in the Conditions Precedent set forth in Section 5.a.(ii) and Section 5.b.(iii), the Parties contemplate that ANR Southern shall have been issued and accepted all of the regulatory and environmental authorizations and approvals required from the FPSC to construct, own and operate the Florida Facilities and offer the transportation service consistent with the terms of this Agreement (the "Regulatory Authorizations"), and the Parties further contemplate that the Regulatory Authorizations shall have become final and no longer subject to appeal as of the dates set forth in Section 5.a.(ii) and Section 5.b. (iii). ANR

Southern agrees to provide Shipper a true copy of each and every Regulatory Authorization received by it with full particulars as to the date of its issuance and any material procedural dates with respect thereto, as promptly as practicable after its receipt by ANR Southern, but in no event later than three (3) business days thereafter. The Parties acknowledge and agree that the Regulatory Authorizations, as issued by the applicable regulatory authorities, may not be acceptable to ANR Southern and Shipper, or either ANR Southern or Shipper, or may be judicially challenged by third parties by rehearing petition before the FPSC, or by court appeal ("Third-Party Challenge"). ANR Southern further agrees to provide Shipper with notice of all such Third Party Challenges, if any, including such particulars as the date of filing and any material procedural dates with respect thereto as promptly as practicable after receipt of such notice by ANR Southern, but in no event less than three (3) business days thereafter.

If the Regulatory Authorizations contain material terms or conditions unacceptable to the Parties, or are subject to unacceptable risks associated with a Third Party Challenge that may have a material adverse effect on either Party, each Party shall advise the other Party of any objections to such material terms and conditions of the Regulatory Authorizations, or such unacceptable risks associated with any Third-party Challenge that may have a material adverse effect on either Party (collectively, the "Objections"), in writing, as soon as practicable but in no event later than fifteen (15) days after receipt by ANR Southern of the Regulatory Authorizations or notice of any Third-Party Challenge, as the case may be; provided that in all events Shipper shall have at least three (3) business days from the date it receives a copy of such Regulatory Authorizations or notice of

Third-Party Challenges to advise ANR Southern of any Objections thereto. Each Party shall waive its rights under Section 5.a.(ii) and Section 5.b.(iii), as applicable, save and except for any reserved Objections; provided, however, no waiver shall be required until all Regulatory Authorizations have been issued by FPSC or the time for Third-Party Challenge has expired.

If ANR Southern has not accepted the Regulatory Authorizations, or ANR Southern has accepted the Regulatory Authorizations and there are reserved Objections, prior to the dates set forth in Section 5.a.(ii) and Section 5.b.(iii), the dates specified in Section 5.a.(ii) and 5.b.(iii) shall be extended for a period of thirty (30) days, or such longer period as the Parties may agree in writing (the "Regulatory Extension Period"), to resolve any reserved Objection to the satisfaction of the Party raising such Objection, or until such time as the Party raising such Objection waives its reserved Objection. After the Regulatory Extension Period, if a reserved Objection has not been fulfilled or waived by the Party raising such Objection, such Party may elect to terminate this Agreement by giving written notice to the other Party. In the event that a Party chooses not to waive its reserved Objections and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after such other Party receives the notice, unless the reserved Objection has been fulfilled or has been waived by the Party raising the Objection in writing during such five (5) day period. In no event shall the extension of time provided in Section 5.d. result in the dates specified in Section 5.a.(ii) and Section 5.b.(iii) being later than April 15, 1995, and the extension of time provided in Section 5.d. is subject, in all respects, to

the rights of ANR Southern to require that Shipper make an election as provided for in Section 5.c.

6. Covenants of the Parties.

a. Upon the execution of this Agreement by the Parties, ANR Southern agrees that:

(i) ANR Southern shall exert commercially reasonable efforts to obtain financing for the construction and operation of the Florida Facilities;

(ii) With respect to the Florida Facilities, ANR Southern shall make applications for all necessary authorizations and approvals to construct and operate the Florida Facilities, including, without limitation, all authorizations and approvals required under the Florida Statutes and shall prosecute such applications with all reasonable diligence;

(iii) ANR Southern shall exert commercially reasonable efforts to obtain all necessary authorizations and approvals required under the Florida Statutes for a Florida Gas Tariff consistent in all material respects with Exhibit A, that authorizes ANR Southern to provide to Shipper the FT Service at the rates set out in Section 2 above, or such other mutually acceptable

rates, and providing for the assignment of firm capacity held by Shipper on the Florida Facilities to third parties as set forth in Exhibit A;

- (iv) In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable service to similarly situated shippers for ultimate consumption of natural gas within the State of Florida through the Florida Facilities prior to the initial in service date of the Florida Facilities, on terms more favorable (in the reasonable judgment of ANR Southern to be exercised in good faith) than the initial rates and material terms and conditions of service applicable to Shipper provided for in this Agreement and the Service Agreement (the "Third Party Service"), ANR Southern shall promptly so notify Shipper, including in such notice an abstract of the initial rates and material terms and conditions of service applicable to Shipper related to the Third Party Service; provided, however, this provision shall in no way require ANR Southern to breach any confidentiality provision in any other precedent agreement. Shipper shall have the right, exercisable by notice to ANR Southern within thirty (30) days of receipt of ANR Southern's notice of such terms, to require that this Agreement and the Service Agreement be amended to include the initial rate and all material terms and conditions of service applicable to Shipper



in the respective contract related to the Third Party Service.

Such amendment shall continue to be effective for a term coextensive with such Third Party Service. Except as specifically amended pursuant to this Section, the terms and conditions of this Precedent Agreement and the Service Agreement shall remain in effect, and in the event that the term of such amendment expires prior to the term of the FT Service pursuant to this Precedent Agreement and the Service Agreement, after the expiration of such amendment, all of the terms and provisions of this Precedent Agreement and the Service Agreement shall be effective for the remaining term of the FT Service. Shipper shall not be entitled to select less than the initial rate and all of the material terms and conditions of service applicable to Shipper contained in the abstract. The rights of Shipper under this Section 6.a.(iv) shall become effective, if and only to the extent that, such other precedent agreement or service agreement provides for comparable service to similarly situated shippers. In the event that the Third Party Service does not commence, for whatever reason, the rate, terms and conditions of this Precedent Agreement and the Service Agreement originally agreed to by the Parties shall apply to the FT Service; and

- (v) ANR Southern shall provide two (2) years prior written notice to Shipper as to the expected in-service date of that portion of

the Florida Facilities that will transport Shipper's Anclothe Gas Supply and will provide Shipper quarterly written progress reports, after the date of such notice, concerning the status of construction of such portion of the Florida Facilities.

- b. Upon the execution of this Agreement by the Parties, Shipper agrees that Shipper shall affirmatively support all governmental and regulatory authorizations and approvals sought by ANR Southern under the Florida Statutes for the construction and operation of the Florida Facilities required to transport Shipper's Anclothe Gas Supply, First Polk County Gas Supply and Second Polk County Gas Supply, and shall take all actions consistent with Shipper's interests to assist ANR Southern in securing such governmental and regulatory authorizations.
- c. Upon the execution of this Agreement by the Parties, ANR Southern and Shipper agree that under the circumstances described in the second sentence of Section 4. hereof, the following provisions shall apply:
  - (i) In the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of Shipper's first and second power generation units at its Polk County site, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under Section 2 hereof for the natural gas supply for all of the gas fired electric power generation units to be constructed by Shipper in Shipper's service area, up to an

aggregate MDQ of 90,000 MMBtus. In the event Shipper obtains the necessary regulatory and environmental authorizations for one but not both of such first and second power generation units, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under Section 2 hereof for an aggregate MDQ of up to 45,000 MMBtus. As applicable, the MDQs of 90,000 MMBtus or 45,000 MMBtus described in the immediately preceding sentences of this Section 6.c. shall hereinafter be referred to as the "Replacement Gas Supply". Each offer by Shipper shall be made in writing and shall describe in reasonable detail the location of the proposed electric power generation unit or units, the MDQ of FT Service required and any other information pertinent to the nature and extent of such service.

