

205  
UNITED STATES FEDERAL RESERVE SYSTEM

MEMORANDUM FOR THE  
ATTENTION OF THE  
FEDERAL RESERVE BOARD  
DATE: 7/29/83  
SUBJECT: REQUEST FOR  
APPROVAL OF CERTAIN  
COGENERATION CONTRACTS

100-110  
100-110  
100-110

APPENDIX  
REQUEST FOR APPROVAL TO THE  
EXTENSION OF CERTAIN  
ACTS RELATING TO APPROVED  
COGENERATION CONTRACTS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

## APPENDIX

1. ROYSTER PHOSPHATES, INC. (03/06/91 Negotiated contract)
2. MULBERRY ENERGY COMPANY, INC. (03/12/91 Negotiated contract)
3. CFR BIO-GEN CORP. (11/19/91 Negotiated Dispatchable contract)
4. BAY RESOURCES MANAGEMENT, INC. (04/29/88 Negotiated Contract)
5. SEMINOLE FERTILIZER CORP. (10/30/90 Negotiated Contract)
6. DADE COUNTY (03/15/91 Negotiated Contract)
7. GENERAL PEAT RESOURCES L.P. (11/30/88 -- three Standard Offer contracts -- GenPeat Units 1, 2 and 3)
8. ECOPEAT COMPANY, L.P. (03/28/91 Negotiated contract -- EcoPeat Avon Park)
9. TIMBER ENERGY RESOURCES (07/89 Standard Offer contract)
10. EL DORADO ENERGY (03/18/91 Negotiated contract)
11. SUN BANK OF TAMPA BAY (04/05/89 Standard Offer contract -- "LFC Jefferson")
12. SUN BANK OF TAMPA BAY (04/05/89 Standard Offer contract -- "LFC Madison")
13. LAKE COGEN LIMITED (03/13/91 Negotiated contract)
14. NRG RECOVERY GROUP (10/12/88 Standard Offer contract -- Lake County)
15. ORLANDO COGEN LIMITED (03/13/91 Negotiated contract)



16. PANDA-KATHLEEN, L.P. (11/25/91 Standard Offer contract)
17. PASCO COGEN LIMITED (03/13/91 Negotiated contract)
18. PASCO COUNTY (03/28/89 Negotiated contract)
19. PINELLAS COUNTY (02/21/89 Amended & Restated Negotiated Contract -- Pinellas Resource Recovery)
20. PINELLAS COUNTY (02/21/89 Negotiated contract -- Pinellas North)
21. RIDGE GENERATING STATION LIMITED PARTNERSHIP (03/08/91 Negotiated contract)
22. TIMBER ENERGY RESOURCES (12/31/84 Standard Offer contract)

## SUMMARY

### ROYSTER PHOSPHATES, INC. (03/06/91 Negotiated contract)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 05/03/93: FPC consent to Assignment to Polk Power Partners, L.P.
  - FPC's consent expressly recites that the assignment does not alter FPC's rights against Royster and that Royster is only discharged from its obligations to the extent of performance of them by Polk Power

- Regulatory Delay

- Contract expressly authorizes extensions for regulatory delays (§4.1.1)
- 10/14/91: FPC agrees to Royster request to a 37 day extension of commencement and commercial in-service date due to regulatory delays

- Force Majeure Delay

- Contract expressly authorizes extensions for force majeure delays (§4.2.2)
- 12/08/92 & 01/14/93:
  - FPC agrees to a Piney Point (formerly Royster) request for a 180 day force majeure delay due to (1) delays in the environmental permitting process and (2) the bankruptcy of its parent

- Interconnection Delay

- 04/29/93:
  - FPC and Polk Power Partners agree to an extension of the commercial in-service date due to the timing of interconnection

- Facility Relocation

- 01/20/93: FPC agrees to a Piney Point request that the facility site be "relocated" to the Polk Power Partners site



- This is the site from which power will be provided under the Mulberry contract. The Mulberry contract is for 72 MW, but its facility would be 100 MW. By the relocation of the Royster facility site to Mulberry, the Royster contract, which is 28 MW, would take up this otherwise excess capacity. In addition, the Royster contract power will not have to be wheeled from a facility outside FPC's service territory.

- Curtailment

- 10/28/93 & 01/18/94:  
FPC and Polk Power Partners agree that, in connection with this and the Mulberry contracts, output will be reduced during off-peak hours throughout the term of the contracts, no power will be delivered to FPC during a two-week period each year, FPC will purchase all of the Facility's net output even if that is greater than its committed capacity, and with how this impacts on such items as capacity factors and committed capacity

Routine Contract Administration and Performance

- 02/03/94: FPC and Polk Power Partners agree that neither will incur a repayment obligation pursuant to §8.5 of the contract and therefore that §8.5 is of no force and effect
- 02/03/94: FPC and Polk Power Partners acknowledge certain typographical errors in the contract (e.g., a reference in §1.2 to Art. VI is to Art. VII)

## CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into as of May 3, 1993, by and among FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), PINEY POINT PHOSPHATES, INC., a Delaware corporation, formerly known as Royster Phosphates, Inc., ("Assignor"), and POLK POWER PARTNERS, L.P., a Delaware limited partnership authorized to do business in Florida as Polk Power Partners, L.P., Ltd. ("Assignee").

WHEREAS, Assignor (as successor in interest to Royster Phosphates, Inc.) and FPC are parties to that certain Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility (the "Power Purchase Agreement"), pursuant in which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Power Purchase Agreement);

WHEREAS, Assignor and Assignee have entered into that certain letter agreement dated January 15, 1993 as amended, modified or supplemented and in effect from time to time (the "Letter Agreement"), pursuant to which, among other things, Assignor has agreed to sell, and Assignee has agreed to purchase, all of Assignor's right, title and interest in and to the Power Purchase Agreement;

WHEREAS, Assignor desires to assign all of its right, title and interest in, to and under, and to delegate all of its obligations, duties and liabilities arising under, the Power Purchase Agreement to Assignee pursuant to that certain Assignment and Assumption Agreement to be executed and delivered at the closing of the transactions contemplated by the Letter Agreement (the "Assignment");

WHEREAS, Article XXIII of the Power Purchase Agreement provides that Assignor may assign the obligations, benefits and duties under the Power Purchase Agreement with the written consent of FPC and FPC is willing to grant such written consent as set forth in this Consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Consent to Assignment. FPC hereby consents to the assignment of the Power Purchase Agreement by Assignor to Assignee and the assumption by Assignee of Assignor's obligations thereunder pursuant to the terms and conditions of the Assignment.

2. Consent to Change of Location. FPC hereby consents to the change in location of the Facility for the purposes of Section 3.1 of the Power Purchase Agreement from the location in Manatee County, Florida described in the Power Purchase Agreement to Section 23-26, Township 30S, Range 24E in Polk County, Florida.



3. Contract Not Modified. Except as set forth in Section 4 of this Consent, neither the Assignment nor this Consent shall alter, waive or modify the Power Purchase Agreement, or FPC's rights under the Power Purchase Agreement, or its rights against Assignor. FPC agrees that Assignee shall perform Assignor's obligations as "QF" under the Power Purchase Agreement, and Assignor shall be discharged from any such obligations performed by Assignee, but only to the extent of such performance.

4. Amendment to Power Purchase Agreement. FPC agrees that all references to Assignor in the Power Purchase Agreement shall be deemed to be references to Assignee and that Assignee shall be deemed to be the "QF" for purposes of the Power Purchase Agreement. Section 28.1 of the Power Purchase Agreement shall be amended to reflect that all notices and other communications by FPC to the QF under the Power Purchase Agreement shall be addressed to Assignee at the following address:

Polk Power Partners, L.P.  
c/o ARK/CSW Development Partnership  
23293 South Pointe Dr.  
Laguna Hills, Calif. 92653  
Attn: Program Manager

5. Representations, Warranties and Covenants of Assignee. Assignee hereby makes, affirms and agrees to perform, for the benefit of FPC, each of the representations, warranties and covenants contained in the Power Purchase Agreement, including, without limitation, the representations, warranties and covenants set forth in Article XIV of the Power Purchase Agreement.

6. Representations and Warranties of FPC. FPC hereby represents and warrants:

- a. Attached hereto as Exhibit A is a true and correct copy of the Power Purchase Agreement together with all amendments, supplements and modifications to such agreement.
- b. No default by FPC (and, to the best knowledge of FPC, by Assignor) under any material covenant or obligation of the Power Purchase Agreement, has occurred and is continuing or has occurred but has not been waived and the Power Purchase Agreement is in full force and effect as of the date hereof. FPC acknowledges that the occurrence of the items set forth on Schedule 4(e) prior to the date hereof shall not constitute a Pre-Operational Event of Default under the Power Purchase Agreement giving rise to FPC's exercise of remedies under Section 15.2 of the Power Purchase Agreement and FPC expressly waives any Pre-Operational Events of Default (if any) arising therefrom.

- c. There is no pending or, to the best knowledge of FPC, threatened action or proceeding affecting FPC before any court, governmental agency or arbitrator, which may materially adversely affect the financial condition or operations of FPC or the ability of FPC to perform its obligations under, or which purports to affect the legality, validity or enforceability of this Consent or the Power Purchase Agreement.

7. Governing Law. This Consent shall be governed by and construed in accordance with the law of the State of Florida.

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

FLORIDA POWER CORPORATION

Witness

By: 

Name: A. J. HONEY

By: 

Name: P. C. HENRY  
Title: SENIOR V.P. - ENERGY DELIVERY



PINEY POINT PHOSPHATES, INC.  
(Assignor)

Witness

By: 

Name: Lynn Werner

By: 

Name: Earl V. Baker, Jr.  
Title: President

POLK POWER PARTNERS, L.P.  
a Delaware limited partnership,  
authorized to do business in Florida  
as Polk Power Partners, L.P., Ltd.

By: POLK POWER GP, INC.  
Its General Partner (Assignee)

Witness

By: 

Name: Carol E. Manera

By: 

Name: Arnold R. Klann  
Title: Vice President and Secretary





October 14, 1991

Mr. Richard P. Fleming  
Royster Phosphates, Inc.  
13300 US Hwy 41 North  
Palmetto, Fla. 34221

Dear Mr. Fleming:

Enclosed is your letter dated September 11, 1990 with signed acknowledgement by FPC of the acceptance of your requested 37 day Regulatory Delay for the Contract For Firm Capacity and Energy.

If you have any questions, please contact me at 813/866-4745.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert D. Dolan".

Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. P. Fama  
M. B. Foley, Jr.  
RDD:R2:Portlar

102017

MAILED  
CERT NO.  
p 702 910 967

**Royster** Phosphates, Inc.

13300 U S Hwy 41 North  
Palmetto, Florida 34221  
(813) 722-4555

September 11, 1991

Mr. Robert Dolan, Manager  
Cogeneration Contracts & Administration  
Florida Power Corporation  
3201 34th Street South  
St. Petersburg, Fl 33711

Re: Extension of Time

Dear Mr. Dolan:

Pursuant to Article IV, Section 4.2.1 of our March 11, 1991 "Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility" ("Contract"), Royster Phosphates, Inc., ("Royster") hereby requests extension of the dates specified in Section 4.2 of the Contract by 37 days. This request for extension is a result of the Contract Approval Date exceeding 120 days after submittal to the FPSC by 37 days. We arrived at this number based on the following dates/events which yields 157 days from the date of submittal of the agreement to the FPSC to Contract Approval Date as defined in Section 1.16:

|        |          |   |  |
|--------|----------|---|--|
| March  | 19, 1991 | - | Petition submitted to FPSC                       |
| July   | 1, 1991  | - | FPSC PAA order issued                            |
| July   | 22, 1991 | - | PAA order became effective                       |
| August | 22, 1991 | - | Appeal period expired/<br>Contract Approval Date |

Accordingly, the date specified in Section 4.2 (i) for Transmission Service Agreement execution shall be extended from January 1, 1993 to February 8, 1993; the date specified in Section 4.2 (ii) for Construction Commencement shall be extended from May 1, 1993 to June 7, 1993; and, the date specified in Section 4.2 (iii) for Commercial In-Service status shall be extended from December 1, 1993 to January 7, 1994. (Days which fall on a weekend have been moved to the next weekday).

We would appreciate it if you would acknowledge receipt of this request by executing a copy of this

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Mr. Robert Dolan  
-page two-

letter (which is provided in duplicate) where indicated  
and return it to us for our records.

Sincerely,



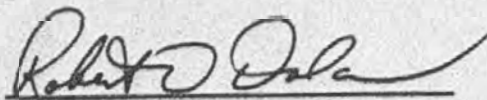
Richard P. Fleming  
Engineering Manager

RPF:djm

cc: James P. Fama, Esquire

Acknowledged:

By:



Title:

Manager, Cogeneration Contracts and Admin.

Date:

10/17/1991

107019

PINEY POINT PHOSPHATES, INC.

13300 U. S. Hwy. 41 North  
Palm Bay, Florida 32909  
(813) 722-4555

December 8, 1992

Mr. Robert D. Dolan  
Manager, Cogeneration Contracts & Administration  
Florida Power Corporation  
3201 34th Street South  
St. Petersburg, FL 33711

Re: Piney Point Phosphates, Inc. (f/k/a Royster Phosphates, Inc.)  
Notice of Events of Force Majeure

Dear Mr. Dolan:

In accordance with Section 21 of the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility between Royster Phosphates, Inc. (now known as Piney Point Phosphates, Inc.) and Florida Power Corporation (the "Contract"), Piney Point Phosphates (Piney) hereby declares Force Majeure events pursuant to 21.1.1 and requests a 180-day extension of the Contract In-Service Date from January 7, 1994 to July 7, 1994 pursuant to 4.2.2. This declaration and request results from delays in the environmental permitting process and the Chapter 11 bankruptcy of Piney's parent company, both of which were beyond Piney's reasonable control, were not reasonably foreseeable and were not caused by Piney's negligence or lack of due diligence. These events of Force Majeure will be addressed separately below.

During Florida Power Corporation's (FPC) capacity bidding process which took place in early 1991, Royster Phosphates, Inc. (now known as Piney Point Phosphates, Inc.) ("Piney"), submitted on February 8, 1991 a "QF Questionnaire," which included among other things a project schedule of major milestones (see Paragraph 8.e.) through the Contract In-Service Date. (A copy of that letter is attached for your convenience.) Piney's schedule was based on permits issued in July 1991 and financing closing in December 1991, with other subsequent project milestones being "keyed" to those critical dates.

PERMITTING:

At the time Piney submitted its bid/offer and Questionnaire to FPC, the permitting schedule on which the bid/offer was based was entirely reasonable and achievable in the opinion of Piney and its experts, and the Florida Department of Environmental Regulation (FDER). (Since Piney's generating capacity was less than 75 MW, Site Certification through the Power Plant Siting Act was not necessary. Only local permits and FDER air and water permits were required.) In response to Question 8.a. of the February 8 Questionnaire, Piney informed FPC of its earlier difficulties in permitting and its success in overcoming a legal challenge at the local level. At that time, based on information available for FDER and local officials, having final permits in hand by July 1991 appeared to be easily achievable.

101923



Mr. Robert D. Dolan  
Florida Power Corporation  
December 8, 1992  
Page 2

Local approval of Piney's "Site Plan" by Manatee County has occurred, with the administrative formality of issuing building permits remaining. However, because of a new but relatively minor design feature of Piney's sulfuric acid plant, which eliminated a drying tower, the air permitting process slowed significantly. A complicating factor was that the proposed design/engineer/construct contractor could not identify a sulfuric acid plant currently in operation with this design feature which could substantiate the predicted operation of the plant as proposed by Piney. FDER's concern over lack of the drying tower resulted in at least six months unforeseeable delay in the air permitting process. This delay is in addition to the delays caused by the bankruptcy discussed below, which resulted in a cessation of permitting activity.

#### BANKRUPTCY:

In April 1991, due to a significant downturn in business, Mulberry Phosphates, Inc. (formerly known as Royster Company) filed for Chapter 11 bankruptcy protection in Federal Court in Tampa, Florida. Although Piney and Mulberry are separate and distinct legal entities, and Piney was not involved in the Mulberry bankruptcy, the common stock of Piney was and is wholly owned by Mulberry. This parent-affiliate relationship impacted upon Piney's ability to access the capital markets, including its ability to procure financing for the cogeneration facility in December 1991 as originally contemplated. Finally, in May of this year, succumbing to mounting financial pressure, Piney also filed for Chapter 11 protection. The bankruptcy court held confirmation hearings on both Mulberry's and Piney's proposed plans of reorganization on November 10 and 11, 1992, with final discharge expected by the end of December 1992. Accordingly, the bankruptcy of Piney's parent has resulted in an unforeseeable delay of at least 12 months, assuming Piney's and Mulberry's bankruptcies are discharged as anticipated.

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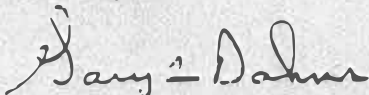
Piney is aware that contract provision 21.1.1 requires declaration of Force Majeure "as soon as possible" after Piney became aware of its inability to perform. Piney submits that in light of the financial conditions precipitated by the bankruptcy of its Parent, Piney's overriding concern that it survive as a viable business organization temporarily and reasonably overshadowed its concerns with respect to strict compliance with the Contract. Piney seeks FPC's concurrence that this declaration is timely under the unique multiple Force Majeure circumstances presented.

101924

Mr. Robert D. Dolan  
Florida Power Corporation  
December 8, 1992  
Page 3

We look forward to your affirmative response, acknowledging Piney's Force Majeure events and granting the maximum 180-day extension of the Contract In-Service Date from January 7, 1994 to July 7, 1994. Please signify Florida Power Corporation's agreement to extend the Contract In-Service Date to July 7, 1994 by executing this letter where noted below and returning a copy to me. Alternatively, feel free to respond by separate letter, but in any event, we would greatly appreciate your response no later than December 18, 1992. In the meantime, if you have any questions or require further information, please call.

Sincerely,



Gary L. Dahms  
Executive Vice President & C.O.O.

/rmm

Attachment

cc: James P. Fama, Esquire

Piney Point Phosphates, Inc. (f/k/a Royster Phosphates, Inc.) requested extension of the Contract In-Service Date of its Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility between Royster Phosphates, Inc. and Florida Power Corporation from January 7, 1994 to July 7, 1994 having been duly considered is hereby approved and granted by Florida Power Corporation this 18TH day of December 1992.



By:

  
Signature

ROBERT D. DOLAN  
Name

MANAGER COGENERATION CONTRACTS  
Title AND ADMINISTRATION  
101925





**Florida  
Power**  
CORPORATION

January 14, 1993

Mr. Gary L. Dahms  
Piney Point Phosphates, Inc.  
13300 US Hwy. 41 North  
Palmetto, Fla. 34221

Dear Mr. Dahms:

We hereby acknowledge your letter dated January 13, 1993, requesting a 180-day extension to your Construction Commencement Date and the Transmission Service Agreement Date. This extends the Construction Commencement Date to December 3, 1993, and the Transmission Service Agreement date to August 5, 1993.

Sincerely,

Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh  
RDC:PRD:JLH

101922



April 29, 1993

Mr. William Malenius  
Ark Energy, Inc.  
23293 South Pointe Dr.  
Laguna Hills, Calif. 92653

RE: Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Mulberry Energy Company and Florida Power and the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Royster Phosphates, Inc. and Florida Power Corporation

Dear Mr. Malenius:

In keeping with the interconnection in-service dates that I referred to in my letter to you on March 30, 1993, Florida Power Corporation (FPC) is willing to extend the contract in-service date as you requested. The new contract in-service date will be 161 days from the July 7, 1994 in-service date for the Royster contract, and 132 days from the August 5, 1994 in-service date for the Mulberry Contract which results in in-service dates for both projects being December 15, 1994.

FPC has determined the earliest feasible in-service date to complete the construction, installation and testing of Phase I of FPC's Interconnection Facilities is June 30, 1994. The Phase I Interconnection Facilities will allow Polk Power Partners, L.P. to deliver full output to FPC. If the interconnection is not completed by June 30, 1994 due to a delay caused by an event beyond the control of Polk Power Partners, L.P., FPC will extend the contract in-service date of December 15, 1994, on a day-for-day basis.

If the foregoing accurately reflects your understanding of our agreement with respect to the subject matter set out above, please so indicate by signing in the space provided below, and returning a signed counterpart hereof to me.

Very truly yours,

Florida Power Corporation

By: Robert D. Dolan  
Robert D. Dolan

ACCEPTED AND AGREED TO THIS 20th DAY OF May, 1993.

Ark Energy, Inc.

By: William Malenius  
William Malenius

101914



cc: M. B. Foley, Jr.

A. J. Honey

A. M. Keith

J. P. Paine

S. G. Rudolph

RDD:FAH/BLP

GENERAL OFFICE

3201 THIRTY-FOURTH STREET SOUTH • POST OFFICE BOX 14042 • ST. PETERSBURG, FLORIDA 33733-4042 • (813) 866-0151  
A Florida Progress Company



PINEY POINT PHOSPHATES, INC.

13348 U. S. Hwy. 91 North  
Palmetto, Florida 34221  
(813) 722-4355

January 20, 1993

Mr. Robert D. Dolan, Manager  
Cogeneration Contracts & Administration  
Florida Power Corporation  
3201 34th Street South  
St. Petersburg, FL 33711

Re: Piney Point Phosphates, Inc. (t/w/z Royster Phosphates, Inc.)

Dear Mr. Dolan:

Pursuant to Florida Power Corporation's (FPC) September 15, 1992 correspondence, as modified by your letter of December 29, 1992, Piney Point Phosphates hereby "relocates" the site specified in the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility between Royster Phosphates, Inc. and Florida Power Corporation (Contract) as set forth in Section 3.1 of the Contract, from Section 6, Township 33S, Range 18E in Manatee County, Florida, to the Polk Power Partners, L.P. site at Sections 13-26, Township 30S, Range 24E in Polk County, Florida.

Please acknowledge your receipt of and agreement with this document by executing the triplicate originals in the space designated below and returning two copies to me. Thank you for your cooperation in this matter.

Sincerely,



Gary L. Dahms  
Executive Vice President & C.O.O.

/rmm

Florida Power Corporation hereby acknowledges receipt of and agreement with this document this 20th day of January 1993 at the offices of Florida Power Corporation, St. Petersburg, Florida.

BY: Robert D. Dolan TITLE: MANAGER COGENERATION CONTRACTS  
NAME (TYPE OR PRINT): Robert D. Dolan

101921



**MULBERRY**

October 28, 1993

Mr. Robert Dolan  
Manager Cogeneration Contracts and Administration  
FLORIDA POWER CORPORATION  
3201 34th Street South  
St Petersburg, FL 33711

FAX: (813) 866-4994

Re: Mulberry Cogeneration Facility, Polk Power Partners, L.P.'s  
gas fired combined cycle cogeneration plant located near  
Bartow, Florida (the "Facility")

Dear Mr. Dolan:

The purpose of this letter is to clarify and confirm the understanding of Florida Power Corporation (the "Company") regarding certain terms and provisions of a) Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Mulberry Energy Company, whose interest was assigned to Polk Power Partners, L.P., ("QP") and Florida Power dated March 12, 1991, the "Mulberry Contract"; and b) Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Royster Phosphates, Inc., whose interest was assigned to QP, and Florida Power Corporation dated March 17, 1991, (the "Royster Contract"; the Mulberry Contract and Royster Contract are collectively referred to as the "Contract"; which are to be serviced by the Facility. Terms which are not otherwise defined herein shall have the meaning provided them in the Contract. The Company and the QP hereby clarify, confirm and agree to the following:

1. Article VIII of the Contract, which is titled "Capacity Payments", which deals with the calculation of the On-Peak Capacity Factor on a rolling average basis for the most recent twelve (12) month period shall be interpreted to provide the Company the following additional rights:

- (a) Subject to the provisions of Section 1.b of this letter, on or before October 31 of each year, the Company shall notify QP of the two (2) week period, which shall be during the months of January, February, March, April, October, November or December, of the next calendar year when QP should shut down the Facility for its annual two (2) week maintenance outage. QP shall shut down the Facility during the period specified in the Company's notice. The Company shall not schedule such shut downs such that the shut downs occur less than ten (10) months or more than fourteen (14) months apart.

101102



Mr. Robert Dolan  
FLORIDA POWER CORPORATION

October 28, 1993

- (b) During those years when a major overhaul or hot gas inspection is required the shut down period referred to in Section 1.a of this letter may be longer than two (2) weeks (the "Overhaul Shut Down") and will be scheduled in accordance with the combustion turbine manufacturer's recommendations. The QF shall give the Company thirty (30) days notice of the scheduled Overhaul Shut Down. The Company and QF shall coordinate the timing of the shutdown as much as reasonably possible. The QF shall make a reasonable effort to schedule the Overhaul Shut Down during the months of March, April, October, November or December or another month by mutual agreement.
- (c) QF shall not sell power to the Company nor shall the Company be required to buy power from the Facility during the hours 11:00 PM to 6:00 AM Eastern time during November through March and 12:00 ~~PM~~ to 7:00 AM Eastern time during April through October each day (these hours shall be defined as the "Dispatch Hours"). In the event that the Company requests that the Facility operate during the Dispatch Hours, the Company shall reimburse the Facility for all fuel and fuel transportation costs in excess of the fuel and fuel transportation costs that the Facility would have paid during the non-Dispatch Hours of the day in which the shut down ended. Such reimbursement shall be made at the end of the month in which costs are incurred. The QF shall have the right, at its sole discretion, not to operate during the Dispatch Hours. PKA  
②
- (d) The Company shall exercise its best efforts to make arrangements with TECO and the QF which shall prevent the terms of this letter agreement from encumbering QF's ability to receive benefits from the QF's contract with TECO a certain Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility including all attachments and amendments thereto, dated as of April 17, 1989. ("the TECO Contract")

When any notice of shut down is given pursuant to Section 1 of this letter, the Company will also specify the restart times which shall be consistent with the restart and ramp rates for the Facility. Notwithstanding this Section 1, the Company and QF shall retain their respective rights to request and receive compensation for any loss, liability or costs incurred as a result of any curtailments or shutdowns or the failure to curtail or shutdown, pursuant to the Contract or pursuant to Florida Public Service Commission ("FPSC") rule 17-25.086 or any successor to this rule.

Mr. Robert Dolan  
FLORIDA POWER CORPORATION

October 28, 1993

2. For purposes of calculating capacity factors and committed capacity under the Contract the Company clarifies and confirms the following:
  - (a) During all hours of shutdown described in Section 1.a and 1.c of this letter, these hours, plus one (1) hour before for shut down and two (2) hours after for startup, shall be excluded for the purposes of calculating the Facility's On-Peak Capacity Factor. During all hours of shutdown described in Section 1.b of this letter, these hours not to exceed five hundred four (504) hours, plus one (1) hour before for shut down and two (2) hours after for startup, shall be excluded for the purposes of calculating the Facility's On-Peak Capacity Factor.
  - (b) All calculations of committed capacity and performance testing will be adjusted to an annual average ambient temperature of 72°F.
  - (c) The On-Peak hours for November through March are all days 6 AM to 12 Noon and 5 PM to 10 PM for April through October all days 11 AM to 10 PM, Eastern time.
3. The QF shall not be in default under the Contract and it shall be entitled to a full capacity payment if the QF's On-Peak Capacity Factor is equal to or greater than seventy five percent (75%) during any month prior to Florida Gas Transmission Company's Phase III expansion project commencing commercial operation (a "Pre-Phase III Month"). The number of Pre-Phase III Months shall, in any event, not extend past twelve (12) full months after the Commercial In-Service Status Date. The calculation of the twelve (12) month rolling average On-Peak Capacity Factor for any period that includes a Pre-Phase III Month shall be adjusted to take into account that a reduced On-Peak Capacity Factor of seventy five percent (75%) rather than the On-Peak Capacity Factor stated in each contract, i.e. 90% or 85% (the "Stated Capacity Factor") entitles the QF to a full capacity payment during a Pre-Phase III Month. For each Pre-Phase III Month used in calculating the twelve (12) month rolling average On-Peak Capacity Factor, the On-Peak Capacity Factor for such Pre-Phase III month shall be adjusted as follows:
$$\frac{[\text{Actual On-Peak Capacity Factor}] \times [\text{Stated Capacity Factor}]}{[\text{for such Pre-Phase III Month}] \quad [75\%]}$$
4. Article 7.2 of the Contract shall be interpreted to provide the QF with the following additional right:



October 28, 1993

For the period ending eighteen (18) months immediately after the Contract In-Service Date, the QF may on one occasion only, increase or decrease the Initial Committed Capacity by no more than ten percent (10%) of the Committed Capacity specified in Article 7.1. The QF may, upon written notice to Company, extend this period day for day in the event that the Company's interconnection to the QF's affiliate, the Orange Cogeneration Facility, is delayed by the Company past the expected completion date of March 1, 1995.

5. Appendix C of the Contract, Rates for the purchase of Firm Capacity and Energy from a Qualifying Facility, Schedule 6, Performance Adjustment, shall be interpreted to provide the QF with the following additional rights:
  - (a) During all hours of shutdown described in Section 2a of this letter, plus one (1) hour before for shut down and two (2) hours after for startup, these hours shall be excluded for the purposes of calculating the Facility's performance adjustment.
  - (b) During all hours that are not On-Peak Hours (the "Off-Peak Hours") the performance adjustment shall not be less than zero. During the two (2) hours after and the one (1) hour before the Dispatch hours the performance adjustment shall not be less than zero.
6. The Company will execute a Transmission Service Agreement to wheel 23 MW of the Facility's power to TECO (the "Wheeling Agreement") and file this agreement with the Federal Energy Regulatory Commission ("FERC") by November 7, 1993. The effective date of the Wheeling Agreement will be December 1, 1994. The Company will expedite the resolution of any letter agreements for the allocation of capacity from the Facility so that they will be completed in time for the QF closing on the refinancing of the Facility before the end of 1993.
7. The QF shall not be in default under the Contract and it shall be entitled to full capacity payment if, during the period in which the Wheeling Agreement is in effect and not to extend beyond December 31, 1995, the Company requires a re-demonstration of the Commercial In-Service Status pursuant to Article 7.6 and (i) that the Facility is in compliance with all applicable Facility permits; (ii) the Facility has maintained an hourly KW output, as metered at the Point of Delivery, equal to or greater than 95% of the Committed Capacity for a consecutive twenty-four (24) hour period or during the on-peak hours specified in Appendix C of two consecutive days; (iii) that such 24 hour period is reasonable



Mr. Robert Dolan  
FLORIDA POWER CORPORATION

October 28, 1993

reflective of the Facilities day to day operations.

8. The Company shall withdraw its October 5, 1993 in Federal Energy Regulatory Commission Docket No. QF92-54-003. If requested by the QF, the Company shall also file a pleading in support of Polk Power Partners, L.P. Request for Recertification as a Qualifying Facility under this Docket.
9. The company shall support any of the QF's FERC pleadings or recertifications the QF may need to pursue in accordance with the changes in the Facility's operations resulting from this letter.
10. The Company shall not file a pleading in opposition and shall, if requested by the QF file a pleading in support of Polk Power Partners, L.P. Request for Limited Waiver of the Commissions's Operating and Efficiency Standards for the calendar year 1994, Re: Federal Energy Regulatory Commission Docket No. EL93-62-000 and QF92-54-005. This shall not apply to any requests for FERC waivers that extend beyond December 31, 1994.
11. Article 6.1 of the Contract shall be clarified as follows:

The QF also shall sell and deliver or arrange for the delivery of electric energy to the Company and the Company agrees to purchase, accept, and pay for such electric energy that is made available for sale to and received by the Company at the Point of Delivery. Such electric energy, expressed in KWH, accumulates over time from the electric output, expressed in KW, that is net of any electric energy used on the QF's side of the Point of Delivery and in excess of that electric energy generated to meet the obligations of the TECO Contract as long as that energy is made available at the Point of Sale. In other words, the Company will purchase all of the net electric energy, KWH, that comes from all of the Facility's output, KW, even though that net output is greater than the Committed Capacity of the Contract. This interpretation shall survive after the QF no longer has an obligation under the TECO contract and after the Royster Contract expires.
12. In the event that the QF were to temporarily lose its steam host or otherwise be in a factual circumstance whereby it was not in compliance with PURPA requirements for qualifying facility (QF) status the Company will rely upon FERC's determination of QF status. The company will not rely upon any independent, factual determination of status. As long as FERC's grant of QF status is effective and has not been canceled by FERC, the QF will have status as far as the

Contract is concerned. The QF shall not be in default so long as it is making its best efforts to be in compliance with its FERC's grant of QF status and has notified the FERC and has taken actions to remedy the situation. In such case, and in other cases, the Company shall abide by FERC's final determination. Nothing in this section 12 shall prevent the Company from protesting QF's QF status before FERC, except to the extent such protest is not allowed under sections 8, 9 and 10 of this letter agreement. Nothing in this section 12 shall prevent the QF from exercising its rights under the Contract to declare a Force Majeure Event.

13. Para 6.2 in the Royster Contract shall be changed to read as follows:

The Committed Capacity and electric energy made available at the Point of Delivery to the Company shall be (x) net of any electricity used on the QF's side of the Point of Ownership or ( ) simultaneous with any purchases from the interconnected utility. This selection in billing methodology shall not be changed after the Facility has achieved Commercial In-Service Status.

Very truly yours,

POLK POWER PARTNERS, L.P.  
by Polk Power G.P., Inc  
its General Partner

By: *Leslie Confair*  
Name: Leslie Confair  
Title: President

ACCEPTED AND AGREED  
FLORIDA POWER CORPORATION

By: *Philip C. Henry*  
Name: PHILIP C. HENRY  
Title: SENIOR VICE PRESIDENT

wrm/C:\RD102893.LTR  
CC: Brad Samuelson  
Lee Atkins  
Rich Zambo





January 18, 1994

Mr. Robert D. Dolan, Manager  
Cogeneration Contracts & Administration  
FLORIDA POWER CORPORATION  
3201 34th Street South  
St. Petersburg, FL 33711

Re: Allocation of electric capacity and energy between the March 11, 1991 Negotiated Contract between Royster Phosphates, Inc. and Florida Power Corporation, as amended (the "Royster contract"), and the March 12, 1991 Negotiated Contract between Mulberry Energy Company, Inc. and Florida Power Corporation, as amended (the "Mulberry Contract")

Dear Mr. Dolan:

This letter will memorialize the agreement between Florida Power Corporation (FPC) and Polk Power Partners, L.P. (PPP) regarding the "allocation" of electric capacity and energy produced at PPP's Mulberry cogeneration facility and delivered to FPC between the referenced Royster Contract and Mulberry Contract.

FPC and PPP agree as follows:

(1) That the electric capacity and energy produced at the facility and delivered to FPC (excluding the amount of capacity and energy, if any, scheduled by PPP for delivery to Tampa Electric Company ("TECO")) shall be allocated between the Mulberry Contract and the Royster Contract on a pro-rata basis in accordance with each contract's committed capacity, as may be in effect from time to time. (As an example, if the committed capacities for the Mulberry Contract and the Royster Contract are 72 MW and 28 MW, respectively, then  $72/(72+28)$  or 72% of the delivered capacity and energy would be allocated to Mulberry and  $28/(72+28)$  or 28% of the delivered capacity and energy would be allocated to Royster.) In the event of termination of either contract, allocation of capacity and energy in this manner shall cease.

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Mr. Robert Dolan, Manager  
January 18, 1994  
Page 2 of 2

(2) FPC shall provide non-firm transmission service to PPP (in addition to the firm service to be provided in accordance with our October 28, 1993 Service Agreement for Transmission Service) pursuant to FPC's Rate Schedule T-1, to allow PPP to schedule and deliver up to 30 MW of electric capacity to TECO on a non-firm basis. To this end, FPC shall expedite preparation, execution and submission to PPP of the appropriate documents necessary for the provision of such service.

Sincerely,

Polk Power Partners, L.P.  
By: Polk Power GP, Inc.,  
its general partner

By: L.P. Conner

Name: L. C. Conner

Title: President

Date: 1/14/94

Accepted and Agreed

Florida Power Corporation

By: Robert D. Dolan

Name: ROBERT D. DOLAN

Title: MANAGER - COGENERATION CONTRACTS & ADMINISTRATION

Date: 2/15/94





February 3, 1994

Mr. Robert Dolan  
Manager, Cogeneration Contracts &  
Administration  
FLORIDA POWER CORPORATION  
3201 Thirty-Fourth Street, South  
St. Petersburg, Florida 33733-4042

SUBJECT: Mulberry Cogeneration Facility, Polk Power  
Partners, L.P.'s Gas Fired Combined Cycle  
Cogeneration Plant Located Near Bartow, Florida  
("Facility")

Dear Mr. Dolan:

The purpose of this letter is to confirm and clarify certain provisions of the following agreements to which Polk Power Partners, L.P. ("Polk") and Florida Power Corporation ("FPC") are parties:

1. A Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Mulberry Energy Company, Inc. ("Mulberry") and FPC, dated March 12, 1991 (the "unamended Mulberry Agreement"), as amended by the Declaration of Force Majeure letter from Mulberry to FPC dated April 19, 1991, and FPC's acknowledgment of said letter dated May 20, 1991, the Letter Agreement between Mulberry and FPC, dated as of September 30, 1991, the Assignment and Assumption Agreement among Mulberry, Mr. Arch Ford dba Polk Power Project and Polk, dated as of February 24, 1992, the Consent to Assignment among FPC, Mulberry, and Polk, dated as of February 24, 1992, the Electrical Interconnection Reimbursement dated April 29, 1992, between Polk and FPC, the request for additional Pre-Operational Force Majeure extensions, dated September 10, 1992, and FPC's acknowledgment dated January 20, 1993, the Letter Agreement between FPC and ARK Energy, Inc., dated as of April 29, 1993 (the "Apr. 29, 1993 Letter Agreement") and the Letter Agreement between Polk and FPC, dated as of October 28, 1993 (the "Oct. 28 Letter Agreement") (together the "Mulberry Agreement"); and

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Mr. Robert Dolan  
February 3, 1994  
Page 2

2. A Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Royster Phosphates, Inc. ("Royster") and FPC, executed in March 1991 (the "unamended Royster Agreement"), as amended by the regulatory delay letter, dated September 11, 1991, between Royster and FPC, the Pre-Operational Force Majeure declaration between FPC and Piney Point Phosphates, Inc., formerly known as Royster ("Piney Point"), dated December 8, 1992, and acknowledged by FPC on December 18, 1992, the Construction Commencement Date letter from Piney Point to FPC, dated January 14, 1993, the relocation letter between Piney Point and FPC, dated January 20, 1993, the April 29, 1993 Letter Agreement, the Assignment and Assumption Agreement between Piney Point and Polk, dated as of May 3, 1993, the Consent to Assignment among FPC, Piney Point, and Polk, dated as of May 3, 1993, and the Oct. 28 Letter Agreement (together the "Royster Agreement").

The Mulberry Agreement and the Royster Agreement are hereinafter jointly the "Agreements." References to Articles, Sections and Appendices of each or either of the Agreements shall be to both or either of the unamended Mulberry Agreement and/or unamended Royster Agreement as specified. Capitalized terms used without definition shall have the meanings given in the Agreements. References to Polk shall include its successors and/or assignees.

Polk and FPC hereby clarify, confirm and agree as follows:

(a) That the contest by Polk of any proceedings before any federal, state or local government authority (provided that such contest is pursued in good faith by appropriate proceedings diligently conducted and such contest does not subject the Facility to a risk of forfeiture) will not violate the covenant of Polk set forth in Section 14.1.2 of each of the Agreements. Section 1.11(i) of each of the Agreements will be deemed satisfied if Polk is not in violation of the covenant set forth in Section 14.1.2 of each of the Agreements.

(b) In the event the Facility experiences an Event of Default pursuant to Section 15.3.2 of an Agreement, Polk's right to a reasonable opportunity to cure shall include the right to complete such repairs and modifications, if any, as Polk determines are required and diligently pursues (whether at the Facility or the steam user) and to schedule additional



Mr. Robert Dolan  
February 3, 1994  
Page 3

tests to redemonstrate the Facility's Commercial In-Service Status; provided, however, that Polk will provide not less than twenty-four hours prior notice to the Contracting Party of each such redemonstration and the Contracting Party shall be permitted to be in attendance during such redemonstration.

(c) The Facility is not located north of the latitude of FPC's Central Florida Substation. Therefore, no Import Capability, as described in Article II of the Agreements, is required and Article II of each of the Agreements is of no force and effect.

(d) Neither FPC nor Polk will incur a repayment obligation pursuant to Section 8.5 of either of the Agreements and Section 8.5 of each of the Agreements is of no force and effect.

(e) Sections 1.46, 4.2(i) and 15.1.3, Appendix A Section 2.2h and Appendix D of the Royster Agreement, which are applicable solely to a non-interconnected facility, and Sections 11.1, 22.2 and 22.3 and Appendix A Section 2.1 of the Royster Agreement, to the extent such sections make reference to the Transmission Service Utility, are of no force and effect.

(f) Polk's ability to use fuel oil as a back-up fuel for the Facility, with fuel oil storage capability on-site, satisfies the requirements of Section 3.3 of each of the Agreements; provided that the fuel oil stored in such on-site storage tanks must be capable of being used in the operation of the Facility in the event of an interruption of the primary fuel supply so as to continue reasonably uninterrupted energy deliveries.

(g) Each of the Agreements is corrected as follows:

1. ~~The reference to Article VI in Section 1.12 of each of the Agreements is to Article VII.~~ (RD)

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Mr. Robert Dolan  
February 3, 1994  
Page 4

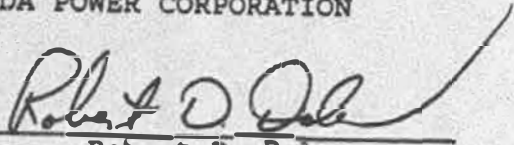
2. The reference to Section 13.3 in Section 1.38 of each of the Agreements is to Section 13.2.

Very truly yours,

Polk Power Partners, L.P.  
By: Polk Power GP, Inc.  
its General Partner

By:   
Name: Arnold R. Klann  
Title: Vice President

ACCEPTED AND AGREED  
FLORIDA POWER CORPORATION

By:   
Name: Robert D. Dolan  
Title: Manager - Cogeneration Contracts & Administration





## SUMMARY

### MULBERRY ENERGY COMPANY, INC. (03/12/91 Negotiated contract)

#### • Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 02/24/92: FPC consents to Assignment to Polk Power Partners, L.P.
- FPC's consent expressly recites that the assignment does not alter FPC's rights against Mulberry and that Mulberry is only discharged from its obligations to the extent of performance of them by Polk Power

#### • Force Majeure Delay

- Contract expressly authorizes extensions for force majeure delays (§4.2.2)
- 05/20/91: FPC agrees to a Mulberry request for a 90 day force majeure delay due to changes in the Comprehensive Land Use plan for Polk County
- 01/20/93: FPC agrees to an extension of commencement and commercial in-service dates due to Mulberry having to refile its air permit applications in order to clearly satisfy the "best available current technology" standard

#### • Regulatory Delay

- Contract expressly authorizes extensions for regulatory delays (§4.1.1)
- 10/14/91: FPC agrees to a Mulberry request for a 37 day extension of commencement and commercial in-service date due to regulatory delays

#### • Interconnection Delay

- 04/29/93: FPC and Mulberry agree to an extension of the commercial in-service date due to the timing of interconnection

#### • Curtailment

- 10/28/93 & 01/18/94:



FPC and Mulberry agree that, in connection with this and the Royster contracts, output will be reduced during off-peak hours throughout the term of the contracts, no power will be delivered to FPC during a two-week period each year, FPC will purchase all of the Facility's net output even if that is greater than its committed capacity, and with how this impacts on such items as capacity factors and committed capacity

• Routine Contract Administration and Performance

- 02/03/94: FPC and Mulberry agree that neither will incur a repayment obligation pursuant to §8.5 of the contract and therefore that §8.5 is of no force and effect
- 02/03/94: FPC and Mulberry acknowledge typographical errors in the contract (e.g., a reference in §1.2 to Art. VI is to Art. VII)

## CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into as of February 24, 1992, by and among FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), MULBERRY ENERGY COMPANY, INC., a Florida corporation ("Assignor") and POLK POWER PARTNERS, L.P., a Delaware limited partnership, authorized to do business in Florida as Polk Power Partners, L.P., Ltd. ("Assignee").