- (ii) Within thirty (30) days after receipt by ANR Southern of any offer by Shipper to contract for FT Service for all or a portion of the Replacement Gas Supply, ANR Southern shall determine, in the exercise of its good faith judgement, whether providing Shipper FT Service for the MDQ of Replacement Gas Supply over the term offered by Shipper and pursuant to the terms and provisions of this Agreement or upon some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR

Southern in the exercise of its good faith judgment, and shall so notify Shipper.

(iii) If ANR Southern determines that contracting with Shipper to provide FT Service for the offered Replacement Gas Supply on the terms and provisions of this Agreement or some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in its sole discretion, ANR Southern shall notify Shipper in writing as to the specific terms and conditions under which it is willing to provide the FT Service required by Shipper and the Parties shall negotiate in good faith with respect to a service agreement for the FT Service, but neither Party shall be required to enter into a contract for such FT Service except upon mutually agreeable terms and conditions.

(iv) Shipper shall be obligated to continue to offer to contract with ANR Southern to provide FT Service pursuant to Section 6.c.(i)-(iii) above until the Parties have entered into service agreements covering MDQs of gas at least equal to the applicable Replacement Gas Supply, after which the obligations of the Parties under this Section 6.c. shall be deemed fully satisfied.

7. Expansion of the Florida Facilities. ANR Southern and Shipper agree as follows with respect to the future expansion of the Florida Facilities:

- a. In the event that Shipper shall require firm transportation service in addition to the FT Service provided for in Section 1. above (the "Additional FT Service") for an additional supply or supplies of natural gas to fuel Shipper's future gas requirements, Shipper shall, with respect to MDQs of Additional FT Service up to an aggregate MDQ of 300,000 MMBtus (inclusive of the MDQs of FT Service provided for under Sections 1. and 6.c. hereof) and Shipper may, with respect to any MDQs of Additional FT Service in excess of an aggregate MDQ of 300,000 MMBtus, tender a written offer to ANR Southern to contract for such Additional FT Service (including the amount of Additional FT Service required and supporting information in reasonable detail). If ANR Southern accepts such offer, ANR Southern shall provide such Additional FT Service pursuant to its then effective tariff, rate schedule or Service Agreement, as applicable. ANR Southern shall notify Shipper as to whether or not it accepts such offer to provide the Additional FT Service described in Shipper's offer within thirty (30) days after receipt of such offer.
- b. If ANR Southern determines that the Florida Facilities do not have the capacity to provide the Additional FT Service for which Shipper has offered to contract with ANR Southern, as promptly as practicable, ANR Southern shall determine the cost of expanding the Florida Facilities in



order to provide capacity (the "Additional Facilities") for the Additional FT Service and the rates applicable to Service over the Additional Facilities and provide such information to Shipper together with ANR Southern's decision as to whether or not ANR Southern will construct and operate the Additional Facilities and provide the Additional FT Service.

- c. If ANR Southern is willing to construct and operate the Additional Facilities and provide to Shipper the Additional FT Service, Shipper shall have sixty (60) days from the date of its receipt of notification of such fact by ANR Southern to commence negotiations for a formal agreement with respect to such Additional FT Service.
- d. If ANR Southern is not willing to construct and operate the Additional Facilities and provide the Additional FT Service to Shipper, or if the Parties are unable to agree upon the terms and provisions of a service agreement with respect to such Additional FT Service, Shipper may elect, within sixty (60) days of receipt of notification of ANR Southern's unwillingness to construct the Additional Facilities or of the Shipper's notice to ANR Southern of the termination of negotiations for a service agreement, (i) to pay the cost of constructing the Additional Facilities (which shall be owned by Shipper but operated and maintained by ANR Southern or its nominee pursuant to a mutually acceptable operation and maintenance agreement) or (ii) agree to pay the otherwise applicable rate plus the incremental rate designed to recover all costs associated with the Additional Facilities. If Shipper exercises such election so that Additional

Facilities are constructed, ANR Southern shall negotiate with Shipper in good faith for formal agreements with respect to FT Service over such Additional Facilities and the incremental rate for such FT Service, or the operation and maintenance of such Additional Facilities and the incremental rate and for such FT Service, as the case may be; provided, however, in the event the Parties are unable to agree upon the terms of service applicable to the construction of the Additional Facilities by ANR Southern, Shipper shall have the right to proceed under the provisions of the clause (i) of the first sentence of this Section 7.d.

- e. ANR Southern and Shipper agree to cooperate with and assist one another for the purpose of obtaining any governmental and regulatory authorizations and approvals for the construction, operation and maintenance of the Additional Facilities and the use thereof for the purpose of providing Shipper with the Additional FT Service.

8. Interruptible Transportation Service. Concurrent with the execution of a Service Agreement for FT Service pursuant to this Agreement, ANR Southern and Shipper shall execute and deliver an interruptible transportation service agreement in a form mutually agreed upon by the Parties, including provisions equivalent to those set out below. The interruptible transportation service agreement between ANR Southern and Shipper shall provide that at any time interruptible transportation service is available on the Florida Facilities, Shipper shall be entitled to, and ANR Southern shall offer, a proportionate share of the interruptible transportation capacity available as expressed by a fraction, the numerator of which is Shipper's aggregate firm MDQ's as provided in its Service Agreement and the denominator of which is

the aggregate firm MDQs for all FT Service over the Florida Facilities. Shipper shall advise ANR Southern whether or not it intends to receive all or any portion of such interruptible transportation service offered. If, and only if, ANR Southern fails to offer such interruptible capacity to Shipper as provided in this Section 8, and such interruptible capacity is used to provide interruptible transportation service to similarly situated shippers through the Florida Facilities for ultimate consumption of gas within the State of Florida, and Shipper does not have actual or constructive knowledge of the availability of interruptible transportation capacity, then ANR Southern's transportation charge to Shipper for firm service rendered pursuant to this Agreement during the period such interruptible transportation capacity was not made available to Shipper shall be equal to the lowest weighted average transportation rate including rates for interruptible service paid by such similarly situated shipper multiplied by Shipper's MDQ as provided in this Agreement.

In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable interruptible transportation service to similarly situated shippers for ultimate consumption of natural gas within the State of Florida, at rates more favorable than the rates offered to Shipper by ANR Southern pursuant to the preceding paragraph, such rates shall be offered to Shipper with respect to the volumes and term of service set forth in such precedent agreement or service agreement, as applicable, with such similarly situated shipper. Shipper shall not be entitled to such rate unless Shipper transports the natural gas for its ultimate consumption within the State of Florida.

9. Termination. This Agreement shall become effective when executed by both ANR Southern and Shipper, and shall remain in effect as provided in Section 1, unless and until terminated as hereinafter provided.

- a. In the event that any of the conditions set forth in Section 5.b. of this Agreement have not been fulfilled or waived by the required date as may be modified by Section 5.c., then Shipper may terminate this Agreement by giving written notice to ANR Southern not later than five (5) business days after the nonoccurrence of such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by Shipper in writing.
  
- b. In the event that the conditions set forth in Sections 5.a.(i) or Section 5.a.(iii) of this Agreement have not been fulfilled or waived by the required date, then ANR Southern may terminate this Agreement by giving written notice to Shipper not later than five (5) business days after the non-occurrence of any such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by ANR Southern in writing.
  
- c. In the event that the conditions set forth in Section 5.a. (ii) or Section 5.b. (iii) of this Agreement have not been fulfilled or waived by the required date, as may be modified by Section 5.c. or Section 5.d., as applicable, then ANR Southern or Shipper, as the case may be, may terminate this Agreement pursuant to Section 5.d.