## R E C I T A L S

WHEREAS, Assignor and FPC are parties to that certain Negotiated Contract for the Purchase of Firm Energy and Capacity From a Qualifying Facility, executed by FPC on March 6, 1991 and by Assignor on March 12, 1991 (the "Sale Contract"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Sale Contract);

WHEREAS, Assignor and Assignee have entered into that certain Purchase Agreement dated as of November 25, 1991, pursuant to which, among other things, Assignor has agreed to sell, and Assignee has agreed to purchase, all of Assignor's right, title and interest in certain rights relating to the development, construction and operation of the Facility;

WHEREAS, Assignor desires to assign all of the right, title and interest in, to and under, and to delegate all of the obligations, duties and liabilities arising under, the Sale Contract to Assignee pursuant to that certain Assignment and Assumption Agreement dated as of even date herewith (the "Assignment");

WHEREAS, Article XXIII of the Sale Contract provides that Assignor may assign the obligations, benefits and duties under the Sale Contract with the written consent of FPC and FPC is willing to grant such written consent as set forth in this Consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FPC hereby agrees as follows:

1. Consent to Assignment. FPC hereby consents to the assignment of the Sale Contract by Assignor to Assignee pursuant to the terms and conditions of the Assignment.



2. Contract Not Modified. Except as set forth in Section 3 of this Consent, neither the Assignment nor this Consent shall alter, waive or modify the Sale Contract, or FPC's rights under the Sale Contract, or its rights against Assignor. FPC agrees that Assignee may perform Assignor's obligations under the Sale Contract, and Assignor shall be discharged from any obligations performed for it by Assignee, but only to the extent of such performance.

3. Amendment to Sale Contract. FPC agrees that all references to Assignor in the Sale Contract shall be deemed to be references to Assignee and that Assignee shall be deemed to be the "QP" for purposes of the Sale Contract. Section 28.1 of the Sale Contract shall be amended to reflect that all notices and other communications by FPC to the QP under the Sale Contract shall be addressed to Assignee at the following address:

Polk Power Partners, L.P.  
c/o ARK/CSW Development Partnership  
23293 South Pointe Drive  
Laguna Hills, California 92653  
Attention: President

4. Representations and Warranties. Assignee represents and warrants to FPC that it possesses all necessary partnership power and authority to enter into and perform, in the State of Florida and elsewhere, the obligations under the Sale Contract.

5. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their officers duly authorized as of the date first above written.

FLORIDA POWER CORPORATION

Attest

By Robert D. Dolan  
Name: ROBERT D. DOLAN

XXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXX

By Maurice H. Phillips  
Name: MAURICE H. PHILLIPS  
Title: EXECUTIVE VICE PRESIDENT

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXX

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- 2 -

101123





Attest

By

Denise Marie Iman  
Name: Denise Marie Iman

MULBERRY ENERGY COMPANY, INC.

By

Arch R. Ford  
Name: Arch R. Ford  
Title: President

POLK POWER PARTNERS, L.P.,  
a Delaware limited  
partnership, authorized to do  
business in Florida as Polk  
Power Partners, L.P., Ltd.

By: POLK POWER GP, INC.,  
Its General Partner

Attest

By

Pam Shuler  
Name:

By:

W. H. Hutton  
Name: W. H. Hutton  
Title: President

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is dated as of February 24, 1992 by and among MULBERRY ENERGY COMPANY, INC., a Florida corporation, and MR. ARCH R. FORD dba POLK POWER PROJECT, a sole proprietorship (collectively, the "Seller"), and POLK POWER PARTNERS, L.P., a Delaware limited partnership (authorized to do business in Florida as Polk Power Partners, Ltd.) ("Purchaser").

### RECITALS

A. Seller and Purchaser, as assignee of ARK/CSW Development Partnership are parties to that certain Purchase Agreement dated as of November 25, 1991 (the "Purchase Agreement") pursuant to which Seller has agreed to sell and Purchaser has agreed to buy the Sale Assets described on Exhibit A-1 attached hereto (but excluding any Excluded Assets set forth on Exhibit A-2 attached hereto and pursuant to which Purchaser has agreed to assume the Liabilities set forth in Section 3 thereof). Terms used and not defined herein have the meanings assigned to them in the Purchase Agreement.

B. Seller desires to convey all of its right, title and interest to the Sale Assets to Purchaser and Purchaser desires to accept conveyance of the Sale Assets from Seller and to assume the Liabilities.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment. Seller does hereby unconditionally, absolutely and irrevocably grant, bargain, sell, transfer, assign, convey, set over, and deliver unto Purchaser all of its right, title and interest in the Project Contracts, and the Government Approvals in existence as of the Closing Date (but excluding the Excluded Assets) and delegates to Purchaser all Seller's obligations to pay, perform and discharge when due the Liabilities as defined in Section 3 of the Purchase Agreement. This Assignment excludes any and all right, title and interest in or to the Excluded Assets.

2. Assumption. Purchaser does hereby accept all right, title and interest in the Sale Assets and assumes and agrees to pay, perform and discharge when due all of the Liabilities as such term is defined in Section 3 of the Purchase Agreement; provided that Purchaser shall not assume any Liabilities with respect to those Project Contracts set forth on Exhibit C attached hereto which are terminated and as to which Releases have been obtained pursuant to the last sentence of Section 3 of the Purchase Agreement.

3. Bill of Sale. Concurrently herewith, Seller shall execute and deliver to Purchaser a Bill of Sale in substantially the form of Exhibit B attached hereto to evidence the transfer and conveyance of all personal property assets which are included in the Sale Assets.

4. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within the State of California.

5. Effective Date. The assignment and assumption made pursuant to this Assignment shall be effective as of the Closing Date.

6. Counterparts. This Assignment may be executed in counterparts, all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

PURCHASER: POLK POWER PARTNERS, L.P.,  
a Delaware limited partnership

By: POLK POWER GP, INC.,  
a Delaware corporation  
Its General Partner

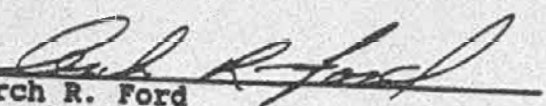
By: William R. Stratton  
William R. Stratton  
President



SELLER:

MULBERRY ENERGY COMPANY, INC.,  
a Florida corporation

By:

  
Arch R. Ford  
President

MR. ARCH R. FORD dba  
POLK POWER PROJECT,  
a sole proprietorship

By:

  
Arch R. Ford  
Principal

SALE ASSETS

I. Project Contracts

- (a) FPC Power Purchase Agreement;
- (b) TECO Power Purchase Agreement;
- (c) Project Site Option;
- (d) ERC Agreement;
- (e) Gas Transportation Contract;
- (f) Agency Agreement entered into as of October 18, 1991 by and between Mulberry and CFG; and
- (g) Agreement dated as of November 15, 1991 by and between Mulberry and CFG with respect to certain escrowed funds.

II. Governmental Approvals

- (a) Polk County Site Approval

III. Other Sale Assets

All other applications for Governmental Approvals, assets, drawings, files, correspondence, purchase orders, bills of order, permitting and environmental studies, maps and other similar data of Seller used or prepared in connection with the development, construction and operation of the Facility other than the Excluded Assets.

EXCLUDED ASSETS

The following assets shall be excluded from the Sale Assets:

- (a) DLJ Agreement



FORM OF BILL OF SALE

MULBERRY ENERGY COMPANY, INC., a Florida corporation, and MR. ARCH R. FORD dba POLK POWER PROJECT, a sole proprietorship (herein, collectively, called "Grantor"), for valuable consideration, does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver unto POLK POWER PARTNERS, L.P., a Delaware limited partnership (herein called "Grantee"), all right, title and interest of Grantor in and to certain personal property assets described generally on Annex A attached hereto (collectively and severally, the "Assets") pursuant to, and subject to all of the terms and conditions of, that certain Purchase Agreement dated as of \_\_\_\_\_, 19\_\_ (the "Purchase Agreement") between Grantor and Grantee (as assignee of ARK/CSW Development Partnership). Terms used and not defined herein have the meanings assigned to them in the Purchase Agreement.

Grantor warrants the Assets to be free and clear of all Liens in favor of any Person. Grantor does hereby covenant to Grantee that Grantor is the lawful owner of the Assets, and that Grantor has good and marketable title to the same and will warrant and defend the title thereto unto Grantee, its successors and assigns against the claims and demands of all Persons whomsoever.

TO HAVE AND TO HOLD, unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, this Bill of Sale is executed this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

SELLER:

MULBERRY ENERGY COMPANY, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Name:  
Title:

MR. ARCH R. FORD dba  
POLK POWER PROJECT,  
a sole proprietorship

By: \_\_\_\_\_  
Name:  
Title:

DESCRIPTION OF ASSETS

I. Project Contracts

- (a) FPC Power Purchase Agreement;
- (b) TECO Power Purchase Agreement;
- (c) Project Site Option;
- (d) ERC Agreement;
- (e) Gas Transportation Contract;
- (f) Agency Agreement entered into as of October 18, 1991 by and between Mulberry and CFG; and
- (g) Agreement dated as of November 15, 1991 by and between Mulberry and CFG with respect to certain escrowed funds.

II. Governmental Approvals

- (a) Polk County Site Approval

III. Other Sale Assets

All other applications for Governmental Approvals, assets, drawings, files, correspondence, purchase orders, bills of order, permitting and environmental studies, maps and other similar data of Seller used or prepared in connection with the development, construction and operation of the Facility other than the Excluded Assets.



List of Terminated Project Contracts

a) DLJ Agreement

FUC-2

**SECURITIES AND EXCHANGE COMMISSION**

(Rel. No. 35- 25477 , 70-7918)

**Central and South West Corporation, et al.  
Order Authorizing Acquisition of Interest in Partnership;  
Acquisition of Interest in Qualifying Cogeneration Facility;  
Issuance, Sale and Acquisition of Common Stock; Issuance of  
Notes; Capital Contributions; Obligations Under Letters of  
Credit; Exception from Competitive Bidding**

**February 18, 1992**

Central and South West Corporation ("CSW"), a registered holding company, and three of its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW Development-I, Inc. ("Energy Sub"), each located in Dallas, Texas, and ARK/CSW Development Partnership (the "Joint Venture"), located in Laguna Hills, California (collectively, "Applicants"), have filed an application-declaration with this Commission under Sections 6(a), 7, 9(a), 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, 50(a)(5) and 51 thereunder. A notice of the filing was issued by the Commission on January 17, 1992 (HCAR No. 25456).

The Applicants seek authority to acquire indirectly, through subsidiaries to be formed, a 122.2 megawatt, approximately \$140 million, gas-fired cogeneration facility (the "Project"). Once operational, the Project, located near Bartow in Polk County, Florida, would be a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978.

The Applicants propose to create a new subsidiary, Polk Power Partners, L.P. (the "Partnership"), which would be a Delaware limited partnership, to own and operate the Project.

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The Applicants propose to organize and acquire for \$1,000 all of the common stock, no par value, of a new subsidiary ("JV Sub"), which would be the sole general partner of the Partnership. JV Sub will be a wholly owned subsidiary of Joint Venture, a Delaware general partnership owned equally by Energy Sub and ARK Energy, Inc. ("ARK"), a nonassociate corporation. It will be a Delaware corporation and will have 10 interest in the Partnership. The two limited partners will be Energy Sub and ARK. They would each hold a 49.5% interest in the Partnership.

CSW, Energy, Energy Sub and Joint Venture seek the approval of the Commission to make capital contributions to Partnership in the amount of \$2 million for Partnership to (i) pay \$500,000 due to the seller of the Project at the closing of sale in order to acquire the seller's rights, title and interest in and to the Project and (ii) pay up to \$1.5 million to acquire the Project site and easements and for related real estate and title matters. CSW, Energy, Energy Sub and the Joint Venture propose to make capital contributions in the amount of \$9 million to the Partnership. JV Sub, Energy Sub and ARK would each make an initial capital contribution of approximately \$1,000 in relative proportion to their respective partnership interests. Energy Sub and ARK would then each make capital contributions of up to \$9 million to the Partnership. JV Sub will contribute work product and management services for its interest.

The power from the Project will be sold to Tampa Electric Company ("TECO") and Florida Power Corporation ("FPC"). TECO and

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FPC are nonassociate Florida electric-utility corporations. It is anticipated that a small portion of the excess energy generated by the Project will be sold to the steam host and the balance will be sold to FPC on an "as available" basis.

The Applicants propose that the Partnership borrow approximately \$120 million for use in constructing and developing the Project by entering into a credit facility with a lending institution or a syndicate of lending institutions to be determined ("Construction Financing"). It is anticipated that the Construction Financing would include the issuance of letters of credit to transportation and fuel suppliers which would replace other letters of credit to these suppliers. Rather than be subject to a reimbursement agreement, unreimbursed drawings under these letters of credit would be treated as loans under the Construction Financing. The Construction Financing is to be converted to, or refinanced by, a term loan facility ("Term Loan Financing") with a lender or group of lenders upon the completion of the Project (expected to occur prior to April 12, 1994). It is anticipated that the terms of the Construction Financing and the Term Loan Financing would be up to 15 years. The interest cost to the Partnership for the Construction Financing and the Term Loan Financing will not exceed 12% per annum. Commitment fees payable to lenders under the Construction Financing and the Term Loan Financing will not exceed 1.5% of the loan amount. The Applicants request an exception from the competitive bidding



requirements of Rule 50 under subsection (a)(5) thereof for the Construction Financing and the Term Loan Financing.

Lenders may require the Partnership and/or the partners to provide some assurance for the \$18 million equity of the Project in the form of an equity support agreement or letter of credit ("Equity LOC"). Fees payable to the issuer for Equity LOCs would not exceed 1% per annum of the face amount of the Equity Support LOC and the interest rate payable per annum on unreimbursed drawings under the Equity LOC would not exceed the prime rate plus four percentage points.

The Applicants propose to procure an irrevocable standby letter of credit ("CFGC LOC") in favor of Central Florida Gas Company ("CFGC"), the Project's fuel transportation provider, in the amount of approximately \$800,000, which would obligate one of the Applicants to reimburse the bank issuing the CFGC LOC, on demand, for the amount drawn. The CFGC LOC would support payment obligations under the fuel transportation contract with CFGC ("Fuel Services Contract"). The CFGC LOC would be issued for renewable, five year terms for the duration of the Fuel Services Contract. The fees payable to the issuer of the CFGC LOC would not exceed 1% per annum of its face amount. The interest rate payable per annum on unreimbursed drawings under the CFGC LOC would not exceed the prime rate plus four percentage points.

Fees and expenses in the estimated amount of \$27,000 are anticipated in connection with the proposed transactions. It is

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stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied; and that no adverse findings are necessary:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz  
Secretary

*Margaret H. McFarland*  
By: Margaret H. McFarland  
Deputy Secretary

101137



**Florida  
Power**  
CORPORATION

May 21, 1991

Mr. Arch Ford  
President  
Mulberry Energy Co., Inc.  
1607 Kopy Rd.  
Bellingham, Washington 98226

RE: Letter Dated April 19, 1991 Declaration of Force Majeure Event

Dear Arch:

Florida Power Corporation hereby acknowledges receipt of your letter declaring a Pre-Operational Force Majeure Event as defined by section 1.25 in the Negotiated Contract For The Purchase of Firm Capacity and Energy From A Qualified Facility (the "Power Purchase Agreement") executed by your company on March 12, 1991 for your Polk County, Florida plant.

In your letter, you explained that the Polk County Commission had changed language in the proposed Comprehensive Land Use Plan for Polk County. This change effectively prohibited the use of your intended facility site at the Hernando Commerce Park by any cogeneration or other alternate generation plant. The Commission released these revised zoning maps to the public on March 19, 1991. After reviewing this new language, you "immediately discontinued all development and permit preparation activities, due to complete lack of siting certainty."

In later telephone conversations, you represented that based on your discussions with the County, you now anticipate that the Board of County Commissioners will approve your site as a heading on May 28, 1991. You also stated that you believe the state approval process could take as long as 90 days.

For these reasons, your letter seeks to serve as the notice required by section 21.1 of the Power Purchase Agreement declaring a Force Majeure Event starting on March 19, 1991 with an expected duration of 90 days. Your letter further requests that Florida Power Corporation extend both the Construction Commencement Date and the Contract In-Service Date on a day-for-day basis for each day of delay caused by the Force Majeure Event as provided for by section 4.2.2 of the Power Purchase Agreement.

1011119



May 21, 1991  
Mr. Arch Ford  
Page 2

Based on the representations of your letter and later telephone conversations, Florida Power Corporation accepts your Declaration of a Force Majeure Event beginning on March 19, 1991 with an expected duration of 90 days. At this time, and subject to the extension limits of section 4.2.2 of the Power Purchase Agreement, Florida Power Corporation will consider the date of the approval by the Polk County Board of Commissioners as the end of this Force Majeure Event. As provided by section 21.1, we require your company to use its best efforts to remedy its inability to perform and to provide prompt written proof of the date approval ending the Force Majeure Event.

As provided for by section 4.2.2 of the Power Purchase Agreement, and as requested in your letter, Florida Power Corporation will amend the Construction Commencement Date and your Contract In-Service Date for this project day-for-day for each day of delay caused by this Force Majeure Event. The Power Purchase Agreement limits any such extensions to a maximum cumulative total of 180 days for all Force Majeure Events.

Nothing in this letter will constitute a contract amendment or modification.

Sincerely,

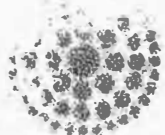
J L Seelke *RSO*

J. L. Seelke, Jr.  
Manager, Generation Contracts &  
Administration

JLS/ada

cc: [illegible]

101119



**Florida  
Power**  
CORPORATION

January 20, 1993

Mr. William Malenfant  
Ark Energy, Inc.  
23293 South Pointe Dr.  
Laguna Hills, Calif. 92653

Dear Bill:

We have reviewed your September 10, 1992 request for additional Pre-Operational Force Majeure extensions. This letter is to acknowledge this force majeure event and to confirm the extension of the following dates:

|                            |        |
|----------------------------|--------|
| In-Service Date:           | 8-5-94 |
| Construction Commencement: | 5-5-93 |

If I can be of further assistance, please do not hesitate to call me at 813/866-4745.

Sincerely,

Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/adj

cc: J. P. Fama  
R. D. Weibum  
M. B. Foley, Jr.

100-44-1012



101114



October 14, 1991

Mr. Arch Ford  
Mulberry Energy Company, Inc.  
1134 Marine Dr.  
Anacortes, Washington 98221

Dear Mr. Ford:

Enclosed is your letter dated September 30, 1991 with signed acknowledgement by FPC of the acceptance of your requested 37 day Regulatory Delay for the Contract For Firm Capacity and Energy.

As pursuant to section 28.3 of your contract, we hereby acknowledge receipt of the change of address for section 28.1.

If you have any questions, please contact me at 813/866-4745.

Sincerely,

Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. P. Faria  
M. D. Foley, Jr.

WOD/PLG/LLM

101229





April 29, 1993

Mr. William Malenius  
Ark Energy, Inc.  
23293 South Pointe Dr.  
Laguna Hills, Calif. 92653

RE: Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Mulberry Energy Company and Florida Power and the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Royster Phosphates, Inc. and Florida Power Corporation

Dear Mr. Malenius:

In keeping with the interconnection in-service dates that I referred to in my letter to you on March 30, 1993, Florida Power Corporation (FPC) is willing to extend the contract in-service date as you requested. The new contract in-service date will be 161 days from the July 7, 1994 in-service date for the Royster contract, and 132 days from the August 5, 1994 in-service date for the Mulberry Contract which results in in-service dates for both projects being December 15, 1994.

FPC has determined the earliest possible in-service date to complete the construction, installation and testing of Phase I of FPC's interconnection facilities is June 30, 1994. The Phase I interconnection facilities will allow Polk Power Partners, L.P. to deliver full output to FPC. If the interconnection is not completed by June 30, 1994 due to a delay caused by an event beyond the control of Polk Power Partners, L.P., FPC will extend the contract in-service date of December 15, 1994, on a day-for-day basis.

If the foregoing accurately reflects your understanding of our agreement with respect to the subject matter set out above, please so indicate by signing in the space provided below, and returning a signed counterpart hereto to me.

Very truly yours,

Florida Power Corporation

By: Robert D. Dulan  
Robert D. Dulan

ACCEPTED AND AGREED TO THIS 29th DAY OF April, 1993.

Ark Energy, Inc.

By: William Malenius  
William Malenius

1011113

SCOTT R. FOLLY, JR.

A. J. HARRY

A. M. KUSH

J. P. PARRA

S. G. RUDOLPH

SEAL OF AUTHORITY

GENERAL OFFICE

2801 THIRTY-FOURTH STREET SOUTH • POST OFFICE BOX 14042 • ST. PETERSBURG, FLORIDA 33733-4042 • (813) 665-5151  
A Florida Progress Company





**MULBERRY**  
ENERGY COMPANY, L.P.

October 28, 1993

Mr. Robert Dolan  
Manager Cogeneration Contracts and Administration  
FLORIDA POWER CORPORATION  
3201 34th Street South  
St. Petersburg, FL 33711

FAX: (813) 266-4994

Re: Mulberry Cogeneration Facility, Polk Power Partners, L.P.'s  
gas fired combined cycle cogeneration plant located near  
Bartow, Florida (the "Facility")

Dear Mr. Dolan:

The purpose of this letter is to clarify and confirm the understanding of Florida Power Corporation (the "Company") regarding certain terms and provisions of a) Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Mulberry Energy Company, whose interest was assigned to Polk Power Partners, L.P., ("QP") and Florida Power dated March 12, 1991, the "Mulberry Contract"; and b) Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Royster Phosphate, Inc., whose interest was assigned to QP, and Florida Power Corporation dated March 17, 1991, (the "Royster Contract"; the Mulberry Contract and Royster Contract are collectively referred to as the "Contract") which are to be serviced by the Facility. Terms which are not otherwise defined herein shall have the meaning provided them in the Contract. The Company and the QP hereby clarify, confirm and agree to the following:

1. Article VIII of the Contract, which is titled "Capacity Payments", which deals with the calculation of the On-Peak Capacity Factor on a rolling average basis for the most recent twelve (12) month period shall be interpreted to provide the Company the following additional rights:

- (a) Subject to the provisions of Section 1.b of this letter, on or before October 31 of each year, the Company shall notify QP of the two (2) week period, which shall be during the months of January, February, March, April, October, November or December, of the next calendar year when QP should shut down the Facility for its annual two (2) week maintenance outage. QP shall shut down the Facility during the period specified in the Company's notice. The Company shall not schedule such shut downs such that the shut downs occur less than ten (10) months or more than fourteen (14) months apart.

October 28, 1993

- (b) During those years when a major overhaul or hot gas inspection is required the shut down period referred to in Section 1.a of this letter may be longer than two (2) weeks (the "Overhaul Shut Down") and will be scheduled in accordance with the combustion turbine manufacturer's recommendations. The QF shall give the Company thirty (30) days notice of the scheduled Overhaul Shut Down. The Company and QF shall coordinate the timing of the shutdown as much as reasonably possible. The QF shall make a reasonable effort to schedule the Overhaul Shut Down during the months of March, April, October, November or December or another month by mutual agreement.
- (c) QF shall not sell power to the Company nor shall the Company be required to buy power from the Facility during the hours 11:00 PM to 5:00 AM Eastern time during November through March and 12:00 ~~AM~~ to 7:00 AM Eastern time during April through October each day (these hours shall be defined as the "Dispatch Hours"). In the event that the Company requests that the Facility operate during the Dispatch Hours, the Company shall reimburse the Facility for all fuel and fuel transportation costs in excess of the fuel and fuel transportation costs that the Facility would have paid during the non-Dispatch Hours of the day in which the shut down ended. Such reimbursement shall be made at the end of the month in which costs are incurred. The QF shall have the right, at its sole discretion, not to operate during the Dispatch Hours. TKT  
②
- (d) The Company shall exercise its best efforts to make arrangements with TECO and the QF which shall prevent the terms of this letter agreement from encumbering QF's ability to receive benefits from the QF's contract with TECO a certain Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility including all attachments and amendments thereto, dated as of April 17, 1989. ("the TECO Contract")

When any notice of shut down is given pursuant to Section 1 of this letter, the Company will also specify the restart times which shall be consistent with the restart and ramp rates for the Facility. Notwithstanding this Section 1, the Company and QF shall retain their respective rights to request and receive compensation for any loss, liability or costs incurred as a result of any curtailments or shutdowns or the failure to curtail or shutdown, pursuant to the Contract or pursuant to Florida Public Service Commission ("FPC") rule 17-25.026 or any successor to this rule.

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October 28, 1993

2. For purposes of calculating capacity factors and committed capacity under the Contract the Company clarifies and confirms the following:

- (a) During all hours of shutdown described in Section 1.a and 1.c of this letter, these hours, plus one (1) hour before for shut down and two (2) hours after for startup, shall be excluded for the purposes of calculating the Facility's On-Peak Capacity Factor. During all hours of shutdown described in Section 1.b of this letter, these hours not to exceed five hundred four (504) hours, plus one (1) hour before for shut down and two (2) hours after for startup, shall be excluded for the purposes of calculating the Facility's On-Peak Capacity Factor.
- (b) All calculations of committed capacity and performance testing will be adjusted to an annual average ambient temperature of 77°F.
- (c) The On-Peak hours for November through March are all days 6 AM to 12 Noon and 5 PM to 10 PM for April through October all days 11 AM to 10 PM, Eastern time.

3. The QF shall not be in default under the Contract and it shall be entitled to a full capacity payment if the QF's On-Peak Capacity Factor is equal to or greater than seventy five percent (75%) during any month prior to Florida Gas Transmission Company's Phase III expansion project commencing commercial operation (a "Pre-Phase III Month"). The number of Pre-Phase III Months shall, in any event, not exceed past twelve (12) full months after the Commercial In-Service Status Date. The calculation of the twelve (12) month rolling average On-Peak Capacity Factor for any period that includes a Pre-Phase III Month shall be adjusted to take into account that a reduced On-Peak Capacity Factor of seventy five percent (75%) rather than the On-Peak Capacity Factor stated in each contract, i.e. 90% or 85% (the "Stated Capacity Factor") entitles the QF to a full capacity payment during a Pre-Phase III Month. For each Pre-Phase III Month used in calculating the twelve (12) month rolling average On-Peak Capacity Factor, the On-Peak Capacity Factor for such Pre-Phase III month shall be adjusted as follows:

$$\left[ \frac{\text{Actual On-Peak Capacity Factor}}{\text{For such Pre-Phase III Month}} \right] \times \left[ \frac{\text{Stated Capacity Factor}}{75\%} \right]$$

4. Article 7.2 of the Contract shall be interpreted to provide the QF with the following additional right:

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October 28, 1993

For the period ending eighteen (18) months immediately after the Contract In-Service Date, the QF may on one occasion only, increase or decrease the Initial Committed Capacity by no more than ten percent (10%) of the Committed Capacity specified in Article 7.1. The QF may, upon written notice to Company, extend this period day for day in the event that the Company's interconnection to the QF's affiliate, the Orange Cogeneration Facility, is delayed by the Company past the expected completion date of March 1, 1995.

5. Appendix C of the Contract, Rates for the purchase of Firm Capacity and Energy from a Qualifying Facility, Schedule 6, Performance Adjustment, shall be interpreted to provide the QF with the following additional rights:

- (a) During all hours of shutdown described in Section 2a of this letter, plus one (1) hour before for shut down and two (2) hours after for startup, these hours shall be excluded for the purposes of calculating the Facility's performance adjustment.
- (b) During all hours that are not On-Peak Hours (the "Off-Peak Hours") the performance adjustment shall not be less than zero. During the two (2) hours after and the one (1) hour before the Dispatch hours the performance adjustment shall not be less than zero.

6. The Company will execute a Transmission Service Agreement to wheel 23 MW of the Facility's power to T&CO (the "Wheeling Agreement") and file this agreement with the Federal Energy Regulatory Commission ("FERC") by November 7, 1993. The effective date of the Wheeling Agreement will be December 1, 1994. The Company will expedite the resolution of any letter agreements for the allocation of capacity from the Facility so that they will be completed in time for the QF closing on the refinancing of the Facility before the end of 1993.

7. The QF shall not be in default under the Contract and it shall be entitled to full capacity payment if, during the period in which the Wheeling Agreement is in effect and not to extend beyond December 31, 1995, the Company requires a re-demonstration of the Commercial In-Service Status pursuant to Article 7.6 and (i) that the Facility is in compliance with all applicable Facility permits; (ii) the Facility has maintained an hourly KW output, as metered at the Point of Delivery, equal to or greater than 95% of the Committed Capacity for a consecutive twenty-four (24) hour period or during the on-peak hours specified in Appendix C of two consecutive days; (iii) that such 24 hour period is reasonable

October 25, 1991

reflective of the Facilities day to day operations.

8. The Company shall withdraw its October 5, 1991 in Federal Energy Regulatory Commission Docket No. QF92-54-003. If requested by the QF, the Company shall also file a pleading in support of Polk Power Partners, L.P. Request for Recertification as a Qualifying Facility under this Docket.
9. The company shall support any of the QF's FERC pleadings or recertifications the QF may need to pursue in accordance with the changes in the Facility's operations resulting from this letter.
10. The Company shall not file a pleading in opposition and shall, if requested by the QF file a pleading in support of Polk Power Partners, L.P. Request for Limited Waiver of the Commission's Operating and Efficiency Standards for the calendar year 1994. Re: Federal Energy Regulatory Commission Docket No. EL93-62-000 and QF92-54-005. This shall not apply to any requests for FERC waivers that extend beyond December 31, 1994.
11. Article 6.1 of the Contract shall be clarified as follows:  
  
The QF also shall sell and deliver or arrange for the delivery of electric energy to the Company and the Company agrees to purchase, accept, and pay for such electric energy that is made available for sale to and received by the Company at the Point of Delivery. Such electric energy, expressed in KWH, accumulates over time from the electric output, expressed in KW, that is net of any electric energy used on the QF's side of the Point of Delivery and in excess of that electric energy generated to meet the obligations of the TECO Contract as long as that energy is made available at the Point of Sale. In other words, the Company will purchase all of the net electric energy, KWH, that comes from all of the Facility's output, KW, even though that net output is greater than the Committed Capacity of the Contract. This interpretation shall survive after the QF no longer has an obligation under the TECO contract and after the Royalty Contract expires.
12. In the event that the QF were to temporarily lose its steam host or otherwise be in a factual circumstance whereby it was not in compliance with PURPA requirements for qualifying facility (QF) status the Company will rely upon FERC's determination of QF status. The company will not rely upon any independent, factual determination of status. As long as FERC's grant of QF status is effective and has not been canceled by FERC, the QF will have status as far as the

101106



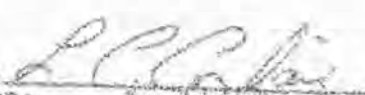
Contract is concerned. The QF shall not be in default so long as it is making its best efforts to be in compliance with its FERC's grant of QF status and has notified the FERC and has taken actions to remedy the situation. In such case, and in other cases, the Company shall abide by FERC's final determination. Nothing in this section 12 shall prevent the Company from protesting QF's QF status before FERC, except to the extent such protest is not allowed under sections 8, 9 and 10 of this letter agreement. Nothing in this section 12 shall prevent the QF from exercising its rights under the Contract to declare a Force Majeure Event.

13. Para 6.2 in the Royster Contract shall be changed to read as follows:

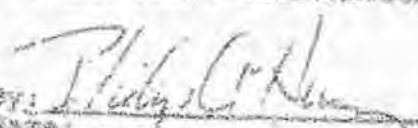
The Committed Capacity and electric energy made available at the Point of Delivery to the Company shall be (x) net of any electricity used on the QF's side of the Point of Ownership or ( ) simultaneous with any purchases from the interconnected utility. This selection in billing methodology shall not be changed after the Facility has achieved Commercial In-Service Status.

Very truly yours,

POLK POWER PARTNERS, L.P.  
by Polk Power G.P., Inc  
its General Partner

By:   
Name: Leslie Gonfais  
Title: President

ACCEPTED AND AGREED  
FLORIDA POWER CORPORATION

By:   
Name: PHILIP C. HENRY  
Title: SENIOR VICE PRESIDENT

WTR/C:\RD102893.LTR  
CC: Brad Samalson  
Lee Atkins  
Rich Zambon





January 18, 1994

Mr. Robert D. Dolan, Manager  
Cogeneration Contracts & Administration  
FLORIDA POWER CORPORATION  
3201 34th Street South  
St. Petersburg, FL 33711

Re: Allocation of electric capacity and energy between the March 11, 1991 Negotiated Contract between Royster Phosphates, Inc. and Florida Power Corporation, as amended (the "Royster contract"), and the March 12, 1991 Negotiated Contract between Mulberry Energy Company, Inc. and Florida Power Corporation, as amended (the "Mulberry Contract")

Dear Mr. Dolan:

This letter will memorialize the agreement between Florida Power Corporation (FPC) and Pole Power Partners, L.P. (PPP) regarding the "allocation" of electric capacity and energy produced at PPP's Mulberry cogeneration facility and delivered to FPC between the referenced Royster Contract and Mulberry Contract.

FPC and PPP agree as follows:

(1) That the electric capacity and energy produced at the facility and delivered to FPC (excluding the amount of capacity and energy, if any, scheduled by PPP for delivery to Tampa Electric Company ("TECO")) shall be allocated between the Mulberry Contract and the Royster Contract on a pro-rata basis in accordance with each contract's committed capacity, as may be in effect from time to time. (As an example, if the committed capacities for the Mulberry Contract and the Royster Contract are 71 MW and 28 MW, respectively, then  $71/(71+28)$  or 72% of the delivered capacity and energy would be allocated to Mulberry and  $28/(71+28)$  or 28% of the delivered capacity and energy would be allocated to Royster.) In the event of termination of either contract, allocation of capacity and energy in this manner shall cease.

101090

Mr. Robert Dolan, Manager  
January 18, 1994  
Page 2 of 2

(2) FPC shall provide non-firm transmission service to PPP (in addition to the firm service to be provided in accordance with our October 22, 1993 Service Agreement for Transmission Service) pursuant to FPC's Rate Schedule T-1, to allow PPP to schedule and deliver up to 30 MW of electric capacity to TBCO on a non-firm basis. To this end, FPC shall expedite preparation, execution and submission to PPP of the appropriate documents necessary for the provision of such service.

Sincerely,

Polk Power Partners, L.P.  
By: Polk Power GP, Inc.,  
its general partner

By: L.P. Carter

Name: L. C. Carter

Title: President

Date: 1/19/94

Accepted and Agreed

Florida Power Corporation

By: Robert D. Dolan

Name: Robert D. Dolan

Title: Mgr - Generation Contracts & Administration

Date: 2/15/94







February 3, 1994

Mr. Robert Dolan  
Manager, Cogeneration Contracts &  
Administration  
FLORIDA POWER CORPORATION  
3201 Thirtieth Street, South  
St. Petersburg, Florida 33732-4042

SUBJECT: Mulberry Cogeneration Facility, Polk Power  
Partners, L.P.'s Gas Fired Combined Cycle  
Cogeneration Plant Located Near Bartow, Florida  
("Facility")

Dear Mr. Dolan:

The purpose of this letter is to confirm and clarify certain provisions of the following agreements to which Polk Power Partners, L.P. ("Polk") and Florida Power Corporation ("FPC") are parties:

1. A Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Mulberry Energy Company, Inc. ("Mulberry") and FPC, dated March 12, 1991 (the "unamended Mulberry Agreement"), as amended by the Declaration of Force Majeure letter from Mulberry to FPC dated April 19, 1991, and FPC's acknowledgment of said letter dated May 20, 1991, the Letter Agreement between Mulberry and FPC, dated as of September 30, 1991, the Assignment and Assumption Agreement among Mulberry, Mr. Arch Ford aka Polk Power Project and Polk, dated as of February 24, 1992, the Consent to Assignment among FPC, Mulberry, and Polk, dated as of February 24, 1992, the Electrical Interconnection Reimbursement dated April 29, 1992, between Polk and FPC, the request for additional Pro-Operational Force Majeure extensions, dated September 10, 1992, and FPC's acknowledgment dated January 20, 1993, the Letter Agreement between FPC and ARK Energy, Inc., dated as of April 23, 1993 (the "Apr. 23, 1993 Letter Agreement") and the Letter Agreement between Polk and FPC, dated as of October 28, 1993 (the "Oct 28 Letter Agreement") (together the "Mulberry Agreement"); and

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Mr. Robert Dolan  
February 3, 1994  
Page 2

2. A Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Royster Phosphates, Inc. ("Royster") and FPC, executed in March 1991 (the "unamended Royster Agreement"), as amended by the regulatory delay letter, dated September 11, 1991, between Royster and FPC, the Pre-Operational Force Majeure Declaration between FPC and Piney Point Phosphates, Inc., formerly known as Royster ("Piney Point"), dated December 8, 1992, and acknowledged by FPC on December 18, 1992, the Construction Commencement Date letter from Piney Point to FPC, dated January 14, 1993, the relocation letter between Piney Point and FPC, dated January 20, 1993, the April 29, 1993 Letter Agreement, the Assignment and Assumption Agreement between Piney Point and Polk, dated as of May 3, 1993, the Consent to Assignment among FPC, Piney Point, and Polk, dated as of May 3, 1993, and the Oct. 28 Letter Agreement (together the "Royster Agreement").

The Mulberry Agreement and the Royster Agreement are hereinafter jointly the "Agreements." References to Articles, Sections and Appendices of each or either of the Agreements shall be to both or either of the unamended Mulberry Agreement and/or unamended Royster Agreement as specified. Capitalized terms used without definition shall have the meanings given in the Agreements. References to Polk shall include its successors and/or assignees.

Polk and FPC hereby clarify, confirm and agree as follows:

(a) That the contest by Polk of any proceedings before any federal, state or local government authority (provided that such contest is pursued in good faith by appropriate proceedings diligently conducted and such contest does not subject the Facility to a risk of forfeiture) will not violate the covenant of Polk set forth in Section 14.1.2 of each of the Agreements. Section 1.11(i) of each of the Agreements will be deemed satisfied if Polk is not in violation of the covenant set forth in Section 14.1.2 of each of the Agreements.

(b) In the event the Facility experiences an Event of Default pursuant to Section 15.3.2 of an Agreement, Polk's right to a reasonable opportunity to cure shall include the right to complete such repairs and modifications, if any, as Polk determines are required and diligently pursues (whether at the Facility or the steam user) and to schedule additional

101095

Mr. Robert Dolan  
February 3, 1994  
Page 1

tests to redemonstrate the Facility's Commercial In-Service Status; provided, however, that Polk will provide not less than twenty-four hours prior notice to the Contracting Party of each such redemonstration and the Contracting Party shall be permitted to be in attendance during such redemonstration.

(c) The Facility is not located north of the latitude of FPC's Central Florida Substation. Therefore, no Import Capability, as described in Article II of the Agreements, is required and Article II of each of the Agreements is of no force and effect.

(d) Neither FPC nor Polk will incur a repayment obligation pursuant to Section 8.3 of either of the Agreements and Section 8.5 of each of the Agreements is of no force and effect.

(e) Sections 1.46, 4.2(i) and 15.1.3, Appendix A Section 2.2h and Appendix D of the Royster Agreement, which are applicable solely to a non-interconnected facility, and Sections 11.1, 22.2 and 22.3 and Appendix A Section 2.1 of the Royster Agreement, to the extent such sections make reference to the Transmission Service Utility, are of no force and effect.

(f) Polk's ability to use fuel oil as a back-up fuel for the Facility, with fuel oil storage capability on-site, satisfies the requirements of Section 3.3 of each of the Agreements; provided that the fuel oil stored in such on-site storage tanks must be capable of being used in the operation of the Facility in the event of an interruption of the primary fuel supply so as to continue reasonably uninterrupted energy deliveries.

(g) Each of the Agreements is corrected as follows:

1. ~~The reference to Article VI in Section 1.12 of each of the Agreements is to Article VII.~~ (20)

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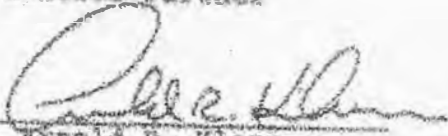


Mr. Robert Delan  
February 3, 1994  
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2. The reference to Section 13.2 in Section 1.38 of each of the Agreements is to Section 13.2.

Very truly yours,

Polk Power Partners, L.P.  
By: Polk Power GP, Inc.  
its General Partner

By:   
Name: Arnold R. Klann  
Title: Vice President

ACCEPTED AND AGREED  
FLORIDA POWER CORPORATION

By:   
Name: Robert D. Delan  
Title: Manager - Cogeneration Contracts & Administration



## SUMMARY

CFR BIG-GEN CORP. (11/12/91 Negotiated Dispatchable contract)

### Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 05/10/92: FPC consents to Assignment to AP Cogen, L.P.
  - FPC's consent expressly recites that the assignment does not alter FPC's rights against CFR and that CFR is only discharged from its obligations to the extent of performance of them by AP Cogen
  - AP Cogen is a group comprised of the original contracting party and additional investors
- 01/29/93: FPC consents to an Assignment to Diamond Energy, Inc., as security in connection w/financing
- 04/30/93: FPC consents to Assignment to Orange Cogeneration Limited Partnership
  - FPC's consent expressly recites that the assignment does not alter FPC's rights against AP Cogen and that AP Cogen is only discharged from its obligations to the extent of performance of them by Orange
  - Orange is also know as Ark and CSW Energy; CSW Energy is comprised of a large group of utilities based in the southwest United States (principally Texas)
- 04/30/93: FPC consents to an Assignment to Diamond Energy, Inc., as security in connection w/financing
- 04/30/93: FPC consents to an assignment to Stewart and Stevenson Services, Inc., and General Electric Capital Corp., as security in connection w/financing

### CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into as of 10<sup>th</sup> day of June, 1992, by and among FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), CFR BIO-GEN CORPORATION, a Florida corporation ("Assignor") and AP COGEN, L.P., a Florida limited partnership ("Assignee").

### R E C I T A L S

WHEREAS, Assignor and FPC are parties to that certain Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, executed by FPC on November 19, 1991 and by Assignor on November 18, 1991 (the "Sale Contract"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Sale Contract);

WHEREAS, Assignor and Assignee have entered into that certain Agreement of Limited Partnership dated as of June 9, 1992 pursuant to which, among other things, Assignor has agreed to assign, and Assignee has agreed to accept, all of Assignor's right, title and interest in certain rights relating to the development, construction and operation of the Facility;

WHEREAS, Assignor desires to assign all of the right, title and interest in, to and under, and to delegate all of the obligations, duties and liabilities arising under, the Sale Contract to Assignee pursuant to that certain Assignment and Assumption Agreement dated as of even date herewith (the "Assignment");

WHEREAS, Article XXIII of the Sale Contract provides that Assignor may assign the obligations, benefits and duties under the Sale Contract with the written consent of FPC and FPC is willing to grant such written consent as set forth in this Consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FPC hereby agrees as follows:

1. Consent to Assignment. FPC hereby consents to the assignment of the Sale Contract by Assignor to Assignee pursuant to the terms and conditions of the Assignment.

2. Contract Not Modified. Except as set forth in Section 3 of this Consent, neither the Assignment nor this Consent shall alter, waive or modify the Sale Contract, or FPC's rights under the Sale Contract, or its rights against Assignor. FPC agrees that Assignee may perform Assignor's obligations under the Sale Contract, and Assignor shall be discharged from any obligations performed for it by Assignee, but only to the extent of such performance.

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3. Amendment to Sale Contract. FPC agrees that all references to Assignor in the Sale Contract shall be deemed to be references to Assignee and that Assignee shall be deemed to be the "QF" for purposes of the Sale Contract. Section 28.1 of the Sale Contract shall be amended to reflect that all notices and other communications by FPC to the QF under the Sale Contract shall be addressed to Assignee at the following address:

9355 Prestwick Club Drive  
Duluth, GA 30136

4. Representations and Warranties. Assignee represents and warrants to FPC that it possesses all necessary partnership power and authority to enter into and perform, in the State of Florida and elsewhere, the obligations under the Sale Contract.

5. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their officers duly authorized as of the date first above written.

FLORIDA POWER CORPORATION

By: [Signature]

Title: Executive Vice President

ATTEST:

[Signature]  
Secretary



CFR BIO-GEN CORPORATION

By: [Signature]  
Richard E. Glick

Title: President

ATTEST:

[Signature]  
Secretary

100089

AP COGEN, L.P., a Florida  
Limited Partnership

By: ENERGY DEVELOPMENT CORPORATION,  
a Florida corporation

By: 

Eldon E. Heaton

Its President

ITS GENERAL PARTNER

SWP\CONSENT.CFR

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CONSENT AND AGREEMENT (this "Consent"), dated as of January 29, 1993, among DIAMOND ENERGY, INC., a Delaware corporation ("Diamond"), AP COGEN, LTD., a Florida limited partnership (together with its successors and assigns, the "Partnership"), and FLORIDA POWER CORPORATION, a public utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

## R E C I T A L S

A. Pursuant to that certain Letter Agreement dated December 12, 1990 (the "Letter Agreement"), between Diamond and Energy Development Corporation, a Georgia corporation ("EDC"), Diamond made certain development advances to EDC and CFR BIO-GEN Corporation, a Florida corporation ("CFR"), in order to finance the development, acquisition, construction, equipping and start-up of the Facility (as defined in the Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated November 19, 1991, as amended from time to time, the "Power Sales Agreement").