10. Assignment. This Agreement shall be binding upon ANR Southern, Shipper and their successors and assigns; provided, however, neither Party shall assign this Agreement or any rights or obligations hereunder without first obtaining the written consent of the other Party (which consent shall not be unreasonably withheld or delayed) and any regulatory authorizations reasonably deemed necessary by ANR Southern, unless such assignment is to an Affiliate of such Party desiring to make assignment; provided, however, any assignment by Shipper to an Affiliate of Shipper shall not relieve Shipper of any obligations, liabilities and responsibilities under this Agreement. Nothing contained herein shall prevent either Party from pledging, mortgaging or assigning its rights as security for its indebtedness and either Party may assign to the pledgee or mortgagee (or to a trustee for a holder of such indebtedness) any monies due or to become due under any Service Agreements. For purposes of this Agreement, the term "Affiliate" shall mean when used with respect to an entity, any other entity (i) which directly or indirectly (through one or more intermediaries) controls, or is controlled by, or is under common control with, such first mentioned person or entity or (ii) which beneficially owns, holds or controls fifty percent (50%) or more of the interest of such first mentioned entity. The term "control" means the possession, either directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through ownership of stock, as general partner, by contract or credit arrangement or otherwise.

11. Modification or Waiver. No modification or waiver of the terms and provisions of this Agreement shall be made except by the execution by the Parties of a written amendment to this Agreement.

12. Notices. All notices, requests, demands, instructions and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally



or mailed by certified mail, postage prepaid and return receipt requested or by telex or telecopier, as follows:

If to ANR Southern:

ANR Southern Pipeline Company  
Coastal Tower  
Nine Greenway Plaza  
Houston, Texas 77046  
Attention: Mr. E. J. Burgin  
Telephone No. (713) 877-3388  
Facsimile No. (713) 877-3714

If to Shipper:

Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Attention: Mr. Stephen Watsey, C.P.M.  
Telephone No. (813) 866-4382  
Facsimile No. (813) 866-4941

or to such other place within the United States of America as either Party may designate as to itself by written notice to the other. All notices given by personal delivery or mail shall be effective on the date of actual receipt at the appropriate address. Notice given by telex or telecopier shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning of the next business day after receipt if received after the recipient's normal business hours.

13. Limitation of Liability. Shipper agrees that any liability relating to and any and all claims against ANR Southern shall be limited to the assets of ANR Southern, and Shipper waives its rights to proceed against any of ANR Southern's Affiliates.

Execution of this Agreement does not bind any Affiliate of ANR Southern or require any Affiliate to undertake any obligation in connection with this Agreement. Shipper and ANR Southern agree that neither party shall be liable to the other for incidental, consequential or indirect damages under this Agreement, whether arising in contract, tort or otherwise.

14. No Third Party Rights or Obligations. This Agreement shall not create any rights in third parties, and no provision hereof shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than ANR Southern and Shipper.

15. Survival. All of the terms and provisions of this Agreement shall survive the execution by the Parties of a Service Agreement, except those terms and provisions hereof that are inconsistent with the terms and provisions of such Service Agreement.

16. Governing Law. THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA, EXCLUDING ANY CONFLICT OF LAW RULE WHICH WOULD REFER ANY MATTER TO THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF FLORIDA.

17. Counterpart Execution. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which shall constitute but one and the same agreement.

18. Partial Invalidity. Except as otherwise expressly stated herein, in the event any provision contained in this Agreement shall for any reason be held invalid, illegal or

\_\_\_\_\_ or regulatory agency of competent jurisdiction by reason of a statutory  
\_\_\_\_\_ invalidity, illegality or unenforceability shall not affect the remaining  
\_\_\_\_\_ ment.

\_\_\_\_\_. Except as provided hereinbelow, neither ANR Southern nor Shipper,  
\_\_\_\_\_, directors, officers, and employees, advisors and representatives  
\_\_\_\_\_ third party the terms and conditions of this Agreement, including the  
\_\_\_\_\_ set forth on the Exhibits, without the other Party's written consent  
\_\_\_\_\_ provision shall not apply to such disclosures that, in the opinion of  
\_\_\_\_\_ counsel, as the case may be, are required by state or federal laws,  
\_\_\_\_\_ which case, the Party making such disclosure shall advise the other Party  
\_\_\_\_\_ if requested by the other Party, shall use every effort to maintain the  
\_\_\_\_\_ agreement, including, without limitation, seeking a protective order). The  
\_\_\_\_\_ pertaining to this Agreement within ANR Southern's or Shipper's  
\_\_\_\_\_ (including Affiliates) and within the organization of any third party to  
\_\_\_\_\_ authorized by ANR Southern or Shipper shall be limited to such personnel  
\_\_\_\_\_ review or counsel with respect to this Agreement and the Party  
\_\_\_\_\_ shall instruct such personnel to maintain the confidentiality of this  
\_\_\_\_\_

\_\_\_\_\_. **Status.** The Parties hereby acknowledge that this Agreement  
\_\_\_\_\_ reflects, that the Florida Facilities will be constructed, operated and  
\_\_\_\_\_ pipeline exempt from the regulatory jurisdiction of FERC pursuant to  
\_\_\_\_\_. In the event that ANR Southern should, for any reason, lose, become  
\_\_\_\_\_ fail to qualify for the Hinshaw Exemption, then ANR Southern and

Shipper nevertheless agree to (i) remain bound by the terms and conditions of this Agreement, and (ii) negotiate in good faith any revisions to this Agreement made necessary by ANR Southern's change in regulatory status.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in multiple originals by their duly authorized officers as of the date first written above.

**ANR SOUTHERN PIPELINE COMPANY**

By: R. Allan Bradley

**FLORIDA POWER CORPORATION**

By: Stephen Katus

PRECEDENT AGREEMENT

This Precedent Agreement ("Agreement"), made this 8<sup>th</sup> day of April 1993, by and between FLORIDA POWER CORPORATION, a Florida corporation ("Shipper") and ANR SOUTHERN PIPELINE COMPANY, a Delaware corporation ("ANR Southern") (hereinafter shipper and ANR Southern are sometimes referred to individually as a "Party" or collectively as the "Parties").

W I T N E S S E T H:

WHEREAS, ANR Southern intends to design, construct, own and operate a natural gas pipeline (the "ANR Southern Interstate Facilities") that extends from a point near Pascagoula, Mississippi to an interconnection in the state of Florida with the proposed intrastate facilities which ANR Southern intends to construct, own and operate within the state of Florida;

WHEREAS, ANR Southern plans to design, construct, own, and operate a natural gas pipeline and appurtenant facilities (the "Florida Facilities") for the transportation of natural gas within the state of Florida, which Florida Facilities shall extend from the interconnection with the ANR Southern Interstate Facilities in Florida to various locations within the state of Florida; and

WHEREAS, Shipper desires to receive firm transportation service (the "FT Service") on and across the ANR Southern Interstate Facilities pursuant to the terms of the Service Agreement



(defined below) and the gas tariff for the ANR Southern Interstate Facilities to be filed with the Federal Energy Regulatory Commission or successor agency ("FERC") in substantially the same form and substance as the Pro Forma Tariff (the "ANR Southern Gas Tariff") attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, shipper and ANR Southern agree as follows:

1. Firm Service Obligation. Subject to the terms and conditions of this Agreement, and terms and conditions which may be imposed by the FERC, ANR Southern hereby agrees to provide to Shipper FT service through the ANR Southern Interstate Facilities as follows:

- a. FT Service for a maximum daily quantity ("MDQ") of 100,000 MMBtus on a year-round basis ("Shipper's Primary Anclote Supply"), for delivery to the Florida Facilities for ultimate delivery to Shipper's Anclote Plant located in Pasco County, Florida, commencing on the later of (i) February 1, 1995, or (ii) the date the ANR Southern Interstate Facilities and any required downstream facilities are capable of providing such transportation service on a firm daily basis (the "Primary FT Service").
- b. Additional FT Service (the "Flexible FT Service") for an MDQ of 20,000 MMBtus on a year-round basis, for delivery to the Florida Facilities for ultimate delivery to Shipper's Anclote Plant commencing on the date the ANR Southern Interstate Facilities and any required downstream facilities are capable of providing FT Service for Shipper's Primary Anclote Gas