B. The Letter Agreement provided, among other things, that Diamond receive a promissory note from EDC secured by a first lien on the Assets (as defined in the Letter Agreement) in exchange for making certain of the development advances.

C. EDC and CFR subsequently transferred all their right, title and interest in the development, acquisition and construction of the Facility, including the Power Sales Agreement, to the Partnership.

D. In connection therewith, the Partnership and Diamond have entered into that certain Security Agreement dated as of June 15, 1992 (as amended, modified or supplemented from time to time, the "Subordinated Security Agreement"), pursuant to which the Partnership has granted to Diamond a security interest in, among other things, all of the Partnership's right, title and interest in and to the Power Sales Agreement (the "Diamond Security Interest"), which Diamond Security Interest is subordinate to the GECC Security Interest (as defined below).

E. Pursuant to that certain Loan and Security Agreement dated as of June 15, 1992 (as amended, modified or supplemented from time to time, the "Loan Agreement"), among the Partnership, Stewart & Stevenson Services, Inc., a Texas corporation ("S&S"), and General Electric Capital Corporation, a New York corporation, in its individual capacity and as agent for the lenders thereunder (in its individual capacity, "GECC" and in



its capacity as agent, the "Agent"), GECC and S&S have made certain loans to the Partnership and the Partnership, in turn, has granted to the Agent a security interest in, among other things, all of the Partnership's right, title and interest in and to the Power Sales Agreement (the "GECC Security Interest").

F. The Partnership, GECC, S&S and the Contracting Party have previously executed that certain Consent and Agreement dated as of September 30, 1992 (the "GECC Consent"), pursuant to which the Contracting Party consented to the Partnership's collateral assignment to the Agent of the Power Sales Agreement and the GECC Security Interest created thereby.

G. The Contracting Party has agreed to consent to the Partnership's collateral assignment to Diamond of the Power Sales Agreement and the Diamond Security Interest created thereby.

## A G R E E M E N T

In consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Power Sales Agreement.

### Section 2. Assignment and Duties of the Partnership.

(a) Subject to the Subordinated Security Agreement, the Contracting Party acknowledges and consents to the collateral pledge and assignment by the Partnership, and the creation by the Partnership of the Diamond Security Interest pursuant to the Subordinated Security Agreement, of all the right, title and interest of the Partnership in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Power Sales Agreement as security for the payment and performance of all or any part of the secured obligations as set forth in the Subordinated Security Agreement.

(b) Unless otherwise provided for herein, Diamond agrees that its rights and remedies against the Partnership relating to the Diamond Security Interest shall be subject to the GECC Security Interest created under the Loan Agreement and that Diamond shall not avail itself of any of the rights and remedies of GECC and/or S&S under the GECC Consent or otherwise exercise any rights and remedies in respect of the Power Sales Agreement.

(c) Notwithstanding the foregoing, upon notice from the Agent to the Contracting Party that all the obligations under the Loan Agreement have been satisfied in full and that the GECC Security Interest is no longer effective, the Partnership, the Contracting Party and Diamond agree to negotiate in good faith a consent substantially in the form of the GECC Consent, pursuant to which Diamond shall have all the rights and remedies of the Agent thereunder.

(d) The Partnership hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Partnership under the Power Sales Agreement.

Section 3. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Power Sales Agreement has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and binding obligation of the Contracting Party enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, the only jurisdiction in which the performance of its obligations under this Consent and the Power Sales Agreement makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Power Sales Agreement.

(c) No Default. To the best knowledge of the Contracting Party, the Partnership is not in default under any material covenant or obligation under the Power Sales Agreement, and no such default has occurred prior to the date hereof. The Contracting Party has duly performed and complied with all covenants, agreements and conditions contained in the Power Sales Agreement, and, to the best knowledge of the Contracting Party, none of the Partnership's rights under the Power Sales Agreement has been waived.

(d) Approvals. No consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority are required to



be obtained by the Contracting Party after the date hereof in order for the Contracting Party to execute, deliver and perform its obligations under this Consent and the Power Sales Agreement. For the purposes of this Section 3(d), the term "Governmental Authority" shall mean any national, state or local government, any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body or entity, or other regulatory bureau, authority, body or entity.

(e) No Violation. The execution, delivery and performance of this Consent and the Power Sales Agreement by the Contracting Party will not result in any violation of any applicable law, rule, statute or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse effect on the ability of the Contracting Party to perform its obligations under this Consent or the Power Sales Agreement.

Section 4. No Obligations. Diamond shall have no obligation to the Contracting Party for the performance of any obligations under the Power Sales Agreement.

Section 5. Restriction on Further Assignment. Subject to Section 2 hereof, Diamond hereby agrees not to assign its rights, title or interest in and to the Power Sales Agreement without the prior written consent of the Contracting Party, which consent shall not be unreasonably withheld.

Section 6. Non-Party. The Contracting Party is not a party to, and has no obligation under, any of the documents referenced herein other than those which it has signed.

Section 7. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 8. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

Section 9. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.



Section 10. Governing Law. The Consent shall be governed by and be construed in accordance with the laws of the State of Florida..

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CONSENT AND AGREEMENT

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IN WITNESS WHEREOF, the parties hereto have executed  
this Consent on the date first above written.

FLORIDA POWER CORPORATION

By *Philip C Henry*  
Name: PHILIP C HENRY  
Title: SENIOR VICE PRESIDENT

AP COGEN, LTD.

By Energy Development  
Corporation, a Georgia  
corporation qualified to do  
business in Florida under the  
name of EDC, Inc., in its  
capacity as general partner

By *Eldon E. Heaton*  
Name: Eldon E. Heaton  
Title: President

DIAMOND ENERGY, INC.

By *Tom Kajita*  
Name: TOM KAJITA  
Title: VICE PRESIDENT



CONSENT AND AGREEMENT

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CONSENT TO ASSIGNMENT

This Consent to Assignment (this "Consent") is entered into as of April 30, 1993, by and among FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), AP COGEN, LTD., a Florida limited partnership ("Assignor") and ORANGE COGENERATION LIMITED PARTNERSHIP, a Delaware limited partnership ("Assignee").

R E C I T A L S

WHEREAS, CFR Bio-Gen Corporation ("CFR") and FPC entered into that certain Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, executed by CFR on November 18, 1991 and by FPC on November 19, 1991 (the "Sale Contract"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Sale Contract);

WHEREAS, FPC consented to the assignment of the Sale Contract to Assignor pursuant to a Consent to Assignment dated as of June 10, 1992, and executed on June 18, 1992, and CFR assigned the Sale Contract to Assignor pursuant to an Assignment and Assumption Agreement dated as of and executed on June 18, 1992;

WHEREAS, Assignor, Energy Development Corporation (the general partner and a limited partner of Assignor) ("EDC"), CFR and ARK/CSW Development Partnership ("ARK/CSW") have entered into that certain Purchase Agreement dated as of December 31, 1992 (the "Purchase Agreement"), pursuant to which, among other things, Assignor has agreed to sell, and ARK/CSW has agreed to purchase, all of Assignor's right, title and interest in the development, construction and operation of the Facility;

WHEREAS, ARK/CSW has assigned all of its right, title and interest in, to and under the Purchase Agreement, and has delegated all of its obligations, duties and liabilities arising thereunder, to Assignee pursuant to that certain Assignment and Assumption Agreement dated as of April 30, 1993;

WHEREAS, Assignor desires to assign all of the right, title and interest in, to and under, and to delegate all of the obligations, duties and liabilities arising under, the Sale Contract to Assignee pursuant to that certain Assignment and Assumption Agreement dated as of April 30, 1993 (the "Assignment"); and



WHEREAS, Article XXIII of the Sale Contract provides that Assignor may assign the obligations, benefits and duties under the Sale Contract with the written consent of FPC and FPC is willing to grant such written consent as set forth in this Consent.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FPC hereby agrees as follows:

1. Consent to Assignment. FPC hereby consents to the assignment of the Sale Contract by Assignor to Assignee pursuant to the terms and conditions of the Assignment.

2. Contract Not Modified. Except as set forth in Section 3 of this Consent, neither the Assignment nor this Consent shall alter, waive or modify the Sale Contract, or FPC's rights under the Sale Contract, or its rights against Assignor. FPC agrees that Assignee shall perform Assignor's obligations under the Sale Contract, and Assignor shall be discharged from any such obligations performed by Assignee, but only to the extent of such performance.

3. Amendment to Sale Contract. FPC agrees that all references to Assignor in the Sale Contract shall be deemed to be references to Assignee and that Assignee shall be deemed to be the "QF" for purposes of the Sale Contract. Section 28.1 of the Sale Contract shall be amended to reflect that all notices and other communications by FPC to the QF under the Sale Contract shall be addressed to Assignee at the following address:

Orange Cogeneration Limited Partnership  
3753 Howard Hughes Parkway  
Suite 200  
Las Vegas, Nevada 89109  
Attention: President

CSW Energy, Inc.  
1616 Woodall Rodgers Freeway  
P.O. Box 660164  
Dallas, Texas 75201-3398  
Attention: President

4. Representations and Warranties. Assignee hereby makes, affirms and agrees to perform, for the benefit of FPC, each of the representations, warranties and covenants contained in the Sale Contract, including, without limitation, the representations, warranties and covenants set forth in Article XIV of the Sale Contract, except that with respect to Section 14.1.1 of the Sale Contract, Assignee represents and warrants

that it is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business under the laws of the State of Florida.

5. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida.



IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their officers duly authorized as of the date first above written.

FLORIDA POWER CORPORATION,  
a Florida corporation

Attest

By Robert D. Dolan  
Name: Robert D. Dolan



By Philip C. Henry  
Name: PHILIP C. HENRY  
Title: SR. VICE PRESIDENT  
Title:

AP COGEN, LTD.,  
a Florida limited partnership

By: Energy Development  
Corporation  
Its General Partner

Attest

By [signature]  
Name:

By Eldon W. Beaton  
Eldon W. Beaton  
President

ORANGE COGENERATION LIMITED  
PARTNERSHIP,  
a Delaware limited partnership

By: Orange Cogeneration G.P.,  
Inc.  
Its General Partner

Attest

By William R. Stratton  
Name:

By: William R. Stratton  
Name: William R. Stratton  
Title: Chairman of the Board  
~~President~~



IN WITNESS WHEREOF, the parties hereto have caused this  
Consent to be executed by their officers duly authorized as of  
the date first above written.

Attest  
By Robert D. Dolan  
Name: Robert D. Dolan

FLORIDA POWER CORPORATION,  
a Florida corporation

By Philip C. Henry  
Name: PHILIP C. HENRY  
Title: SR. VICE PRESIDENT  
Title:

AP COGEN, LTD.,  
a Florida limited partnership

By: Energy Development Corporation  
Its General Partner

By Eldon E. Heaton  
Eldon E. Heaton  
President

ORANGE COGENERATION LIMITED  
PARTNERSHIP,  
a Delaware limited partnership

By: Orange Cogeneration G.P., Inc.  
Its General Partner

By: William R. Stratton  
Name: William R. Stratton  
Title: President  
President

Attest  
By Thomas E. Pellmar  
Name:

Attest  
By A. E. Williams  
Name:

REVISED EXECUTION COPY

CONSENT AND AGREEMENT (this "Consent"), dated as of April 30, 1993, among DIAMOND ENERGY, INC., a Delaware corporation ("Diamond"), ORANGE COGENERATION LIMITED PARTNERSHIP, a Delaware limited partnership (together with its successors and assigns, the "Partnership"), and FLORIDA POWER CORPORATION, a public utility corporation organized under the laws of the State of Florida (together with its successors and assigns, "FPC").

R E C I T A L S

A. CFR BIO-GEN Corporation, a Florida corporation ("CFR"), and FPC entered into that certain Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, executed by CFR on November 18, 1991 and by FPC on November 19, 1991 (the "Power Sales Agreement"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Power Sales Agreement).

B. Pursuant to that certain Letter Agreement dated December 12, 1990 (the "Letter Agreement"), between Diamond and Energy Development Corporation, a Georgia corporation ("EDC"), Diamond made certain development advances to EDC and CFR in order to finance the development, acquisition, construction, equipping and start-up of the Facility.

C. The Letter Agreement provided, among other things, that Diamond receive a promissory note from EDC secured by a first lien on the Assets (as defined in the Letter Agreement), in exchange for making certain of the development advances.

D. EDC and CFR subsequently assigned all their right, title and interest in the development, acquisition and construction of the Facility, including the Power Sales Agreement, to AP Cogen, Ltd., a Florida limited partnership ("AP Cogen"), and FPC consented to such assignment pursuant to a Consent to Assignment dated as of June 10, 1992 and executed on June 18, 1992.

E. Thereafter, AP Cogen granted to Diamond a security interest in, among other things, all of AP Cogen's right, title and interest in and to the Power Sales Agreement pursuant to that certain Security Agreement dated as of June 15, 1992, which collateral assignment was consented to by FPC pursuant to that



certain Consent and Agreement, dated as of January 29, 1993, among Diamond, AP Cogen and FPC (the "FPC/Diamond Consent").

F. AP Cogen has since agreed to sell, and ARK/CSW Development Partnership, a Delaware limited partnership ("ARK/CSW"), has agreed to purchase, all of AP Cogen's right, title and interest in the development, construction and operation of the Facility, including the Power Sales Agreement, pursuant to that certain Purchase Agreement dated as of December 31, 1992, among AP Cogen, EDC, CFR and ARK/CSW (the "Purchase Agreement").

G. ARK/CSW has assigned all of its right, title and interest in, to and under the Purchase Agreement, and has delegated all of its obligations, duties and liabilities arising thereunder, to the Partnership pursuant to that certain Assignment and Assumption Agreement dated as of April 30, 1993.

H. Pursuant to that certain First Amended and Restated Security Agreement dated as of April 30, 1993 (the "Diamond Subordinated Security Agreement"), among the Partnership, Diamond and AP Cogen, the Partnership has granted to Diamond a security interest in, among other things, all of the Partnership's right, title and interest in and to the Power Sales Agreement (the "Diamond Security Interest"), which Diamond Security Interest is subordinate to the GECC Security Interest (as defined below).

I. Pursuant to that certain First Amended and Restated Loan and Security Agreement dated as of April 30, 1993 (the "GECC Loan Agreement"), among the Partnership, AP Cogen, Stewart & Stevenson Services, Inc., a Texas corporation ("S&S"), and General Electric Capital Corporation, a New York corporation, in its individual capacity and as agent for the lenders thereunder (in its individual capacity, "GECC" and in its capacity as agent, the "Agent"), and certain other parties thereto, the Partnership has granted to the Agent a security interest in, among other things, all of the Partnership's right, title and interest in and to the Power Sales Agreement (the "GECC Security Interest").

J. The Partnership, GECC, S&S and FPC have executed that certain Consent and Agreement dated as of even date herewith (the "GECC Consent"), pursuant to which FPC has consented to the Partnership's collateral assignment to the Agent of the Power Sales Agreement and the GECC Security Interest created thereby.

K. FPC has agreed to consent to the Partnership's collateral assignment to Diamond of the Power Sales Agreement and the Diamond Security Interest created thereby.



In consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## A G R E E M E N T

Section 1. Definitions. All capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Power Sales Agreement.

Section 2. Assignment and Duties of the Partnership.

(a) Subject to the Diamond Subordinated Security Agreement, FPC acknowledges and consents to the collateral pledge and assignment by the Partnership, and the creation by the Partnership of the Diamond Security Interest pursuant to the Diamond Subordinated Security Agreement, of all the right, title and interest of the Partnership in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Power Sales Agreement as security for the payment and performance of all or any part of the secured obligations as set forth in the Diamond Subordinated Security Agreement.

(b) Unless otherwise provided for herein, Diamond agrees that its rights and remedies against the Partnership relating to the Diamond Security Interest shall be subject to the GECC Security Interest created under the GECC Loan Agreement and that Diamond shall not avail itself of any of the rights and remedies of GECC and/or S&S under the GECC Consent or otherwise exercise any rights and remedies in respect of the Power Sales Agreement.

(c) Notwithstanding the foregoing, upon notice from the Agent to FPC that all the obligations under the GECC Loan Agreement have been satisfied in full and that the GECC Security Interest is no longer effective, the Partnership, FPC and Diamond agree to negotiate in good faith a consent substantially in the form of the GECC Consent, pursuant to which Diamond shall have all the rights, remedies and obligations of the Agent thereunder.

(d) The Partnership hereby agrees that it shall remain liable to FPC for each and every duty, liability and obligation of the Partnership under the Power Sales Agreement.

Section 3. Representations and Warranties. FPC represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Power Sales Agreement has been duly authorized, executed and delivered by FPC, is in full force and effect and is a legal, valid and binding obligation of FPC enforceable against FPC in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally or as the enforceability thereof may be limited by the application of the rules, regulations, orders or other actions of the Florida Public Service Commission or any successor agency.

(b) Corporate Status. FPC is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, the only jurisdiction in which the performance of its obligations under this Consent and the Power Sales Agreement makes such qualification necessary. FPC has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Power Sales Agreement.

(c) No Default. To the best knowledge of FPC, the Partnership is not in default under any material covenant or obligation under the Power Sales Agreement, and no such default has occurred prior to the date hereof. FPC has substantially performed and complied with all material covenants, agreements and conditions contained in the Power Sales Agreement, and, to the best knowledge of FPC, none of the Partnership's rights under the Power Sales Agreement has been waived.

(d) Approvals. No consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority are required to be obtained by FPC after the date hereof in order for FPC to execute, deliver and perform its obligations under this Consent and the Power Sales Agreement. For the purposes of this Section 1(d), the term "Governmental Authority" shall mean any national, state or local government, any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body or entity, or other regulatory bureau, authority, body or entity.

(e) No Violation. To date, the execution, delivery and performance of this Consent and the Power Sales Agreement by FPC has not resulted in any violation of any applicable law, rule, statute or regulation to which FPC is subject, which violation individually or in the aggregate could have a material



adverse effect on the ability of FPC to perform its obligations under this Consent or the Power Sales Agreement.

Section 4. No Obligations. Diamond shall have no obligation to FPC for the performance of any obligations under the Power Sales Agreement.

Section 5. Restriction on Further Assignment. Subject to Section 2 hereof, Diamond hereby agrees not to assign its rights, title or interest in and to the Power Sales Agreement without the prior written consent of FPC, which consent shall not be unreasonably withheld.

Section 6. Non-Party. FPC is not a party to, and has no obligation under, any of the documents referenced herein other than those which it has signed.

Section 7. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 8. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof. Without limiting the generality of the foregoing, upon the execution of each of this Consent, the Diamond Subordinated Security Agreement and the Note (as defined in the Diamond Subordinated Security Agreement) by all of the parties thereto, the FPC/Diamond Consent shall be superseded hereby and shall no longer be of any force or effect.

Section 9. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.

Section 10. Governing Law. The Consent shall be governed by and be construed in accordance with the laws of the State of Florida.



IN WITNESS WHEREOF, the parties hereto have executed  
this Consent on the date first above written.

DIAMOND ENERGY, INC.,  
a Delaware corporation

By *Makoto Saito*  
Name: MAKOTO SAITO  
Title: SR. VICE PRESIDENT

ORANGE COGENERATION LIMITED  
PARTNERSHIP,  
a Delaware limited partnership

By Orange Cogeneration G.P., Inc.,  
Its General Partner

By *William R. Stratton*  
Name:  
Title: William R. Stratton  
Chairman

~~AMERICAN~~  
FLORIDA POWER CORPORATION,  
a Florida corporation

By *Philip C. Henry*  
Name:  
Title: PHILIP C. HENRY  
SR. VICE PRESIDENT



CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (the "Consent"), dated as of April 30, 1993 by and among STEWART AND STEVENSON SERVICES, INC., a Texas Corporation ("S&S"), GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation, in its individual capacity and as agent for the Lenders (as defined below) (in its individual capacity, "GECC" and in its capacity as agent, the "Agent") (S&S, GECC and their respective affiliates and successors and assigns collectively referred to herein as the "Lenders"), ORANGE COGENERATION LIMITED PARTNERSHIP, a Delaware limited partnership (together with its successors and assigns, the "Partnership") and FLORIDA POWER CORPORATION, a private utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

W I T N E S S E T H

WHEREAS, in order to finance the development, acquisition, construction, equipping and start-up of the Facility (as defined in the Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated November 19, 1991, as amended from time to

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time, the "Power Sales Agreement") and certain related expenditures, the Partnership has entered into, and will enter into, various agreements with one or more of the Lenders;

WHEREAS, Partnership and the Lenders have entered into a First Amended and Restated Loan and Security Agreement dated as of April 30, 1993 (as amended, modified or supplemented from time to time, the "Loan Agreement"), pursuant to which Partnership has granted to the Agent (on behalf of the Lenders) a security interest in, among other things, all of Partnership's right, title and interest in and to the Power Sales Agreement; and

WHEREAS, the Contracting Party is agreeable to consenting to such assignment of and lien on the Partnership's right, title and interest in the Power Sales Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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Section 1. Assignment and Duties of the Partnership.

(a) The Contracting Party acknowledges and consents to the collateral pledge and assignment by the Partnership to, and the creation by the Partnership of a security interest in favor of, the Lenders pursuant to the Loan Agreement, of all of the right, title and interest of the Partnership in, to and under (but, except as otherwise expressly provided below, not its obligation, liabilities or duties with respect to) the Power Sales Agreement as security for the payment and performance of all or any part of the secured obligations.

(b) The Partnership hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Partnership under the Power Sales Agreement.

Section 2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Power Sales Agreement has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and

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binding obligation of the Contracting Party enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, or as the enforceability thereof may be limited by the application of the rules, regulations, orders or other actions of the Florida Public Service Commission or any successor agency.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, the only jurisdiction in which the performance of its obligations under the Power Sales Agreement and this Consent makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Power Sales Agreement.

(c) No Default. To the best knowledge of the Contracting Party, the Partnership is not in default under any material covenant or obligation under the Power Sales Agreement, and no such default has occurred prior to the

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[GE-AP EDC COHEN/A04.WPF/E/4655/35KB]

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date hereof. The Contracting Party has substantially performed and complied with all material covenants, agreements and conditions contained in the Power Sales Agreement, and, to the best knowledge of the Contracting Party, none of the Partnership's rights under the Power Sales Agreement has been waived.

(d) Approvals. No consents, permits (other than the permits required for the interconnection facility), licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority are required to be obtained by the Contracting Party after the date hereof in order for the Contracting Party to execute, deliver and perform its obligations under this Consent and the Power Sales Agreement.

(e) No Violation. To date, the execution, delivery and performance of this Consent and the Power Sales Agreement by the Contracting Party has not resulted in any violation of any applicable law, rule, statute or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse effect on the ability of the Contracting Party to

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perform its obligations under this Consent or the Power Sales Agreement.

Section 3. Certain Cure Rights. (a) The Contracting Party agrees that it will not terminate or suspend the performance of its obligations under the Power Sales Agreement without first giving the Lenders notice as provided in paragraph 4(b) below. Notice of any such termination shall be given by the Contracting Party at least five business days prior to the proposed date of termination.

(b) Following receipt of a notice of termination pursuant to Section 3(a), the Lenders shall have the right to an additional period of time not to exceed 120 days from receipt of such notice of termination to cure Partnership's default under the Power Sales Agreement on the terms set forth in this Section 3(b). Such additional cure time may be obtained by the Lenders in biweekly increments upon at least two business days' advance written notice to the Contracting Party prior to the date of termination identified in the termination notice (or prior to the end of the then current additional biweekly cure period, as the case may be). If the Lenders elect to acquire such additional biweekly cure

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period, the Lenders shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Power Sales Agreement (to the extent that replacement power is unavailable for any reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under the Power Sales Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Power Sales Agreement. "Lost Profits" shall mean the lost nonfuel revenue associated with the Contracting Party's unserved firm load that would have been served had the Facility (as defined in the Power Sales Agreement) been operating in accordance with the terms and provisions of the Power Sales Agreement. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable

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administrative and general expenses incurred in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail and shall, upon request, be made available no more frequently than monthly to the Agent). The Lenders shall pay the Contracting Party biweekly in advance the Contracting Party's reasonable good faith estimate of the amount that will be owing by the Lenders in respect of such period of cure time pursuant to the foregoing provisions; at the end of each such cure period, the Contracting Party shall notify the Lenders if additional amounts are due (giving the Contracting Party's calculation of such amounts in reasonable detail) and the Lenders shall promptly pay such amounts or the Contracting Party shall rebate or credit against additional cure periods (if elected by the Agent) any excess amount previously paid. The Lenders shall have the right but not the obligation to cure a default by the Partnership as provided herein.

Section 4. Notice. (a) The Contracting Party will deliver to the Lenders in a timely fashion copies of all notices it delivers to Partnership under the Power Sales Agreement (including all notices of the occurrence of any default under the Power Sales Agreement (and, in the case of monetary defaults, the amount of such default) but excluding

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day-to-day operational notices that are delivered to the Partnership in the ordinary course). The costs associated with the delivery of all such notices shall be paid by the Partnership.

(b) Notices to the Lenders hereunder may be given by hand delivery, by means of an independent commercial overnight courier, by tested or otherwise authenticated telex, telecopy or facsimile or by registered or certified mail, postage prepaid, return receipt requested. Notice of any party hereto shall be deemed to be delivered on the earlier of (a) the date of personal delivery or (b) if deposited in the United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or deposited with an independent commercial overnight courier in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, in each case as evidenced by the return receipt. Notices hereunder shall be

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delivered to the following entities at the following addresses:

The Lenders:

c/o General Electric Capital Corporation  
Transportation and Industrial  
Funding Division  
1600 Summer Street, 6th Floor  
Stamford, Conn. 06927  
Attn: Manager, Energy Portfolio  
Administration

with copies to:

Richard M. Allen, Esq.  
Cravath, Swaine & Moore  
825 Eighth Ave.  
New York, New York 10019

Partnership:

Orange Cogeneration Limited Partnership  
3753 Howard Hughes Parkway, Suite 200,  
Las Vegas, Nevada 89109  
Attn: President

with copy to:

Edwin Feo, Esq.  
Milbank, Tweed, Hadley & McCloy  
601 South Figueroa Street, 30th Floor  
Los Angeles, California 90017

The Contracting  
Party:

Florida Power Corporation  
PO Box 14042  
St. Petersburg, Fla. 33733  
Attn: Manager, Cogeneration Contracts &  
Administration

Section 5. Obligations. (a) Except as expressly provided below, neither the Lenders nor any secured party shall have any obligation to the Contracting Party for the performance of any obligations under the Power Sales Agreement; ~~provided, however,~~ that if any of such parties shall elect to assume the obligations of Partnership under

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the Power Sales Agreement, such parties must first provide written notice thereof to the Contracting Party, and such parties must comply in all respects with paragraphs (b) and (c) below. If the Lenders or any successor in interest or designee shall assume the Power Sales Agreement, liability in respect of any and all obligations thereunder shall be limited solely to such party's interest in the Facility following the assumption of liability under the Power Sales Agreement (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto). The Contracting Party shall have the right to approve, which approval shall not be unreasonably withheld, any entity that is proposed by the Lenders or the Agent to operate the Facility, including without limitation any agent, subsidiary, affiliate or other entity in which any Lender owns an interest. Subject to the foregoing, the Contracting Party agrees that it will accept performance by the Lenders or any successor in interest or assigns or designees of the obligations of Partnership under and in accordance with the Power Sales Agreement and the rules of the Florida Public Service Commission. After the Lenders shall give the Contracting Party notice that an Event of Default (as defined in the Loan Agreement) exists

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and that it or a successor in interest is exercising its rights upon the occurrence of such an event, the Contracting Party agrees that the Lenders shall have the right to enforce directly against the Contracting Party all obligations of the Contracting Party under the Power Sales Agreement and otherwise to exercise all rights and remedies of the Partnership thereunder.

(b) If, after the exercise of remedies available to the Lenders under the Loan Agreement, the Lenders intend to take ongoing advantage of the Power Sales Agreement and to operate the Facility, then the Lenders shall provide the Contracting Party with written notice thereof prior to undertaking such operation. In such event, the Lenders agree that in the event that it operates the Facility directly, or indirectly through an agent or through a subsidiary, affiliate, or other entity in which it holds an ownership interest (provided, that the foregoing shall not include operation by a court appointed receiver or similar person during the pendency of foreclosure or similar proceedings), the Lenders (or such subsidiary, affiliate or other entity, as aforesaid) shall (subject to the second sentence of Section 5(a) above) assume each and every duty and obligation of Partnership arising out of or in

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connection with the Power Sales Agreement, including but not limited to each and every such duty and obligation arising prior to the date of such assumption.

(c) The parties acknowledge and agree that operation of the Facility must at all times be in the hands of a competent operator. In the event of a foreclosure or similar proceeding, including the appointment of a receiver, the Agent agrees to seek the appointment by the court of such a competent operator.

Section 6. Payments to Lenders. (a) In the event the Lenders provide written notice to the Contracting Party to the effect that Partnership and the Lenders have agreed that all revenues derived from the Facility are to be paid to the Lenders, the Contracting Party hereby agrees to make all payments required to be made by it to Partnership pursuant to the Power Sales Agreement subsequent to the date of such notice by wire transfer to an account that the Lenders shall specify. All parties hereto agree that the deposit with the Lenders of amounts due to Partnership from the Contracting Party under the Power Sales Agreement shall satisfy the Contracting Party's payment obligations under the Power Sales Agreement.

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(b) To the extent provided by law or under the terms of the Power Sales Agreement, each of the parties hereto agrees that the Contracting Party shall have the right to set off or deduct from payments due to Partnership each and every amount due the Contracting Party arising out of or in connection with the Power Sales Agreement.

Section 7. Restriction on Further Assignment. (a) Subject to Section 1 hereof, the Lenders hereby agree not to assign their rights, title or interest in and to the Power Sales Agreement without the prior written consent of the Contracting Party, which consent shall not be unreasonably withheld; provided, however, that in the case of an assignment of the Power Sales Agreement to a successor functioning in the same capacity, such a successor Lender shall be a bank or trust company organized under the laws of the United States or any political subdivision thereof having a combined capital and surplus of at least \$100,000,000 and willing, and legally qualified, to perform the duties of the Lenders upon reasonable and customary terms. In the event of any such transfer reasonably consented to by the Contracting Party, the Contracting Party agrees to negotiate in good faith a consent to assignment of the Power Sales Agreement by such transferee to its

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financing parties (which consent may be substantially in the form of this Consent).

Section 8. Non-Party. The Contracting Party is not a party to, and has no obligation under, any of the documents referenced herein other than those which it has signed.

Section 9. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 10. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

Section 11. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.

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Section 12. Governing Law. The Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

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Dated: \_\_\_\_\_, 1993



FLORIDA POWER CORPORATION

By

*Philip C. Henry*  
Name: PHILIP C. HENRY  
Title: SR. VICE PRESIDENT

ORANGE COGENERATION LIMITED PARTNERSHIP,

By ORANGE COGENERATION G.P., INC.,

By

*William R. Stratton*  
Name: William R. Stratton  
Title: President

GENERAL ELECTRIC CAPITAL CORPORATION

By

*Robert E. Maxwell*  
Name: ROBERT E. MAXWELL  
Title: SENIOR VICE PRESIDENT & MGR.

STEWART & STEVENSON SERVICES, INC.

By

*Richard R. Stewart*  
Name: RICHARD R. STEWART  
Title: GROUP VICE PRESIDENT

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## SUMMARY

HAY RESOURCES MANAGEMENT, INC. (04/22/88 Negotiated Contract)

- None

## SUMMARY

### SEMINOLE FERTILIZER CORP. (10/30/90 Negotiated Contract)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. 14.4)
- 05/04/93: FPC consents to Assignment to Cargill Fertilizer, Inc.
  - FPC's consent expressly recites that, after its execution, Seminole will not be liable for any liabilities and obligations under the contract
  - Cargill had acquired Seminole and, with it, the cogeneration contract

- Curtailment

- FPC and Cargill have an informal agreement whereby, during off-peak hours, Cargill will reduce its output as much as possible.
  - FPC will not apply the Performance Adjustment during the off-peak hours that Cargill curtails at FPC's request
  - Cargill makes sulfuric acid and, in doing so, generates excess heat which, in turn, forms the source of energy for its power production. As a result, it is more difficult for Cargill to reach a formal agreement to curtail production during specific times.

- Routine Contract Administration and Performance

- 06/23/93: Change of address for payments to be made to Cargill Fertilizer, Inc.

## CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into as of May 4, 1993, by and among FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), Seminole Fertilizer Inc. a Delaware corporation ("Assignor") and Cargill Fertilizer, Inc. a Delaware corporation ("Assignee").

## RECITALS

WHEREAS, Assignor and FPC are parties to that certain Negotiated Contract for the Purchase of Firm Energy and Capacity From a Qualifying Facility, executed by FPC on October 30 1990 and by Assignor on October 30, 1990 (the "Sale Contract"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Sale Contract);

WHEREAS, Assignor and Assignee have entered into that certain Purchase Agreement dated as of March 1, 1993 pursuant to which, among other things, Assignor has agreed to sell, and Assignee has agreed to purchase, all of Assignor's right, title and interest in certain rights relating to the development, construction and operation of the Facility;

WHEREAS, Assignor desires to assign all of the right, title and interest in, to and under, and to delegate all of the obligations, duties and liabilities arising under, the Sale Contract to Assignee pursuant to that certain Assignment and Assumption Agreement dated as of even date herewith (the "Assignment");

WHEREAS, Article XXIII of the Sale Contract provides that Assignor may assign the obligations, benefits and duties under the Sale Contract with the written consent of FPC and FPC is willing to grant such written consent as set forth in this Consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FPC hereby agrees as follows:

1. Consent to Assignment. FPC hereby consents to the assignment of the Sale Contract by Assignor to Assignee pursuant to the terms and conditions of the Assignment.

2. Contract Not Modified. Except as set forth in Section 3 of this Consent, neither the Assignment nor this Consent shall alter, waive or modify the Sale Contract, or FPC's rights under the Sale Contract. FPC agrees that Assignor may assign all of its right, title and interest to and under the Sale Contract and that Assignor shall not be liable for any liabilities and obligations arising under the Sales Contract on or after the date of Consent to Assignment.



3. Amendment to Sale Contract. FPC agrees that all references to Assignor in the Sale Contract shall be deemed to be references to Assignee and that Assignee shall be deemed to be the "QF" for purposes of the Sale Contract. Section 28.1 of the Sale Contract shall be amended to reflect that all notices and other communications by FPC to the QF under the Sale Contract shall be addressed to Assignee at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Representations and Warranties. Assignee represents and warrants to FPC that it possesses all necessary partnership power and authority to enter into and perform, in the State of Florida and elsewhere, the obligations under the Sale Contract.

5. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida.

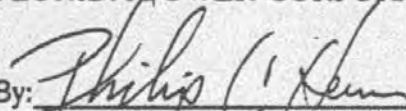
IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their officers duly authorized as of the date first above written.

Attest

  
Name: Jane Honey




FLORIDA POWER CORPORATION

By:   
Title: Senior Vice President Energy Delivery


Attest

  
Name: ~~Gwen C. Banks~~  
JUDITH LEVENTHAL

COMPANY (Assignor)  
SEMINOLE FERTILIZER, INC.

By:   
Title: ~~Executive Vice President & Gen. Mgr.~~  
COO

Attest

  
Name: Nancy Albrecht  
Add'l: 02-Seminole Corp

COMPANY (Assignee)  
CARGILL FERTILIZER, INC.

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

102024

101-810-071-6285

JUN 23 95 13.24 NO.005 P.01



# CARGILL FERTILIZER, INC.

JERRY N. HAMMOND  
VICE PRESIDENT AND TREASURER

8813 Highway 41 South • Riverview, Florida 33568 • Telephone 813-677-9111 • TWX 810-878-0648 • Telex 67688 • FAX 813-671-8148

June 23, 1993

Mr. Alan Honey  
Florida Power Corp.  
151 East Central Ave.  
Lake Wales, FL 33853

Dear Mr. Honey,

Please send funds to the following by wire transfer in payment of  
power sold to you:

Chase Manhattan Bank  
New York, NY  
ABA #021 000 021  
For Credit: Cargill, Inc./Cargill Fertilizer, Inc.  
Account #910-1-149-475 DDL#411 CGLFERT

Please advise by phone Priscilla Pitisci at (813) 671-6111 the date  
and amount of transfer as soon as possible prior to the transfer.

Very truly yours,

J. N. Hammond  
Vice President & Treasurer

JNH/baj

SEND BILL TO:

LARRY GEDLING  
PLANT ADMINISTRATOR  
CARGILL FERTILIZER  
PO BOX 9002  
BARTOW, FL 33830



102025



## SUMMARY

### DADE COUNTY (03/15/91 Negotiated Contract)

- Settlement of Dispute Relating to Fluctuations in Output
  - FPC observed large fluctuations in Dade's output (e.g., a drop of 40 to 50 MW in 5 to 10 minutes), and advised Dade that it was in default.
    - The fluctuations were caused by breakdowns in the conveyor system by which Dade brought garbage to its boiler for burning
  - 10/25/93: FPC and Dade agree to extend "the allowed cure period" by 30 days to continue efforts to settle the dispute, and that, if no settlement were reached by November 23, 1993, FPC would be entitled to withhold \$125,000 from the amount otherwise due for the period October 23 to November 23, 1993
  - 11/16/93: Settlement resulted in (1) Dade's installation of bins which would provide fuel to the boiler in the event the conveyor broke down, and FPC's concomitant agreement not to pursue its default remedies until 10/31/94, (2) a reduction in FPC's monthly capacity payments until installation was complete, (3) a curtailment of Dade's output during certain off-peak hours, and (4) FPC permitting Dade to use FP&L's interruptible standby service in the event it was unable to provide its own power
    - Given the Dade facility location, it would be in FP&L's own economic interest to minimize Dade's downtime when power was tight in the area. Thus, the fact that Dade was interruptible would have minimal practical impact.



# *Fine Jacobson Schwartz Nash & Block*

215 South Monroe Street - Suite 804  
Tallahassee, Florida 32301-1859  
(904) 222-7000  
Fax (904) 681-6651

October 25, 1993

VIA TELECOPIER

Mr. James P. Fama, Esq.  
Senior Counsel  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733-4042

Re: Extension of Cure Period With Respect to Alleged Default by  
Metropolitan Dade County Under Power Sales Contract With  
Florida Power Corporation

Dear Mr. Fama:

As we discussed in our meeting on October 20, 1993, this letter outlines a basis for temporarily extending the allowed cure period pursuant to Florida Power Corporation's notice of default declared by FPC's letter dated August 23, 1993 from Mr. Robert Dolan, Manager of Cogeneration Contracts and Administration, to Mr. Dennis Carter, Assistant County Manager. By this proposal, FPC, Montenay-Dade, Ltd. ("Montenay"), and Metropolitan Dade County ("County") will agree that:

1. FPC will extend the allowable period for curing the alleged default by 30 days, i.e., to November 23, 1993, and will immediately send a letter confirming this extension to Mr. Dennis Carter;
2. the parties will continue to negotiate in good faith toward a comprehensive settlement of this situation by November 23, 1993;
3. the County and Montenay will agree that, in the event a definitive settlement is not reached by November 23, 1993, FPC shall be entitled to withhold \$125,000 from the amount that would otherwise be due to the County for power delivered to FPC between October 23 and November 23, 1993;
4. in the event a definitive settlement agreement is reached on or before November 23, any amount to be withheld from FPC's payments to the County shall be determined in accord with said settlement agreement (i.e., if a settlement agreement is reached, the amount to be withheld pursuant to said settlement shall be instead of the \$125,000 referred to in the preceding provision);

Mr. James P. Fama, Esquire  
Re: Extension of Default Cure Period  
October 25, 1993  
Page 2

5. except for the sum of \$50,000, which the parties recognize shall not be contestable nor recoverable in any subsequent litigation, no party waives any rights to litigate any claims arising from this dispute, nor does any party waive any defenses by executing this agreement, including both the right to claim or deny that a default has occurred, and the right of the County to recover any amounts withheld in excess of the above-mentioned sum of \$50,000; and

6. in the event that a settlement agreement is reached, FPC will rescind its notice of default issued on August 23, 1993.

I have attached a draft letter confirming the extension of the cure period as described in No. 1 above. I have set forth below appropriate signature blocks for FPC, Montenay, and the County Staff to indicate their respective acceptances of the proposed terms in principle.

Thank you again for our productive meeting last Wednesday. I look forward to talking with you soon. If you have any questions, please give me a call.

Cordially yours,

*Robert Scheffel Wright*  
Robert Scheffel Wright

Accepted in Principle:

For the Staff of Metropolitan Dade County, Florida:

By: *James J. Carter*  
Date: 10/28/93 Title: ASSISTANT COUNTY MANAGER

For Florida Power Corporation:

By: *Philip C. Henry*  
Date: 11/2/93 Title: SENIOR VICE PRESIDENT ENERGY DELIVERY

For Montenay-Dade, Ltd., by Montenay Power Corp. as General Partner:

By: *Montenay*  
Date: 10/29/93 Title: Pres

100039



### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 16<sup>th</sup> day of November, 1993, by and between FLORIDA POWER CORPORATION ("FPC"), METROPOLITAN DADE COUNTY ("Dade County"), and MONTENAY-DADE, LTD. ("Montenay") and reflects the terms of a negotiated settlement of matters relating to fluctuations in the electrical output of the DADE COUNTY RESOURCES RECOVERY FACILITY ("Facility").

### RECITALS

WHEREAS, Dade County is the owner of the Facility, a solid waste facility as defined in section 377.709, Florida Statutes, which is located in Dade County, Florida and includes four solid waste-fired boilers and two steam electric generating turbines; and

WHEREAS, Montenay operates the Facility for Dade County pursuant to the Second Amended and Restated Operations and Management Agreement between Montenay and Dade County, approved by the Dade County Board of County Commissioners by Resolution No. R-901-91 on July 25, 1991, as amended ("O&M Agreement"); and

WHEREAS, Dade County and FPC have entered into a certain contract entitled Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility dated March 15, 1991 ("Contract"), approved by the Dade County Board of County Commissioners by Resolution No. R-561-91 on May 30, 1991, which provides for the sale by Dade County and the purchase by FPC of firm electric capacity and energy generated from the Facility; and



WHEREAS, on August 23, 1993, FPC provided notice to Dade County that FPC considered fluctuations in the output of the Facility to constitute an Operational Event of Default under the Contract; and

WHEREAS, Dade County and Montenay deny that the output fluctuations constitute a default or an Operational Event of Default under the Contract; and

WHEREAS, in consultation with FPC, and with FPC's knowledge, Dade County and Montenay are proceeding to install fuel feed-storage bins ("bins") on each of the Facility's boilers, which bins are expected to significantly reduce the Facility's output fluctuations; and

WHEREAS, pursuing good faith efforts to resolve this dispute efficiently and cooperatively, the parties met and negotiated the terms of settlement described in the following body of this Agreement;

NOW THEREFORE, in consideration of the premises of this Agreement and of the mutual promises and covenants set forth herein, FPC, Dade County, and Montenay ("the parties") hereby agree as follows:

**I. CAPACITY PAYMENT DISCOUNTS**

1. Beginning with the payment due for power delivered after October 23, 1993, FPC will deduct \$40,000 per month from the capacity payments otherwise due to Dade County until the fuel feed-

storage bins are installed and operating on the first boiler to be equipped with such bins. FPC will reduce the monthly deduction by \$10,000 as the bins are installed on each boiler: i.e., the monthly deduction will reduce to \$30,000 when the bins are installed and operating on the first boiler, to \$20,000 when the bins are installed and operating on two boilers, to \$10,000 when the bins are installed and operating on three boilers, and to \$0 when the bins are installed and operating on all four boilers. These deductions shall be pro-rated on a daily basis for partial month periods.

## **II. OFF-PEAK OUTPUT REDUCTIONS**

2. Upon request by FPC, Dade County and Montenay shall reduce the Facility's energy output by a maximum of 17 MW from the scheduled daily on-peak output level between the hours starting 0100 and ending 0600, on a maximum of not more than 30 days per year and a maximum of not more than 10 days per month, for the remaining term of the Contract.

3. Except for the reductions specified in Paragraph 2 above, during calendar year 1995, FPC will minimize its requests for output curtailment by the Facility by prioritizing its curtailment requests such that Dade County will not be requested to reduce the Facility's output until all other cogenerators and small power producers have been sought for maximum curtailment. In all other years of the remaining term of the Contract, FPC will minimize its



requests for output curtailment by the Facility by prioritizing the Facility in the last curtailment group of cogenerators and small power producers on FPC's system. If, pursuant to Florida Public Service Commission (FPSC) Rule 25-17.086, Florida Administrative Code, FPC unilaterally refuses, or seeks the FPSC's authorization to refuse, to receive electric energy from cogenerators and small power producers on its system, FPC will treat Dade County as a small power producer in a separate class from any cogenerators or small power producers who have not agreed to voluntary output curtailments.