Supply on a firm daily basis, subject to flexible nominations by Shipper as follows:

- (1) Shipper shall have the right to tender to ANR Southern for FT Service on a daily basis during the months of October, November, December, January, February, March and April (the "Winter Season"), on a daily quantity of natural gas of between zero MMBtu and 40,000 MMBtus per day, so long as the aggregate of such daily tenders during the Winter Season does not exceed the product of 20,000 MMBtus and the number of days in the Winter Season (the "Winter Contract Quantity"); and
- (2) if Shipper has, during the Winter Season, tendered to ANR Southern less than the Winter Contract Quantity, ANR Southern agrees to accept tenders by Shipper for FT Service of the balance of the Winter Contract Quantity, subject to the limitations set out in (i) and (ii) below, and to credit against the rate applicable to such FT Service the rate paid by Shipper on account of the unused Winter Contract Quantity:
  - (i) during the month of May (in addition to tenders by Shipper of not less than 120,000 MMBtus per day, not less than 165,000 MMBtus per day commencing with the in-service date of FT Service for Shipper's First Polk County Gas Supply, and not less than 210,000 MMBtus per day commencing with the in-service date of FT Service for

Shipper's Second Polk County Gas Supply) on a pro rata basis with tenders by other shippers for interruptible transportation service; and

- (ii) during the months of June, July, August and September (in addition to tenders by Shipper of not less than 120,000 MMBtus per day, not less than 165,000 MMBtus per day commencing with the in-service date of FT Service for Shipper's First Polk County Gas Supply, and not less than 210,000 MMBtus per day commencing with the in-service date of FT Service for Shipper's Second Polk County Gas Supply) to the extent capacity sufficient to accommodate the transportation of such additional tenders is available after accommodating all other firm and interruptible tenders on the ANR Southern Interstate Facilities.
- c. Additional FT Service during the months of May, June, July, August and September (the "Summer Season") for an MDQ of 20,000 MMBtus, for delivery to the Florida Facilities for ultimate delivery to Shipper's Anclote Plant commencing on the date the ANR Southern Interstate Facilities and any required downstream facilities are capable of providing FT Service for Shipper's Primary Anclote Gas Supply on a firm daily basis (the "Summer FT Service").

- d. Transportation of an additional MDQ of 45,000 MMBtus ("Shippers's First Polk County Gas Supply") for delivery to the Florida Facilities for ultimate delivery to Shipper's first power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1998 or the date the ANR Southern Interstate Facilities and any upstream and downstream facilities are capable of providing such FT Service on a firm basis; and
- e. Transportation of an additional MDQ of 45,000 MMBtus ("Shipper's Second Polk County Gas Supply") for delivery to the Florida Facilities for ultimate delivery to Shipper's second power generation unit to be constructed at its Polk County site, commencing on the later of August 1, 1999 or the date the ANR Southern Interstate Facilities and any required upstream and downstream facilities are capable of providing such FT Service on a firm basis.

The MDQs identified in paragraphs a. through e. above are hereinafter referred to collectively as "Shipper's Gas Supply". The later of (i) and (ii) in paragraph a., August 1, 1998 in paragraph d. and August 1, 1999 in paragraph e. above, are hereinafter referred to as the "Commencement Date" for the particular FT Service described in each such paragraph.

The initial term of the FT Service described in paragraphs a., b., d. and e. above shall be twenty-five (25) years from the Commencement Date of FT Service for Shipper's Anclote Gas Supply (the "Initial Term"). Shipper shall have the right to extend the term of this Agreement as to each FT Service described in paragraphs a., b., d. and e. above for one or more periods of ten (10) years at ANR Southern's then applicable maximum lawful rate (any such period being hereinafter referred to as a "Secondary Term") beyond the expiration of the

Initial Term (or any Secondary Term) thereof by providing ANR Southern with written notice of the exercise of such right not less than two (2) years prior to the expiration of the Initial Term thereof (or any Secondary Term for which this Agreement has been previously extended). Unless Shipper elects to extend the term of this Agreement with respect to a particular FT Service described in paragraphs a., b., d. and e. as provided above, the Initial Term thereof (and any Secondary Term thereof for which Shipper has previously elected to extend the term of this Agreement) shall be automatically extended from year to year after its expiration; provided, however, either Party may terminate this Agreement with respect to a particular FT Service described in paragraphs a., b. or d. above by providing written notice to the other Party at least one (1) year prior to the expiration of either (i) the Initial Term thereof or (ii) any Secondary Term thereof, or any anniversary date of either.

The initial term of the Summer FT Service shall be ten (10) years from the Commencement Date thereof (the "Initial Summer Term"). The Initial Summer Term shall be automatically extended from year to year thereafter unless ANR Southern terminates this Agreement with respect to the Summer FT Service by providing written notice to Shipper, at least one (1) year prior to the expiration of the Initial Summer Term or any anniversary thereof, that there is insufficient capacity in the Florida Facilities or the ANR Southern Interstate Facilities to permit the continuation of the Summer FT Service. In the event ANR Southern gives notice of termination of this Agreement with respect to the Summer FT Service, as aforesaid, Shipper's Flexible FT Service shall be automatically converted to Primary FT Service at the same MDQ level, and Shipper shall have the right to convert the Summer FT Service to Primary FT Service and extend the term of this Agreement with respect to such converted Summer FT Service beyond the expiration of the Initial Summer Term (or any anniversary thereof) for a period coextensive with the Initial Term of the FT Service provided for in



paragraphs a., b., d. and e. above (any such period being hereinafter referred to as a "Secondary Term") at ANR Southern's then applicable maximum lawful rate, subject to Section 2.c., by providing ANR Southern with written notice of the exercise of such right within ninety (90) days following Shipper's receipt of ANR Southern's notice of termination with respect to the Summer FT Service, in which case the provisions set forth above with respect to the term extensions and termination of this Agreement with respect to the FT Service described in paragraphs a., b., d. and e. above shall thereafter be applicable. Unless Shipper exercises its conversion right with respect to the Summer FT Service, such FT Service shall terminate at the expiration of the one year notice period.

All of the increments of FT Service set out in subsections a., b., c., d. and e. of this Section 1 shall be provided: (i) pursuant to the terms and provisions of this Agreement and (ii) pursuant to a service agreement substantially in the form of the service agreement contained in Exhibit "A" (the "Service Agreement"). There shall be added to the MDQ for each increment of Shipper's FT Service additional capacity sufficient to transport additional quantities of gas required by ANR Southern as fuel and lost and unaccounted for gas related to each such increment of FT Service. Shipper's FT Service shall be from the points of receipt on the ANR Southern Interstate Facilities to the points of delivery, which points of receipt and points of delivery are specified in Exhibit "B" attached hereto. Shipper shall have the right, in its sole discretion, to nominate all or any portion of the aggregate of the MDQ's described in paragraphs a., b., c., d., and e. of this Section 1. for delivery at any point or points of delivery specified in Exhibit B pursuant to the nomination procedures applicable to the FT Service in ANR Southern's Gas Tariff; provided that, subject to the provisions set forth above with respect to the Flexible FT Service, any nominated quantity above Shipper's firm MDQ (plus gas used for fuel and lost and unaccounted for gas) applicable to the nominated delivery point shall not have a priority of service over any firm service for other shippers at such delivery point, but will have

priority over interruptible transportation service at that delivery point. Upon the request of Shipper pursuant to the nomination procedures applicable to FT Service in the then effective ANR Southern Gas Tariff, ANR Southern shall deliver to the Florida Facilities a minimum of eighty-five percent (85%) of shippers's MDQ during any fourteen (14) consecutive hour period during any twenty-four (24) hour period; provided, however, that such fourteen (14) hour periods on consecutive days will be separated by not less than ten (10) hours. ANR Southern's obligation to provide such fourteen (14) hour service is subject to receipt of sufficient gas supplies for Shipper's account, and to force majeure or other capacity curtailments in accord with ANR Southern's Gas Tariff.