4. FPC will provide notice of curtailment requests by 12:00 noon on the day preceding the day on which curtailment is requested (i.e., 13 hours notice). Notice shall be via facsimile transmission to the plant operator's designee at the Facility; if facsimile transmission is not possible, notice may be made via telephone.

### III. PLANNED AND COORDINATED MAINTENANCE

5. Dade County and Montenay will coordinate with FPC the Facility's planned maintenance schedule between October 15 of any year and March 15 of the following year. To the extent these outages are approved by FPC, they will be excluded from the calculations of the Facility's 12-month rolling average On-Peak Capacity Factor.



6. Notice of a request by FPC for a change in planned outages shall be furnished at least ten days prior to each such planned outage. Notice shall be via facsimile transmission, unless facsimile transmission is not possible, in which case notice shall be made via express courier service (Federal Express Priority Overnight service or equivalent). Montenay and Dade County shall not be obliged by such a request to change the planned maintenance schedule for the Facility but shall use reasonable efforts to comply with such a request.

7. During calendar year 1995, scheduled outages relating to the installation of air quality control system ("AQCS") equipment on the Facility's four boilers (the "AQCS outages") shall be excluded from the calculation of the Facility's 12-month rolling average On-Peak Capacity Factor. These outages shall not exceed four occurrences of 9 days each. Notice of the AQCS outages shall be made by facsimile transmission at least 72 hours before the planned beginning of the outage. This provision shall not limit Dade County's ability to declare such outages to be force majeure events within the meaning of section 1.25 of the Contract (definition of force majeure).

#### IV. RESCISSION OF DEFAULT AND MUTUAL FORBEARANCE FROM LITIGATION

8. Upon approval and execution of this Agreement as specified in Paragraph 16 below, FPC will send a letter to Mr. Dennis I. Carter, Assistant County Manager, rescinding its notice of default declared

in FPC's letter dated August 23, 1993 from Mr. Robert D. Dolan, FPC's Manager of Cogeneration Contracts and Administration, to Mr. Dennis I. Carter.

9. Upon FPC's rescission of the notice of default declared in FPC's letter to Mr. Carter of August 23, 1993, Dade County and Montenay will forbear from pursuing any relief, at law or at equity, or before the Florida Public Service Commission ("FPSC"), or before any other tribunal or regulatory authority, relating to FPC's notice of default declared on August 23, 1993.

10. From the date that this Agreement is executed until October 31, 1994, FPC will forbear from pursuing any relief, at law or at equity, or before the Florida Public Service Commission, or before any other tribunal or regulatory authority, relating to the output fluctuations and their impacts on FPC. From the date that this Agreement is executed until after any notice is given and any cure period is observed as described in Paragraph 11 below, FPC will also forbear from declaring any further events of default relating to the Facility's output fluctuations.

11. If, after October 31, 1994, the Facility's output remains within a band of plus or minus ten percent of the daily output level or levels specified by the plant operator, in ninety percent (90%) of all operating hours under normal operating conditions as adjusted to exclude forced outage periods and periods during which



the Facility's output is affected by a force majeure event from the calculations, FPC will not pursue any legal, equitable, or regulatory action against Dade County or Montenay relative to power output fluctuations. If, after October 31, 1994, the Facility's output remains outside the range described above, then, on request by any party, FPC, Dade County, and Montenay shall meet to agree to mitigating measures to resolve the problem. FPC agrees that for a period of thirty days following a request to meet to discuss mitigating measures, FPC will not declare any event of default relating to the Facility's output fluctuations.

**V. NO ADMISSION OF FAULT OR WAIVER OF FUTURE RIGHTS**

12. Nothing contained herein shall be considered, interpreted, or construed as an admission by Dade County or Montenay that an event of default or a breach of Dade County's obligations under the Contract has occurred, or that output fluctuations of any magnitude give rise to any event of default or breach.

13. Nothing contained herein shall be considered, interpreted, or construed as an admission by FPC that a breach of FPC's obligations under the Contract has occurred.

14. Except as provided in Paragraphs 10 and 11 above, nothing contained herein shall be considered, interpreted, or construed as a waiver of any rights that FPC may have to pursue any available remedies relating to the Facility's output fluctuations if, after



October 31, 1994, the Facility's output does not remain within the range specified in Paragraph 11 above.

15. Nothing contained herein shall be considered, interpreted, or construed as a waiver of any rights that FPC, the County, or Montenay may have to pursue any available remedies (a) arising from events other than those relating to the Facility's output fluctuations and their impacts on FPC, or (b) arising from events occurring after October 31, 1994, except as provided in Paragraph 11 above.

16. This Agreement is subject to the approval of the Dade County Board of County Commissioners and to the approval of the financing parties ("Banks") as defined in the O&M Agreement between Dade County and Montenay. FPC will provide personnel to support this settlement at the Board's meeting on November 16, 1993.

17. Except as described above, this Agreement does not limit any party's rights to pursue any rights that it may have relating to other issues.

#### VI. MISCELLANEOUS TERMS

18. Section 3.4 of the Contract shall, for the remaining term of the Contract, be interpreted to permit the County to receive interruptible standby service from Florida Power & Light Company.

19. Montenay and the County will send monthly progress reports detailing the progress and status of the fuel bin installation project and the primary fuel supply conveyor replacement project to FPC no later than the tenth day of the month following the month covered by each progress report.

20. FPC's consultation regarding, and knowledge of, the fuel bin installation and primary fuel supply conveyor replacement projects shall not be construed as constituting FPC's recognition of, nor acquiescence in, the proposition that these measures are the sole technical remedy needed to correct the Facility's output fluctuations.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement in manner and form sufficient to bind them, effective upon the approvals of the Dade County Board of County Commissioners and the Banks, as set forth in Paragraph 16 above, as of the later of (a) the date on which this Agreement is executed on behalf of the Dade County Board of County Commissioners, or (b) the date on which the approval of the Banks is granted.

For Florida Power Corporation:

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_



For the Staff of Metropolitan Dade County, Florida:

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_

For Montenay-Dade, Ltd., by Montenay Power Corp., as its General Partner:

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_



IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement in manner and form sufficient to bind them, effective upon the approvals of the Dade County Board of County Commissioners and the Banks, as set forth in Paragraph 16 above, as of the later of (a) the date on which this Agreement is executed on behalf of the Dade County Board of County Commissioners, or (b) the date on which the approval of the Banks is granted.

ATTEST:

HARVEY REVIN, CLERK

BY:

DEPUTY CLERK

DADE COUNTY, FLORIDA

BY ITS BOARD OF COUNTY COMMISSIONERS

BY:

JOAQUIN G. AVINO, P.E., P.L.S.  
COUNTY MANAGER

FOR FLORIDA POWER CORPORATION:

BY: \_\_\_\_\_

DATE: \_\_\_\_\_ TITLE: \_\_\_\_\_

FOR MONTENAY-DADE, LTD., BY MONTENAY POWER CORP., AS ITS GENERAL PARTNER:

BY: \_\_\_\_\_

DATE: \_\_\_\_\_ TITLE: \_\_\_\_\_

APPROVAL

The Financing Parties hereby certify that they have reviewed the attached Settlement Agreement among Dade County, Florida Power Corporation, and Montenay-Dade Ltd., and the letter agreement of October 26, 1993, between Montenay and Dade County, approved by the Dade County Board of County Commissioners on 11-16, 1993, by Resolution No. R-142-93, and that they approve the Settlement Agreement and letter agreement in whole.

For the Financing Parties:

By: 

Name and Title: Dan Corine

Dated: 11/19/93

Attest: 

Dated: 11/19/93

## SUMMARY

GENERAL PEAT RESOURCES L.P. (11/30/88 -- three Standard Offer contracts -- GenPeat Units 1, 2 and 3)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (\$9.6)
- 06/14/90: FPC consents to Assignment to EcoPeat, L.P.
  - FPC's consent expressly recites that the assignment does not alter FPC's rights against GPR and that GPR is only discharged from its obligations to the extent of performance of them by EcoPeat
  - EcoPeat is an entity that includes GenPeat and additional investors

- One-Time Change in Committed Capacity

- Contract expressly authorizes the cogenerator to change its committed capacity (\$4.2.2)
- 08/10/92: FPC agrees with Central Florida Power, L.P. (name changed from EcoPeat, L.P. after Destec became a partner) to a change in committed capacity under each of the three contracts from 52 to 57.2 MW

- Interconnection Delay

- 02/22/93: FPC and Central Florida Power, L.P. agree to changes in the timing and remedies associated with interconnection, and a related extension of the commercial in-service date

- Curtailment

- 08/17/93 & 12/23/93:
  - FPC agrees that, in connection with this and the EcoPeat Avon Park contracts, output will be reduced during off-peak hours throughout the term of the contracts, and that no power will be delivered to FPC during three two-week periods each year, and with how this impacts on such items as capacity factors and committed capacity



### CONSENT TO ASSIGNMENT

This Consent to Assignment is given by FLORIDA POWER CORPORATION, a Florida corporation (FPC), as of June 14, 1990, under the terms set forth herein, with respect to the assignment to EcoPeat Power, L.P. (EcoPeat), a Delaware limited partnership formed by EcoPeat Company (a Delaware general partnership) and General Peat Resources, L.P. (a Delaware limited partnership, hereafter GPR) of the three negotiated contracts for the Purchase Of Firm Energy And Capacity From A Qualifying Facility, dated November 30, 1988, each of which was entered into between FPC and GPR. Collectively, the agreements referenced above are referred to hereafter as the Sale Contracts.

1. Consent to Assignment. FPC hereby consents to the assignment of the Sale Contracts by GPR to EcoPeat.

2. Contract Not Modified. This Assignment does not alter, waive or modify the Sale Contracts, or FPC's rights under the Sale Contracts, or its rights against GPR. FPC agrees that EcoPeat may perform GPR's obligations under the Sale Contracts, and GPR shall be discharged from any obligations performed for it by EcoPeat, but only to the extent of such performance.

3. Payments. FPC shall make all payments due from it to GPR under the Sale Contracts to EcoPeat.

4. Notices. FPC agrees to provide to EcoPeat copies of any notice sent by FPC to GPR pursuant to the Sale Contracts contemporaneously with sending such notice to the GPR. However, failure to provide any notice shall not affect FPC's rights under the Sale Contracts.

5. GPR Representations and Warranties. GPR represents and warrants that:

(a) EcoPeat possesses all necessary partnership power and authority to enter into and perform, in the State of Florida and elsewhere, the obligations under the Sale Contracts;

(b) The small power production facilities to be developed by GPR and EcoPeat are qualifying small power production facilities, which will primarily burn peat as fuel, and which will be built in Highlands County, Florida;

(c) The Joint Development Agreement, the Limited Partnership Agreement, and the Asset Transfer Agreement, all between GPR and EcoPeat Company, promote and foster the development of the small power production facilities contemplated in the Sales Contracts;

6. Governing Law. This Consent to Assignment shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, FPC and GPR have caused this Consent to Assignment to be executed by their officers duly authorized as of this 14th day of June. 1990.

FLORIDA POWER CORPORATION

By: [Signature]  
Executive Vice President

Attest:  
By: [Signature]

GENERAL PEAT RESOURCES, LP.

By: [Signature]  
President

Attest:  
By: [Signature]





**CENTRAL FLORIDA POWER,  
L.P.**

Central Florida Power, L.P.  
3500 CITYWEST BLVD., SUITE 150  
P.O. BOX 4411  
HOUSTON, TEXAS 77241-4411

August 10, 1992



Mr. Robert D. Dolan  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, FL 33733

RE: Three Contracts for the Purchase of Firm Energy and Capacity from a Qualifying Facility (the "Agreements") each dated November 30, 1988 between Florida Power Corporation ("FPC") and General Peat Resources, L.P. whose interest was assigned to Central Florida Power, L.P. ("Central Florida").

Dear Robert:

Central Florida hereby notifies FPC pursuant to Section 4.2.2 of each of the Agreements of its election to change the committed capacity under each of the Agreements to ~~57.34~~ 57.2 <sup>EDP</sup> megawatts or an aggregate for the three agreements of ~~172~~ 171.6 <sup>EDP</sup> megawatts.

Please sign and return one copy of this notice to the undersigned at the above address.

Very truly yours,

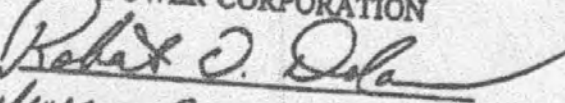
CENTRAL FLORIDA POWER, L.P.

By: CENTRAL FLORIDA DGE, INC.,  
its general partner

By:   
R. I. Taylor

Accepted as of the date above written.

FLORIDA POWER CORPORATION

By:   
MANAGER, COGENERATION CONTRACTS  
AND ADMINISTRATION



February 22, 1993



Central Florida Power, L.P.  
111 Second Avenue, N.E.  
Suite 700  
St. Petersburg, Florida 33701

Re: Tiger Bay Limited's proposed gas fired combined cycle cogeneration plant located near Ft. Meade, Florida (the "Facility")

Ladies and Gentlemen:

The purpose of this letter is to clarify Florida Power Corporation's (the "Company") understanding of certain terms and provisions of three Contracts For the Purchase of Firm Energy and Capacity from a Qualifying Facility, each dated November 30, 1988 (collectively, the "Contract") between General Peat Resources L.P., whose interest was assigned to Central Florida Power, L.P., whose name is expected to be changed to Tiger Bay Limited ("QF") and the Company which are to be serviced by the Facility. Terms which are not otherwise defined herein shall have the meaning given them in the Contract. The Company confirms the following:

1. The amount of capacity payments to be paid by the Company for the term of the Contract shall be those amounts which are listed in either the column entitled "Accelerated \$/KW/Month" or "Normal \$/KW/Month" in Appendix C to the Contract. QF has the right at any time prior to the last day of the calendar month in which the commercial in service date occurs to designate which column shall apply. If QF fails to designate a column prior to said date, the column entitled "Normal \$/KW/Month" shall be deemed to have been designated by the QF. Any other term or provision of the Contract to the contrary notwithstanding, once one of the aforesaid columns has been designated or deemed designated by QF as aforesaid, the amount of capacity payments shall be made in accordance with such column for the term of the Contract.

2. The normal capacity payments to the QF and the payment of the interconnection costs will not impose net income on the Company. The QF will not be assessed any charges under the Agreement under present law, rules or regulations or IRS rulings for these costs.



3. The only provisions of Rate Schedule COG-2 ("COG-2") which have been or are subject to amendment in the future are the sections entitled "Delivery Voltage Adjustment", "Customer Charges" and Interconnection Charge for Variable Utility Expenses. In the event of a conflict between COG-2 and the remainder of the Contract, the remainder of the Contract shall govern.

4. As used in the definition of "Force Majeure" the words "or similar occurrences" means other occurrences which are beyond the Company's or the QF's reasonable control.

5. The Company will use its best efforts to complete the construction, installation and testing of the Company's interconnection facilities (referred to in the Interconnection Agreement attached as Appendix A to the Agreement) on or before October 1, 1994. QF agrees to waive any claim it might have for damages for failure of the Company to interconnect the Facility prior to March 1, 1995. The Company agrees not to exercise any rights, if any, that it might have to suspend or terminate the Contract prior to July 1, 1995. If the interconnection is not completed by October 1, 1994 due to a delay caused by any event beyond the control of the QF, the Company will extend the QF's contract in-service date of July 1, 1995 on a day-for-day basis.

6. QF will only be in default under clause (2) of Section 8.2 of the Contract, if it fails to attain the commercial in service date for reasons other than force majeure on or prior to July 1, 1995. The Company's remedies for default or breach of the Contract are set out in Section 8.3.

7. Whether or not the Facility is a "Qualifying Facility" under the Public Utility Regulatory Policies Act of 1978 will be determined by the Company as described in the letter of James P. Fama to Ansley Watson, Jr. dated October 8, 1991 attached hereto as Exhibit A.

8. Energy payments under the Agreement will be based upon the average monthly inventory charge out price of coal burned at Tampa Electric Company's Big Bend Unit No. 4 for the most recent month in which coal was burned and for which such information is available.



Central Florida Power, L.P.  
February 22, 1993  
Page 3



9. The Company will deliver to the QF a duly executed blanket resale certificate in the form described in Florida Administration Code Rule 12A-1.039.

Very truly yours,

FLORIDA POWER CORPORATION

By: Philip C Henry  
PHILIP C HENRY  
SENIOR VICE PRESIDENT

ACCEPTED AND AGREED

CENTRAL FLORIDA POWER, L.P.  
BY CENTRAL FLORIDA DGE INC  
ITS GENERAL PARTNER.

By: Robert O. Rosen KE  
PRESIDENT





# EXHIBIT A

## Restart and Ramp Rate

### Restart Time

420 minutes

### Shutdown

Cold Start: Plant down 40 or more hours



**Florida  
Power**  
CORPORATION

August 17, 1993

Central Florida Power, L.P.  
111 Second Ave., N.E.  
Suite 700  
St. Petersburg, Fla. 33701

RE: Tiger Bay Limited's proposed gas fired combined cycle cogeneration plant located near Ft. Meade, Florida (the "Facility")

Ladies and Gentlemen:

The purpose of this letter is to clarify Florida Power Corporation's (the "Company") understanding of certain terms and provisions of (a) three Contracts For the Purchase of Firm Energy and Capacity from a Qualifying Facility, each dated November 30, 1988 (collectively, the "GPR Contract") between General Peat Resources L.P., whose interest was assigned to Central Florida Power, L.P., whose name is expected to be changed to Tiger Bay Limited ("QF") and the Company and (b) the Negotiated Contract For the Purchase of Firm Capacity and Energy From a Qualifying Facility dated March 28, 1991, between EcoPeat Avon Park, whose interest was assigned to QF, and the Company (the "ECO Contract"; the ECO Contract and GPR Contract are collectively referred to as the "Contract") which are to be serviced by the Facility. Terms which are not otherwise defined herein shall have the meaning provided them in the Contract. The Company clarifies and confirms the following:

1. The penultimate sentence of the first paragraph of the Section entitled "Calculation of 12 Month Rolling Average Capacity Factor" of Appendix A to Rate Schedule COG-2 which is attached to the Contract shall be interpreted to provide the Company the following additional rights:
  - (a) On or before October 31 of each year, the Company shall notify QF of the two week period, which shall be during the months of January, February, October, November or December, of the next calendar year when QF should shut down the Facility for its annual two week maintenance outage. QF shall shutdown the Facility during this period except in those years when a major overhaul or hot gas inspection is required and manufacturer recommendations require the shutdown to take place at another time.

*General Peat Resources L.P.*

*↓  
Central Florida Power L.P.*

*↓  
Tiger Bay Limited*



- (b) QF shall not operate the Facility for two consecutive weeks in March and April of each year which weeks will be designated by the Company in writing and delivered to the QF no later than seven (7) business days prior to the end of the month prior to the month when the shutdown is to occur. If the Company fails to timely give such notice, then QF shall not operate the Facility for the last two weeks of each such month.
- (c) QF shall operate his Facility at no higher than 80% of the Facility capacity at current ambient conditions during the hours beginning at 11:30 PM to 5:30 AM during November through March and 12:01 AM to 7:00 AM during April through October each day unless the Company requests otherwise.

When any notice of curtailment or shutdown is given pursuant to Section 1 of this letter, the Company will also specify the restart times which shall be consistent with the restart and ramp rates for the Facility set out on Exhibit A. Notwithstanding this paragraph 1, the Company and QF shall retain their respective rights to request and receive compensation for any loss, liability or costs incurred as a result of any curtailments or shutdowns or the failure to curtail or shutdown, pursuant to Florida Public Service Commission ("FPSC") rule 17-25.086

- 2. For purposes of calculating capacity factors and committed capacity under the Contract the Company clarifies and confirms the following:
  - (a) during all hours of shutdown or curtailment described in Section 1 of this letter. These hours shall be excluded for the purposes of calculating the Facility's capacity factor.
  - (b) all calculations of committed capacity and performance testing will be adjusted to an annual average ambient temperature of 72°F; and
  - (c) there shall be included any kilowatt hours delivered from the Facility in excess of the committed capacity.
  - (d) the on-peak hours for November through March are all days 6 AM to 12 Noon and 5 PM to 10 PM for April through October all days 11 AM to 10 PM.
  - (e) the facility shall restart pursuant to Exhibit A.



Central Florida Power, L.P.  
August 17, 1993  
Page 3

3. The QF shall not be in default under the Contract and it shall be entitled to full capacity payment if (a) its twelve month rolling average overall capacity factor is less than 70% at any time during the term of the Contract and/or (b) its on-peak capacity factor during any month prior to or in which Florida Gas Transmission Company's Phase III expansion project ("Phase III") or one year whichever is less commences commercial operation is equal to or greater than 50%. Furthermore, the required 12 month rolling average on-peak capacity factor for any 12 month period which contains any month prior to or in which Phase III or one year whichever is less commences commercial operation shall be adjusted to take into account the fact that the QF need have a 50% on-peak capacity factor during any month prior to or in which Phase III commences commercial operation or one year whichever is less.

Very truly your,

FLORIDA POWER CORPORATION

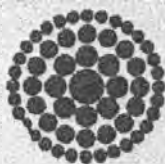
By: 

Philip C. Henry  
Senior Vice President

ACCEPTED AND AGREED  
CENTRAL FLORIDA POWER, L.P.

By: 





**Florida  
Power**  
CORPORATION

December 23, 1993

Tiger Bay Limited Partnership  
111 Second Ave., NE Suite 700  
St. Petersburg, Fla. 33701

**RE: Tiger Bay Project**

Dear Gentlemen:

In response to your request, I am writing to confirm and clarify certain matters with respect to the following power purchase agreements that have been entered into by and between Florida Power Corporation ("FPC") and Tiger Bay Limited Partnership and/or its predecessors in interests ("Tiger Bay"): (a) three Contracts for the Purchase of Firm Energy and Capacity from a Qualifying Facility, each dated November 30, 1988 (collectively, the "GPR Contracts") between FPC and General Peat Resources L.P., whose interest was assigned to Central Florida Power, L.P., whose name was changed to Tiger Bay Limited Partnership, and (b) the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, dated March 28, 1991, between FPC and EcoPeat Avon Park, whose interest was assigned to Tiger Bay (the "ECO Contract"; the ECO Contract and GPR Contracts are collectively referred to as the "Agreements").