2. Rates. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Contract Year" shall mean each twelve (12) month period beginning on the date described in Section 1.a. or any anniversary date thereof.

"Currently Effective Rate Per MMBtu" shall mean for each of ANR Southern Interstate Facilities and the Florida Facilities, the rate applicable to FT service for Shipper, from time to time.

"GNP Price Deflator" shall mean the GNP implicit price deflator computed and published by the United States Department of Commerce, Bureau of Economic Analysis in the "Survey of Current Business", or such successor index as the United States Department of Commerce or successor agency or department shall develop as a replacement index.

"Rate" or Rates" (whether the initial letter is capitalized or not) shall mean the unit rates directly attributable to any transportation service provided by ANR Southern to Shipper under this Agreement, and shall not include fuel, lost and unaccounted for gas, Annual Charge Adjustment ("ACA"), Gas Research Institute ("GRI") or other generally applicable surcharges required to be charged and collected.

Subject to the terms and conditions of this Agreement and the Service Agreement, and to such terms and conditions which may be imposed by the FERC, ANR Southern shall provide the FT Service, and Shipper shall pay for the FT Service, as follows:

- a. Subject to Section 2.b. and Section 2.c., Shipper shall pay an initial rate for the FT Service expressed herein as a unit rate of not more than 14.8¢ per MMBtu, which shall be initially adjusted to reflect actual final costs of constructing the ANR Southern Interstate Facilities and which may be subsequently adjusted from time to time pursuant to FERC ratemaking procedures.
- b. Shipper shall not be required to pay any amount attributable to the rates for the FT Service in excess of the maximum applicable effective rate provided for in ANR Southern's rate schedule applicable to the FT Service included in ANR Southern's FERC Gas Tariff, as that rate may be on file from time to time.

- c. Shipper shall not be required to pay an amount for both FT Service on the ANR Southern Interstate Facilities and firm transportation service through the Florida Facilities (sometimes hereinafter individually or collectively referred to as the "pipeline" or "pipelines") for transportation of Shipper's gas supplies to the delivery points on the Florida Facilities in excess of the amounts set out in or calculated according to the following provisions of this Section 2.c. (the "Aggregate Rate Cap"). The Aggregate Rate Cap for the first Contract Year, expressed herein as a unit rate, shall be not more than 71.8 ¢ per MMBtu. For each subsequent Contract Year the Aggregate Rate Cap shall be defined as and shall be recalculated by:
- (i) multiplying the Aggregate Rate Cap for the prior Contract Year by forty-five percent (45%);
  - (ii) subtracting the product of Section 2.c.(i) from the Aggregate Rate Cap for the prior Contract Year;
  - (iii) multiplying the product of section 2.c.(i) by the lesser of (x) a fraction the numerator of which is the GNP Price Deflator for the calendar quarter immediately preceding such Contract Year and the denominator of which is the GNP Price Deflator for the corresponding calendar quarter of the immediately preceding Contract Year, or (y) 1.04; and

- (iv) adding the product derived pursuant to Section 2.c.(iii) and the remainder derived pursuant to section 2.c.(ii).

Notwithstanding the foregoing calculations, ANR Southern agrees that during the first twenty (20) years of the Initial Term, the Aggregate Rate Cap shall never exceed 84.0 ¢ per MMBtu. If at any time during the term of the Service Agreement the sum of the Currently Effective Rates per MMBtu applicable to the ANR Southern Interstate Facilities and the rates currently applicable to Shipper's FT Service through the Florida Facilities (hereinafter the "Aggregate Rate") exceeds the Aggregate Rate Cap (the difference between the Aggregate Rate and the Aggregate Rate Cap being hereinafter referred to as the "Excess Rate"), then the Aggregate Rate shall be reduced by an amount equal to the Excess Rate.

- d. In addition to the rate provided for under Section 2.a. above, Shipper will compensate ANR Southern for any other charges applicable to Shipper under the then effective rate schedule applicable to the FT Service plus the actual amounts of natural gas used for fuel and lost and unaccounted for gas: provided, however, that in no event shall Shipper be required to provide compensation for fuel and lost and unaccounted for gas applicable to the ANR Southern Interstate Facilities and the Florida Facilities, in the aggregate, in an amount in excess of one and one-half percent (1.5%) of Shipper's MDQs at the delivery points specified in Exhibit B. However, in the event the Florida Facilities or the ANR Southern Interstate Facilities are expanded in the future such that it results in greater fuel usage than the



combined 1.5% cap but combined lower rates, then the 1.5% fuel cap will be permitted an upward adjustment to actual usage so long as the overall impact is to keep the combined cost (rate plus fuel) less than or equal to the combined cost prior to system expansion.

- e. Subject to the limitations in this Section 2., ANR Southern shall have the unilateral right to file for changes in its maximum rates or any other provisions in its FERC Gas Tariff and the Service Agreement including, but not limited to, provisions relating to compensation for fuel and lost and unaccounted for gas applicable to the service hereunder, and such changes shall be effective and applicable, subject to refund as determined by the FERC, after the required notice or at the end of any suspension period ordered by the FERC, and such maximum rates plus any provision for fuel and lost and unaccounted for gas shall be effective under the Service Agreement. Notwithstanding the foregoing, shipper shall have the right to intervene and protest any such rate filing by ANR Southern with respect to changes in ANR Southern's maximum rates, terms and conditions of service or any other provision in its currently effective gas tariff.

3. **Terms of Service.** Subject to the terms and conditions of this Agreement, ANR Southern agrees to provide the FT Service on substantially the same terms and conditions as those set forth in the Service Agreement and the ANR Southern Gas Tariff attached hereto as Exhibit A.

4. Execution of Service Agreement. Concurrently with the fulfillment or waiver of all of the Conditions Precedent set forth below in Section 5, ANR Southern and Shipper shall execute and deliver the Service Agreement, to be effective as of the Commencement Date. Shipper shall become liable for payment of reservation charges with respect to each increment of service under the Service Agreement on the dates described in Section 1. above, except that with respect to the increments of service described in Sections 1.d. and 1.e. above, in the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of either or both of Shipper's proposed first and second power generation units at Shipper's Polk County site by the earlier of August 31, 1994 or fifteen (15) days prior to the scheduled vote of ANR Southern's Board of Directors on either (i) construction of the ANR Southern Interstate Facilities or (ii) acceptance of the term sheet with respect to financing construction of the ANR Southern Interstate Facilities, Shipper shall not be liable for the payment of reservation charges for FT Service for either or both of such increments of service, as the case may be, and ANR Southern and shipper shall have the respective obligations set forth in Section 6.c. hereof.

5. Conditions Precedent.

- a. The obligation of ANR Southern to provide FT Service to Shipper in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by ANR Southern, of each of the following conditions:
  - (i) On or before August 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the

initial in-service date of the ANR Southern Interstate Facilities, to pay for firm transportation service through the ANR Southern Interstate Facilities under service agreements having a maximum daily quantity, in the aggregate, equal to at least 324,500 MMBtus;

- (ii) On or before October 1, 1995, all of the Conditions Precedent in section 5 of the Precedent Agreement by and between Shipper and ANR Southern for transportation on the Florida Facilities shall have been fulfilled or waived by the appropriate party;
- (iii) On or before March 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required by the FERC and all other necessary authorizations and approvals from federal, state, local, and/or municipal agencies, to construct, own and operate the ANR Southern Interstate Facilities and provide Shipper FT service consistent with the terms of this Agreement, except those authorizations and approvals normally obtained after the FERC authorizations and approvals have been issued and accepted, and all such authorizations and approvals shall have become final and subject to no further appeal; and
- (iv) On or before October 1, 1995, the Board of Directors of ANR Southern shall have voted to construct the ANR Southern Interstate Facilities and perform the services contemplated by this

Agreement, and ANR Southern shall have accepted a term sheet with respect to, and have obtained a commitment for the financing of, the construction of the ANR Southern Interstate Facilities in such amount and on such terms and conditions as are acceptable to ANR Southern.

- b. The obligation of Shipper to accept and pay for the FT Service in accordance with the terms of this Agreement and the Service Agreement is subject to the fulfillment, or waiver by shipper, of the following conditions:
- (i) Each of the Conditions Precedent in Section 5 of the Precedent Agreement by and between shipper and ANR Southern for transportation on the Florida Facilities shall have been fulfilled or waived by the appropriate party by the respective dates set out in said Section 5; and
  - (ii) On or before July 1, 1993, ANR Southern shall have filed with the FERC an application for authority to construct and operate the ANR Southern Interstate Facilities and to provide Shipper FT Service under the terms of this Agreement and the Service Agreement;
  - (iii) On or before March 1, 1995, ANR Southern shall have been issued and shall have accepted all regulatory authorizations and approvals required by the FERC to construct, own and operate the

ANR Southern Interstate Facilities and offer the transportation service consistent with the terms of this Agreement, and all such authorizations and approvals shall have become final and subject to no further appeal.

- (iv) On or before August 1, 1993, ANR Southern shall have received executed precedent agreements in which shippers agree, on the initial in-service date of the ANR Southern Interstate Facilities, to pay for firm transportation service through the ANR Southern Interstate Facilities under service agreements having a maximum daily quantity, in the aggregate, equal to at least 324,500 MMBtus;
- c. If any of the Conditions Precedent set out or incorporated by reference in Section 5.b., as may be extended by Section 5.d., have not been fulfilled or waived by Shipper (the "Outstanding Conditions") thirty (30) days before the date upon which ANR Southern's Board of Directors is scheduled to approve (i) construction of the ANR Southern Interstate Facilities, or (ii) acceptance of the term sheet with respect to financing construction of the ANR Southern Interstate Facilities, ANR Southern's Board of Directors shall provide Shipper written notice at such time stating the date that ANR Southern's Board of Directors vote is scheduled to be taken. At least fifteen (15) days prior to such vote of ANR Southern's Board of Directors, Shipper shall be required to exercise, in writing, its right to terminate this Agreement or waive its right to terminate this Agreement with respect to any Outstanding Conditions. In the event that Shipper chooses not to waive its Outstanding



Conditions and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after ANR Southern receives the notice, unless the Outstanding Conditions have been satisfied or have been waived by Shipper in writing during such five (5) day period.

- d. With respect to the dates in the Conditions Precedent set forth in Section 5.a.(iii) and Section 5.b.(iii), the Parties contemplate that ANR Southern shall have been issued and accepted all of the regulatory and environmental authorizations and approvals required from the FERC to construct, own and operate the ANR Southern Interstate Facilities and offer the transportation service consistent with the terms of this Agreement (the "Regulatory Authorizations"), and the Parties further contemplate that the Regulatory Authorizations shall have become final and no longer subject to appeal as of the dates set forth in Section 5.a.(iii) and Section 5.b.(iii). ANR Southern agrees to provide shipper a true copy of each and every Regulatory Authorization received by it with full particulars as to the date of its issuance and any material procedural dates with respect thereto as promptly as practicable after its receipt by ANR Southern, but in no event later than three (3) business days thereafter. The Parties acknowledge and agree that the Regulatory Authorizations may not be acceptable to ANR Southern and Shipper, or either ANR Southern or Shipper, or may be judicially challenged by third parties by rehearing before the FERC or by court appeal ("Third-Party Challenge"). ANR Southern further agrees to provide Shipper with notice of all such Third Party Challenges, if any, including such particulars as the date of filing and any material procedural dates with respect

thereto as promptly as practicable after receipt of such notice by ANR Southern, but in no event less than three (3) business days thereafter.

If the Regulatory Authorizations contain any terms or conditions unacceptable to the Parties, or are subject to unacceptable risks associated with a Third-Party Challenge that may have a material adverse effect on either Party, each Party shall advise the other Party of any objections to the terms and conditions of the Regulatory Authorizations, or any unacceptable risks associated with any Third-Party Challenge that may have a material adverse effect on either Party (collectively, the "Objections"), in writing, as soon as practicable, but in no event later than fifteen (15) days after receipt by ANR Southern of the Regulatory Authorizations or notice of any Third-Party Challenges, as the case may be; provided that in all events Shipper shall have at least three (3) business days from the date it receives a copy of such Regulatory Authorizations or notice of Third Party-Challenges to advise ANR Southern of any Objections thereto Shipper and ANR Southern shall waive their rights under Section 5.a.(iii) and Section 5.b.(ii), save and except any reserved Objections; provided, however, no waiver shall be required until all Regulatory Authorizations have been issued by FERC or the time for Third-Party Challenge has expired.

If ANR Southern has not accepted the Regulatory Authorizations, or ANR Southern has accepted the Regulatory Authorizations and there are reserved Objections, prior to the dates set forth in Section 5.a.(iii) and Section 5.b.(iii), the dates specified in Section 5.a.(iii) and 5.b.(iii) shall be extended

for a period of thirty (30) days, or such longer period as the Parties may agree in writing (the "Regulatory Extension Period"), to resolve any reserved Objection to the satisfaction of the Party raising such Objection, or until such time as the Party raising such Objection waives its reserved Objection. After the Regulatory Extension Period, if a reserved Objection has not been fulfilled or waived by the Party raising such Objection, such Party may elect to terminate this Agreement by giving written notice to the other Party. In the event that a Party chooses not to waive its reserved Objections and elects to terminate this Agreement, this Agreement shall terminate five (5) business days after such other Party receives the notice, unless the reserved Objection has been fulfilled or has been waived by the Party raising the Objection in writing during such five (5) day period. In no event shall the extension of time provided in Section 5.d. result in the dates specified in Section 5.a.(iii) and Section 5.b.(ii) being later than April 15, 1995, and the extension of time provided in Section 5.d. is subject, in all respects, to the rights of ANR Southern to require that Shipper make an election as provided for in Section 5.c.

6. Covenants of the Parties.

- a. Upon the execution of this Agreement by the Parties, ANR Southern agrees that:

- (i) ANR Southern shall exert commercially reasonable efforts to obtain financing for the construction and operation of the ANR Southern Interstate Facilities;
- (ii) With respect to the ANR Southern Interstate Facilities, ANR Southern shall make applications for all necessary authorizations and approvals to construct and operate the ANR Southern Interstate Facilities, and shall prosecute such applications with all reasonable diligence;
- (iii) ANR Southern shall exert commercially reasonable efforts to obtain all necessary authorizations for the release and assignment of firm capacity held by Shipper on the ANR Southern Interstate Facilities to third parties in accordance with FERC Order No. 636 (the "Capacity Release Program"), subject to terms and conditions for such Capacity Release Program as set forth in Exhibit A;
- (iv) In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable service to similarly situated shippers for ultimate consumption of natural gas within the State of Florida through the ANR Southern Interstate Facilities prior to the initial in-service date of the ANR Southern Interstate Facilities, on terms more favorable (in the reasonable judgment of ANR Southern to be exercised in good faith) than the initial rates

and material terms and conditions of service applicable to shipper provided for in this Agreement and the Service Agreement (the "Third Party Service"), ANR Southern shall promptly so notify Shipper, including in such notice an abstract of the initial rates and material terms and conditions of service applicable to Shipper related to the Third Party Service; provided, however, this provision shall in no way require ANR Southern to breach any confidentiality provision in any other precedent agreement. Shipper shall have the right, exercisable by notice to ANR Southern within thirty (30) days of receipt of ANR Southern's notice of such terms, to require that this Agreement and the Service Agreement be amended effective as of the date such Third Party Service commences to include the initial rate and all material terms and conditions of service applicable to Shipper in the respective contract related to the Third Party Service. Such amendment shall continue to be effective for a term coextensive with such Third Party Service. Except as specifically amended pursuant to this Section, the terms and conditions of this Precedent Agreement and the Service Agreement shall remain in effect, and in the event that the term of such amendment expires prior to the term of the FT Service pursuant to this Precedent Agreement and the Service Agreement, after the expiration of such amendment, all of the terms and provisions of this Precedent Agreement and the Service Agreement shall be effective for the remaining term of the FT Service. Shipper shall not be entitled to select less than the initial



rate and all of the material terms and conditions of service applicable to Shipper contained in the abstract. The rights of Shipper under this Section 6.a.(iv) shall become effective, if and only to the extent that, such other precedent agreement or service agreement provides for comparable service to similarly situated shippers. In the event that the Third Party Service does not commence, for whatever reason, the rate, terms and conditions of this Precedent Agreement and the Service Agreement originally agreed to by the Parties shall apply to the FT Service;

- (v) ANR Southern shall provide two (2) years' prior written notice to Shipper as to the expected in-service date of that portion of the Florida Interstate Facilities that will transport Shipper's Anclote Gas Supply, and will provide Shipper quarterly written progress reports, after the date of such notice, concerning the status of construction of such portion of the Florida Interstate Facilities.
- b. Upon the execution of this Agreement by the Parties, Shipper agrees that Shipper shall affirmatively support all governmental and regulatory authorizations and approvals sought by ANR Southern for the construction and operation of the ANR Southern Interstate Facilities required to transport Shipper's Anclote Gas Supply, First Polk County Gas Supply and Second Polk County Gas Supply, and shall take all actions consistent with Shipper's interests to assist ANR Southern in securing such governmental and regulatory authorizations.

- c. Upon the execution of this Agreement by the Parties, ANR Southern and Shipper agree that under the circumstances described in the second sentence of Section 4. hereof, the following provisions shall apply:

- (i) In the event Shipper is unable to obtain the regulatory or environmental authorizations necessary to proceed with the construction of Shipper's first and second power generation units at its Polk County site, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under section 2. hereof for the natural gas supply for all of the gas fired electric power generation units to be constructed by Shipper in Shipper's service area, up to an aggregate MDQ of 90,000 MMBtus. In the event Shipper obtains the necessary regulatory and environmental authorizations for one but not both of such first and second power generation units, Shipper shall offer to ANR Southern the right to contract for FT Service at the rate then applicable under Section 2. hereof for an aggregate MDQ of up to 45,000 MMBtus. As applicable, the MDQs of 90,000 MMBtus or 45,000 MMBtus described in the immediately preceding sentences of this Section 6.c. shall hereinafter be referred to as the "Replacement Gas Supply." Each offer by Shipper shall be made in writing and shall describe in reasonable detail the location of the proposed electric power generation unit or units, the MDQ of FT Service required and any other information pertinent to the nature and extent of such service.

- (ii) Within thirty (30) days after receipt by ANR Southern of any offer by Shipper to contract for FT Service for all or a portion of the Replacement Gas Supply, ANR Southern shall determine, in the exercise of its good faith judgment, whether providing Shipper FT Service for the MDQ of Replacement Gas Supply over the term offered by Shipper and pursuant to the terms and provisions of this Agreement or upon some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in the exercise of its good faith judgment, and shall so notify Shipper.
  
- (iii) If ANR Southern determines that contracting with Shipper to provide FT Service for the offered Replacement Gas Supply on the terms and provisions of this Agreement or some other terms and conditions will provide economic benefits to ANR Southern, which are reasonably sufficient to ANR Southern in its sole discretion, ANR Southern shall notify Shipper in writing as to the specific terms and conditions under which it is willing to provide the FT Service required by Shipper and the Parties shall negotiate in good faith with respect to a Service Agreement for the FT Service, but neither Party shall be required to enter into a contract for such FT Service except upon mutually agreeable terms and conditions.
  
- (iv) Shipper shall be obligated to continue to offer to contract with ANR Southern to provide FT Service pursuant to Section

6.c.(i)-(iii) above until the Parties have entered into service agreements covering MDQs of gas at least equal to the applicable Replacement Gas Supply, after which the obligations of the Parties under this Section 6.c. shall be deemed fully satisfied.

7. Expansion of the ANR Southern Interstate Facilities. ANR Southern and Shipper agree as follows with respect to the future expansion of the ANR Southern Interstate Facilities:

- a. In the event that Shipper shall require firm transportation service in addition to the FT Service provided for in Section 1. above (the "Additional FT Service") for an additional supply or supplies of natural gas to fuel Shipper's future gas requirements, Shipper shall, with respect to MDQs of Additional FT Service up to an aggregate MDQ of 300,000 MMBtus (inclusive of the MDQs of FT Service provided for under Sections 1. and 6.c. hereof), and Shipper may, with respect to any MDQs of Additional FT Service in excess of an aggregate MDQ of 300,000 MMBtus, tender a written offer to ANR Southern to contract for such Additional FT Service (including the amount of Additional FT Service required and supporting information in reasonable detail). If ANR Southern accepts such offer, ANR Southern shall provide such Additional FT Service pursuant to its then effective FERC Gas Tariff. ANR Southern shall notify Shipper as to whether or not it accepts such offer to provide the Additional FT Service described in Shipper's offer within thirty (30) days after receipt of such offer.

- b. If ANR Southern determines that the ANR Southern Interstate Facilities do not have the capacity to provide the Additional FT Service for which Shipper has offered to contract with ANR Southern, as promptly as practicable, ANR Southern shall determine the cost of expanding the ANR Southern Interstate Facilities in order to provide capacity (the "Expanded Facilities") for the Additional FT Service and the rates applicable to service over the Expanded Facilities, and provide such information to Shipper together with ANR Southern's decision as to whether or not ANR Southern will construct and operate the Expanded Facilities and provide the Additional FT Service.
- c. If ANR Southern is willing to construct and operate the Expanded Facilities and provide to Shipper the Additional FT Service, Shipper shall have sixty (60) days from the date of its receipt of notification of such fact from ANR Southern to commence negotiations for a formal agreement with respect to such Additional FT Service.
- d. If ANR Southern is not willing to construct and operate the Expanded Facilities and provide the Additional FT Service to Shipper, or if the Parties are unable to agree upon the terms and provisions of a service agreement with respect to such Additional FT Service, Shipper may elect, within sixty (60) days of receipt of notification of ANR Southern's unwillingness to construct the Additional Facilities or of the Shipper's notice to ANR Southern of the termination of negotiations for a service agreement, (i) to pay the cost of constructing the Expanded Facilities (which shall be owned by Shipper but operated and maintained by ANR Southern or its nominee pursuant to a



mutually acceptable operation and maintenance agreement) or (ii) agree to pay the otherwise applicable rate plus the incremental rate designed to recover all costs associated with the Expanded Facilities. If Shipper exercises such election so that Expanded Facilities are constructed, ANR Southern shall negotiate with Shipper in good faith for formal agreements with respect to FT Service over such Expanded Facilities and the incremental rate for such FT Service, or the operation and maintenance of such Expanded Facilities, as the case may be; provided, however, in the event the Parties are unable to agree upon the terms of service applicable to the construction of the Additional Facilities by ANR Southern, Shipper shall have the right to proceed under the provisions of the clause (i) of the first sentence of this Section 7.d.

- e. ANR Southern and Shipper agree to cooperate with and assist one another for the purpose of obtaining any governmental and regulatory authorizations and approvals for the construction, operation and maintenance of the Expanded Facilities and the use thereof for the purpose of providing Shipper with the Additional FT Service.

8. Interruptible Transportation Service. Concurrent with the execution of the Service Agreement for the FT Service, ANR Southern and Shipper shall execute and deliver an interruptible transportation service agreement for up to 210,000 MMBtus per day in a form mutually agreed upon by the Parties including provisions equivalent to those set out below. The interruptible transportation service agreement between ANR Southern and Shipper shall provide that at any time interruptible transportation service is available on the ANR Southern Interstate

Facilities, Shipper shall be entitled to, and ANR Southern shall offer, a proportionate share of the interruptible transportation capacity available as expressed by a fraction, the numerator of which is Shipper's MDQ as provided in the Service Agreement and the denominator of which is the aggregate firm MDQs for all FT Service over the ANR Southern Interstate Facilities. Shipper shall advise ANR Southern whether or not it intends to receive all or any portion of such interruptible transportation service offered. If, and only if, ANR Southern fails to offer such interruptible capacity to Shipper as provided in this Section 8, and such interruptible capacity is used to provide interruptible transportation service to similarly situated shippers through the ANR Southern Interstate Facilities for ultimate consumption of gas within the State of Florida, and Shipper does not have actual or constructive knowledge of the availability of interruptible transportation capacity, then ANR Southern's transportation charge to Shipper for firm service rendered pursuant to this Agreement during the period such interruptible transportation capacity was not made available to Shipper shall be equal to the lowest weighted average transportation rate including rates for interruptible service paid by such similarly situated shipper multiplied by Shipper's MDQ as provided in this Agreement.

In the event that ANR Southern enters into a precedent agreement or service agreement to provide comparable interruptible transportation service to a similarly situated shipper through the ANR Southern Interstate Facilities, which volumes are transported through the Florida Facilities for ultimate consumption of natural gas within the State of Florida, at rates more favorable than rates offered to Shipper by ANR Southern, such rates shall be offered to Shipper with respect to the volumes and term of service set forth in such precedent agreement or service agreement, as applicable, with such similarly situated shipper. Shipper shall not be entitled to such rate unless Shipper transports the natural gas for its ultimate consumption within the State of Florida.

9. Termination. This Agreement shall become effective when executed by both ANR Southern and Shipper, and shall remain in effect as provided in Section 1 unless and until terminated hereinafter provided.

- a. In the event that any of the conditions incorporated by reference in Section 5.b. of this Agreement have not been fulfilled or waived by the required date, as may be modified by Section 5.c., then Shipper may terminate this Agreement by giving written notice to ANR Southern not later than five (5) business days after the non-occurrence of such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by Shipper in writing.
- b. In the event that the conditions set forth in Section 5.a.(i), Section 5.a.(ii) or Section 5.a.(iv) of this Agreement have not been fulfilled or waived by the required date, then ANR Southern may terminate this Agreement by giving written notice to Shipper not later than five (5) business days after the non-occurrence of any such condition by the required date, and this Agreement shall terminate upon the expiration of sixty (60) days from the receipt of such notice, unless within such period such condition has been fulfilled or has been waived by ANR Southern in writing.
- c. In the event that the conditions set forth in Section 5.a.(iii) or Section 5.b.(ii) of this Agreement have not been fulfilled or waived by the required date, as may be modified by Section 5.c. or Section 5.d., as applicable, then ANR

Southern or Shipper, as the case may be, may terminate this Agreement pursuant to Section 5.d.

10. Assignment. This Agreement shall be binding upon ANR Southern, Shipper and their successors and assigns; provided, however, neither Party shall assign this Agreement or any rights or obligations hereunder without first obtaining the written consent of the other Party (which consent shall not be unreasonably withheld or delayed) and any regulatory authorizations reasonably deemed necessary by ANR Southern. An assignment to an Affiliate of such Party desiring to make the assignment may be made without prior written consent subject to the receipt of any necessary governmental authorizations; provided, however, any assignment by Shipper to an Affiliate of Shipper shall not relieve Shipper of any obligations, liabilities and responsibilities under this Agreement. Nothing contained herein shall prevent either Party from pledging, mortgaging or assigning its rights as security for its indebtedness and either Party may assign to the pledgee or mortgagee (or to a trustee for a holder of such indebtedness) any monies due or to become due under any Service Agreements. For purposes of this Agreement, the term "Affiliate" shall mean when used with respect to an entity, any other entity (i) which directly or indirectly (through one or more intermediaries) controls, or is controlled by, or is under common control with, such first mentioned person or entity or (ii) which beneficially owns, holds or controls fifty percent (50%) or more of the interest of such first mentioned entity. The term "control" means the possession, either directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through ownership of stock, as general partner, by contract or credit arrangement or otherwise.

11. Modification or Waiver. No modification or waiver of the terms and provisions of this Agreement shall be made except by the execution by the Parties of a written amendment to this Agreement.

12. Notices. All notices, requests, demands, instructions and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or mailed by certified mail, postage prepaid and return receipt requested or by telex or telecopier, as follows:

If to ANR Southern:

ANR Southern Pipeline Company  
Coastal Tower  
Nine Greenway Plaza  
Houston, Texas 77046  
Attention: Mr. E. J. Burgin  
Telephone No. (713) 877-3388  
Facsimile No. (713) 877-3714

If to Shipper:

Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Attention: Mr. Stephen Watsey, C.P.M.  
Telephone No. (813) 866-4382  
Facsimile No. (813) 866-4941

or to such other place within the United States of America as either Party may designate as to itself by written notice to the other. All notices given by personal delivery or mail shall be effective on the date of actual receipt at the appropriate address. Notice given by telex or telecopier shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning of the next business day after receipt if received after the recipient's normal business hours.



13. Limitation of Liability. Shipper agrees that any liability relating to and any and all claims against ANR Southern shall be limited to the assets of ANR Southern, and Shipper waives its rights to proceed against any of ANR Southern's Affiliates. Execution of this Agreement does not bind any Affiliate of ANR Southern or require any Affiliate to undertake any obligation in connection with this Agreement. Shipper and ANR Southern agree that neither party shall be liable to the other for incidental, consequential or indirect damages under this Agreement, whether arising in contract, tort or otherwise.

14. No Third Party Rights or Obligations. This Agreement shall not create any rights in third parties, and no provision hereof shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than ANR Southern and Shipper.

15. Survival. All of the terms and provisions of this Agreement shall survive the execution by the Parties of a Service Agreement, except those terms and provisions hereof that are inconsistent with the terms and provisions of such Service Agreement.

16. Governing Law. THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT OF LAW RULE WHICH WOULD REFER ANY MATTER TO THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF TEXAS.

17. Counterpart Execution. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which shall constitute but one and the same agreement.

18. Partial Invalidity. Except as otherwise expressly stated herein, in the event any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable by a court or regulatory agency of competent jurisdiction by reason of a statutory change or enactment, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement.

19. Confidentiality. Except as provided hereinbelow, neither ANR Southern nor Shipper, nor their respective Affiliates, directors, officers, and employees, advisors and representatives shall disclose to any third party the terms and conditions of this Agreement, including the information and agreements set forth on the Exhibits, without the other Party's written consent to such disclosure. This provision shall not apply to such disclosures that, in the opinion of ANR Southern's or Shipper's counsel, as the case may be, are required by state or federal laws, rules or regulations (in which case, the Party making such disclosure shall advise the other Party prior to disclosure and, if requested by the other Party, shall use every effort to maintain the confidentiality of this Agreement, including, without limitation, seeking a protective order). The disclosure of any information pertaining to this Agreement within ANR Southern's or Shipper's internal organization (including Affiliates) and within the organization of any third party to which disclosure is authorized by ANR Southern or Shipper shall be limited to such personnel whose duties require their review or counsel with respect to this Agreement and the Party making such disclosure shall instruct such personnel to maintain the confidentiality of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed  
in multiple originals by their duly authorized officers as of the date first written above.

ANR SOUTHERN PIPELINE COMPANY

By: R. Allan Bradley

FLORIDA POWER CORPORATION

By: Stephen Watney