1. As I informed you during our recent meetings, FPC has been experiencing certain operating problems associated with FPC's "minimum load conditions." In other words, FPC currently has, and is projected to have, an excess of baseload generating capacity on its system. It is for this reason that, over the past year or so, FPC has requested each of the various cogenerators on its system to agree to reduce their respective generating output during specified off-peak hours. As you are aware, Tiger Bay has agreed, at our request, to reduce its output during certain off-peak hours throughout the term of the Agreements and to deliver no power to FPC during three two-week periods each year. These modifications to the Agreements, together with similar arrangements we have entered into or are in the process of entering into with other cogenerators, will mitigate the operating problems FPC is experiencing in connection with the minimum load conditions.



Tiger Bay Limited Partnership  
December 23, 1993  
Page 2 of 2

2. In the event that the reductions in electrical output that have been agreed to by Tiger Bay and the other cogenerators are not sufficient to eliminate FPC's minimum load conditions, it is possible that FPC would be required to curtail certain purchases of electric energy pursuant to Rule 25-17.086 of the Florida Public Service Commission (the "FPSC"). We would note that, to this date, FPC has not implemented any curtailments pursuant to Rule 25-17.086. If FPC were required to curtail purchases pursuant to Rule 25-17.086, FPC would initially curtail purchases from only those cogenerators that have not agreed contractually to reduce their off-peak electrical output. Only if such curtailments were insufficient to remedy FPC's operation problems would FPC then begin to curtail purchases from Tiger Bay and the other cogenerators who have contractually agreed to reduce their off-peak electrical output.
3. At your request, we wish to confirm that the contractual reductions in the electrical output under the Agreement (as described in Paragraph 1 above) will have no effect on the capacity payments payable to Tiger Bay under the Agreements. Further, in the event that FPC was required to initiate curtailments of purchases pursuant to Rule 25-17.086 (as described in Paragraph 2 above), such curtailments would have no effect on the capacity payments payable to Tiger Bay under the Agreements.

Sincerely,



Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. P. Fama





## SUMMARY

ECOPEAT COMPANY, L.P. (03/28/91 Negotiated contract --  
EcoPeat Avon Park)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 02/22/93: FPC consents to Assignment to Central Florida, L.P. (which is to become Tiger Bay Limited)

- Facility Relocation

- 02/22/93: FPC agrees that Tiger Bay will provide power from its 212MW gas-fired facility and not from the facility described in Art. III of the Contract

- Back-Up Fuel Installation

- 07/08/94:  
Tiger Bay agrees to install back-up fuel at the Tiger Bay facility with FPC to adjust lease payments at Avon Park (less in early years, more in later years) to assist Tiger Bay with the impact on its cash flow in doing so. In addition, if the cost of acquisition and installation exceeds \$2.6 million, FPC has the option of either paying the difference or having Tiger Bay pay it \$2.2 million in lieu of requiring the installation.

- Curtailement

- 08/17/93 & 12/23/93:  
FPC agrees that, in connection with this and the three GenPeat contracts, output will be reduced during off-peak hours throughout the term of the contracts, and that no power will be delivered to FPC during three two-week periods each year, and with how this impacts on such items as capacity factors and committed capacity
- By allowing the contracts to move south to the Tiger Bay facility, FPC's import capability was increased, thereby allowing more economical operation of the FPC system.

February 22, 1993



EcoPeat Avon Park  
10055 Red Run Blvd.  
Owings Mills, Maryland 21117

Re: Negotiated Contract For The Purchase of Firm Capacity And Energy From A Qualifying Facility dated March 28, 1991 (the "Contract") between EcoPeat Avon Park ("EcoPeat") and Florida Power Corporation ("FPC").

Gentlemen:

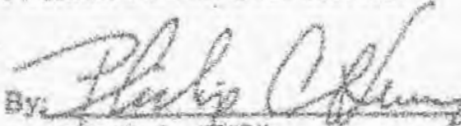
You have previously advised us that you intend to assign all of your right, title and interest in the Contract to Central Florida Power, L.P. whose name is expected to be changed to Tiger Bay Limited ("Tiger Bay") and that Tiger Bay intends to provide the services required to be provided by EcoPeat under the Contract from Tiger Bay's proposed 212 megawatt gas fired cogeneration power plant located in Polk County, Florida (the "Tiger Bay Project"). We understand that in connection with the assignment of the Contract, Tiger Bay has asked for the following assurances with respect to the Contract.

FPC hereby certifies with respect to the Contract that:

1. The Contract has been duly executed and delivered by FPC, is in full force and effect and constitutes the legal, valid and binding obligation of FPC, enforceable in accordance with its terms.
2. To our knowledge, there exists no default nor Event of Default under the Contract and no event has occurred or circumstance exists which, with the passage of time or the giving of notice, or both, would result in a default or Event of Default under the Contract.

In addition to the foregoing, FPC hereby further consents to the aforesaid assignment and hereby waives (a) any rights that it might have to require that the services to be provided to FPC under the Contract be provided from the Facility described in ARTICLE III of the Contract and (b) so long as the payments referred to in clause (1) of section 3. of the Lease Termination Agreement of even date herewith among FPC, EcoPeat and Tiger Bay are made when due or within 60 days after receipt by Tiger Bay of written notice from FPC that Tiger Bay is in default of any such payment, any default or Event of Default which occurs as a result of the termination of the lease agreement with EcoPeat of FPC's Avon Park Steam Unit Number II or the servicing of the Contract by Tiger Bay from the Tiger Bay Project.

FLORIDA POWER CORPORATION

By:   
PHILIP C. HENRY  
SENIOR VICE PRESIDENT





## LEASE TERMINATION AGREEMENT



LEASE TERMINATION AGREEMENT dated February 22, 1993 by and among Florida Power Corporation ("Landlord"), EcoPeat Avon Park ("Tenant") and Central Florida Power, L. P. whose name is expected to be changed to Tiger Bay Limited ("Tiger Bay").

WHEREAS, Landlord and Tenant heretofore, executed a Lease dated March 28, 1991 (the "Lease") with respect to Landlord's Avon Park Steam Unit No. 2;

WHEREAS, Tenant had entered into the Lease in order to enable it to provide power to Landlord under that certain Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated March 28, 1991 (the "Power Contract") between Tenant and Landlord;

WHEREAS, Tenant has assigned with Landlord's consent all of its rights under the Power Contract to Tiger Bay which will provide the services required of the Tenant under the Power Contract from its proposed power plant to be located in Polk County Florida;

WHEREAS, because of the assignment of the Power Contract to Tiger Bay, Tenant no longer has any need for the facilities covered by the Lease;

WHEREAS, Tenant desires to terminate the Lease and Landlord for the considerations herein contained is willing to terminate the Lease.

NOW, THEREFORE, in consideration of the premises and the agreements herein contained, Landlord, Tenant and Tiger Bay hereby agree as follows:

1. Lease Termination.

Landlord and Tenant do hereby agree that all terms and provisions of the Lease other than section 9.d are hereby terminated except that subsection "(ii)" of section 9.d is terminated.

2. Release.

Landlord and Tenant do hereby mutually release one another from any and all liability arising out of, or with respect to, the Lease other than any liability which heretofore or hereafter might arise under those portions of section 9.d of the Lease which remain in effect.



3. Payments by Tiger Bay.

In consideration of among other things, this Lease Termination Agreement and the assignment by EcoPeat to Tiger Bay of the Power Contract, Tiger Bay hereby agrees to pay Landlord (1) \$83,333.34 monthly beginning one month after commencement of commercial operations of Tiger Bay's approximately 212 megawatt Polk County power plant ("Tiger Bay Project") prior to the payment of any distributions with respect to such period to the partners in Tiger Bay and (2) an amount equal to 4% of any partnership distributions from revenues derived from the operations of the Tiger Bay Project made to Tiger Bay's partners by Tiger Bay as and when paid exclusive of the payment of any development fees (paid on or prior to commencement of term loan financing) and after the reimbursement of project development expenses incurred prior to construction loan financing. These payments shall terminate upon termination of the Power Contract.

4. Audit and Review Rights.

Upon reasonable written notice but not more frequently than once each year, Landlord shall have the right at its own cost and expense to audit the books and records of Tiger Bay for the sole purpose of determining the accuracy of the payments required to be made under clause (2) of section 3. hereof. In addition, Landlord shall have the right upon reasonable written notice to discuss the business and finances of Tiger Bay with the appropriate representatives of Tiger Bay.

5. Not A Partner.

It is specifically agreed by the parties hereto that anything herein to the contrary notwithstanding, Landlord is not nor shall it be deemed to be a partner in or of Tiger Bay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.



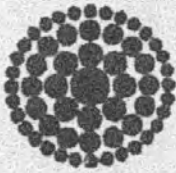
FLORIDA POWER CORPORATION

By: [Signature]

PHILIP C. HENRY  
SENIOR VICE PRESIDENT  
ECOPEAT AVON PARK,  
a general partnership.

By: [Signature]

CENTRAL FLORIDA POWER, L.P. OF Central Florida Power, L.P. 155 G.W. Avenue, Avon Park, FL 33829  
By: [Signature] KE



**Florida  
Power**  
CORPORATION

July 8, 1994

Tiger Bay Limited Partnership  
2500 City West Boulevard  
Houston, Texas 77210

The Fujl Bank & Trust Co.  
Two World Trade Center  
New York, New York 10048

Re: Three Contracts (the "GPR Contracts") for the Purchase of Firm Energy and Capacity from a Qualifying Facility each dated November 30, 1988 between General Peat Resources, L.P. whose interest was assigned to Tiger Bay Limited Partnership ("Tiger Bay") and Florida Power Corporation ("FPC"); and Standard Offer Contract for the Purchase of Firm Energy and Capacity From A Qualifying Facility dated July, 1989 between Timber Energy Resources, Inc. and FPC (the "Timber Energy Contract"); and Negotiated Contract for the Purchase of Firm Capacity and Energy ("Avon Park Contract") from a Qualifying Facility between FPC and EcoPeat Avon Park whose interest was assigned to Tiger Bay; and Lease Termination Agreement dated February 22, 1993 by and among FPC, Tiger Bay and EcoPeat Avon Park ("Lease Termination Agreement")

Ladies and Gentlemen:

Pursuant to our discussions, this will confirm that FPC hereby rescinds its letter dated December 10, 1993 to Mr. Bob Taylor. Based on Tiger Bay's agreement (which agreement is subject to and conditioned on the second paragraph of this letter) that by no later than October 31, 1997 Tiger Bay shall have on-site back-up fuel for its Polk County Florida power plant, FPC will not take the position that the current lack of project on-site back-up fuel is inconsistent with the terms of the GPR Contracts or the Timber Energy Contract nor will it declare a default with respect to back-up fuel under the Avon Park Contract, including without limitation, an Operational Event of Default under section 15.3 of the Avon Park Contract (the GPR Contracts the Timber Energy Contract and the Avon Park Contract are herein collectively referred to as the "Contracts"). The aforesaid date shall be extended to such later date as is necessary to enable Tiger Bay to obtain the necessary permits and equipment and to install the back-up fuel system if Tiger Bay is diligently pursuing the permitting and installation of on-site back-up fuel. In order to facilitate the installation of the on-site back-up fuel system, FPC agrees that either the annual maintenance outage for 1997 under the Contracts will take place in October or it will grant Tiger Bay another two week outage period in October which outage will have no adverse impact on Tiger Bay under the Contracts; provided, that such outage may be longer than two weeks without any adverse impact on Tiger Bay under the Contracts if Tiger Bay is diligently pursuing such installation.



Notwithstanding the foregoing, if Tiger Bay's documented estimate to acquire and install dual fuel capability and back-up fuel storage facilities is greater than \$2,600,000, then FPC may at its sole option elect to:

a) require Tiger Bay (and Tiger Bay agrees upon such election) to proceed to install the dual fuel capability and back-up storage facilities and reimburse Tiger Bay for that portion of the acquisition and installation cost in excess of \$2,600,000; or

b) require Tiger Bay (and Tiger Bay agrees upon such election) to make a one time lump sum payment to FPC \$2,200,000 on October 31, 1997 in lieu of requiring the installation of dual fuel capability. Should FPC elect this option, FPC shall not declare Tiger Bay in default related to lack of dual fuel capability contained in the Contracts.

Tiger Bay shall provide the aforesaid documented estimates on or before December 31, 1996 and FPC shall elect its option by notifying Tiger Bay of the option it has elected within 90 days of its receipt of the aforesaid documented estimate. If FPC elects the option described in paragraph b) above and a subsequent law, regulation or ruling requires Tiger Bay to install dual fuel capability, then FPC shall reimburse Tiger Bay the lump sum payment of \$2,200,000 described in paragraph b) above.

Further, Clause (1) of Section 3 of the Lease Termination Agreement is hereby amended to read in its entirety as follows:

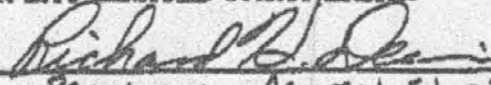
"(1) \$66,666.64 monthly for the first 144 months following the first month that Tiger Bay receives a capacity payment under the Avon Park Contract and \$100,000 for each month thereafter prior to the payment of any distributions with respect to such month to the partners in Tiger Bay".

FPC and Tiger Bay acknowledge and agree that this letter shall be deemed for all purposes a Contracting Party Document under and as defined in the Consent and Agreement, dated as of December 30, 1993, among The Fuji Bank and Trust Company, as collateral agent, Tiger Bay and FPC.

Very truly yours,  
FLORIDA POWER CORPORATION

By:   
Joseph H. Richardson  
Senior Vice President

Accepted and Agreed to this 11<sup>th</sup> day of July, 1994  
TIGER BAY LIMITED PARTNERSHIP

By:   
Title: PRESIDENT CENTRAL FLORIDA DGE, INC.  
GENERAL PARTNER OF  
TIGER BAY LIMITED PARTNERSHIP





**Florida  
Power**  
CORPORATION

August 17, 1993

Central Florida Power, L.P.  
111 Second Ave., N.E.  
Suite 700  
St. Petersburg, Fla. 33701

RE: Tiger Bay Limited's proposed gas fired combined cycle cogeneration plant located near Ft. Meade, Florida (the "Facility")

Ladies and Gentlemen:

The purpose of this letter is to clarify Florida Power Corporation's (the "Company") understanding of certain terms and provisions of (a) three Contracts For the Purchase of Firm Energy and Capacity from a Qualifying Facility, each dated November 30, 1988 (collectively, the "GPR Contract") between General Peat Resources L.P., whose interest was assigned to Central Florida Power, L.P., whose name is expected to be changed to Tiger Bay Limited ("QF") and the Company and (b) the Negotiated Contract For the Purchase of Firm Capacity and Energy From a Qualifying Facility dated March 28, 1991, between EcoPeat Avon Park, whose interest was assigned to QF, and the Company (the "ECO Contract"; the ECO Contract and GPR Contract are collectively referred to as the "Contract") which are to be serviced by the Facility. Terms which are not otherwise defined herein shall have the meaning provided them in the Contract. The Company clarifies and confirms the following:

1. The penultimate sentence of the first paragraph of the Section entitled "Calculation of 12 Month Rolling Average Capacity Factor" of Appendix A to Rate Schedule COG-2 which is attached to the Contract shall be interpreted to provide the Company the following additional rights:
  - (a) On or before October 31 of each year, the Company shall notify QF of the two week period, which shall be during the months of January, February, October, November or December, of the next calendar year when QF should shut down the Facility for its annual two week maintenance outage. QF shall shutdown the Facility during this period except in those years when a major overhaul or hot gas inspection is required and manufacturer recommendations require the shutdown to take place at another time.

*General Peat Resources L.P.*

*↓  
Central Florida L.P.*

*↓  
Tiger Bay Limited*

- (b) QF shall not operate the Facility for two consecutive weeks in March and April of each year which weeks will be designated by the Company in writing and delivered to the QF no later than seven (7) business days prior to the end of the month prior to the month when the shutdown is to occur. If the Company fails to timely give such notice, then QF shall not operate the Facility for the last two weeks of each such month.
- (c) QF shall operate his Facility at no higher than 80% of the Facility capacity at current ambient conditions during the hours beginning at 11:30 PM to 5:30 AM during November through March and 12:01 AM to 7:00 AM during April through October each day unless the Company requests otherwise.

When any notice of curtailment or shutdown is given pursuant to Section 1 of this letter, the Company will also specify the restart times which shall be consistent with the restart and ramp rates for the Facility set out on Exhibit A. Notwithstanding this paragraph 1, the Company and QF shall retain their respective rights to request and receive compensation for any loss, liability or costs incurred as a result of any curtailments or shutdowns or the failure to curtail or shutdown, pursuant to Florida Public Service Commission ("FPSC") rule 17-25.086

- 2. For purposes of calculating capacity factors and committed capacity under the Contract the Company clarifies and confirms the following:
  - (a) during all hours of shutdown or curtailment described in Section 1 of this letter. These hours shall be excluded for the purposes of calculating the Facility's capacity factor.
  - (b) all calculations of committed capacity and performance testing will be adjusted to an annual average ambient temperature of 72°F; and
  - (c) there shall be included any kilowatt hours delivered from the Facility in excess of the committed capacity.
  - (d) the on-peak hours for November through March are all days 6 AM to 12 Noon and 5 PM to 10 PM for April through October all days 11 AM to 10 PM.
  - (e) the facility shall restart pursuant to Exhibit A.



Central Florida Power, L.P.  
August 17, 1993  
Page 3

3. The QF shall not be in default under the Contract and it shall be entitled to full capacity payment if (a) its twelve month rolling average overall capacity factor is less than 70% at any time during the term of the Contract and/or (b) its on-peak capacity factor during any month prior to or in which Florida Gas Transmission Company's Phase III expansion project ("Phase III") or one year whichever is less commences commercial operation is equal to or greater than 50%. Furthermore, the required 12 month rolling average on-peak capacity factor for any 12 month period which contains any month prior to or in which Phase III or one year whichever is less commences commercial operation shall be adjusted to take into account the fact that the QF need have a 50% on-peak capacity factor during any month prior to or in which Phase III commences commercial operation or one year whichever is less.

Very truly yours,

FLORIDA POWER CORPORATION

By: 

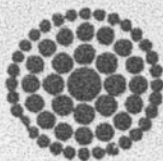
Philip C. Henry  
Senior Vice President

ACCEPTED AND AGREED  
CENTRAL FLORIDA POWER, L.P.

By: 







**Florida  
Power**  
CORPORATION

December 23, 1993

Tiger Bay Limited Partnership  
111 Second Ave., NE Suite 700  
St. Petersburg, Fla. 33701

**RE: Tiger Bay Project**

Dear Gentlemen:

In response to your request, I am writing to confirm and clarify certain matters with respect to the following power purchase agreements that have been entered into by and between Florida Power Corporation ("FPC") and Tiger Bay Limited Partnership and/or its predecessors in interests ("Tiger Bay"): (a) three Contracts for the Purchase of Firm Energy and Capacity from a Qualifying Facility, each dated November 30, 1988 (collectively, the "GPR Contracts") between FPC and General Peat Resources LP., whose interest was assigned to Central Florida Power, LP., whose name was changed to Tiger Bay Limited Partnership, and (b) the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, dated March 28, 1991, between FPC and EcoPeat Avon Park, whose interest was assigned to Tiger Bay (the "ECO Contract"; the ECO Contract and GPR Contracts are collectively referred to as the "Agreements").

1. As I informed you during our recent meetings, FPC has been experiencing certain operating problems associated with FPC's "minimum load conditions." In other words, FPC currently has, and is projected to have, an excess of baseload generating capacity on its system. It is for this reason that, over the past year or so, FPC has requested each of the various cogenerators on its system to agree to reduce their respective generating output during specified off-peak hours. As you are aware, Tiger Bay has agreed, at our request, to reduce its output during certain off-peak hours throughout the term of the Agreements and to deliver no power to FPC during three two-week periods each year. These modifications to the Agreements, together with similar arrangements we have entered into or are in the process of entering into with other cogenerators, will mitigate the operating problems FPC is experiencing in connection with the minimum load conditions.



Tiger Bay Limited Partnership  
December 23, 1993  
Page 2 of 2

2. In the event that the reductions in electrical output that have been agreed to by Tiger Bay and the other cogenerators are not sufficient to eliminate FPC's minimum load conditions, it is possible that FPC would be required to curtail certain purchases of electric energy pursuant to Rule 25-17.086 of the Florida Public Service Commission (the "FPSC"). We would note that, to this date, FPC has not implemented any curtailments pursuant to Rule 25-17.086. If FPC were required to curtail purchases pursuant to Rule 25-17.086, FPC would initially curtail purchases from only those cogenerators that have not agreed contractually to reduce their off-peak electrical output. Only if such curtailments were insufficient to remedy FPC's operation problems would FPC then begin to curtail purchases from Tiger Bay and the other cogenerators who have contractually agreed to reduce their off-peak electrical output.
3. At your request, we wish to confirm that the contractual reductions in the electrical output under the Agreement (as described in Paragraph 1 above) will have no effect on the capacity payments payable to Tiger Bay under the Agreements. Further, in the event that FPC was required to initiate curtailments of purchases pursuant to Rule 25-17.086 (as described in Paragraph 2 above), such curtailments would have no effect on the capacity payments payable to Tiger Bay under the Agreements.

Sincerely,



Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. P. Fama





## SUMMARY

### TIMBER ENERGY RESOURCES (07/89 Standard Offer contract)

#### • Assignments

- ~~Contract~~ expressly authorizes FPC to consent to assignments of obligations, benefits & duties
- 11/09/93: FPC consents to Assignment to Florida Cogen Development Company which will, in turn, assign to Tiger Bay Limited
  - Florida Cogen was set up by Tiger Bay as an interim assignee until Tiger Bay's financing was in place
- 12/30/93: FPC consents to an Assignment to Fuji Bank and Trust Company as security in connection w/financing

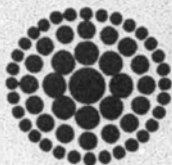
#### • Facility Relocation

- 11/09/93: FPC agrees that Tiger Bay will provide power from its 218MW gas-fired facility and not from the facility described in Art. I of the Contract

#### • Curtailment

- 11/09/93:  
FPC agrees that, as with the three GenPeat and the GenPeat Avon Park contracts, output will be reduced during off-peak hours throughout the term of this contract, and that no power will be delivered to FPC during three two-week periods each year, and with how this impacts on such items as capacity factors and committed capacity





**Florida  
Power**  
CORPORATION

November 9, 1993

Timber Energy Resources, Inc.  
PO Box 199  
Telogia, Fla. 32360

**RE: Standard Offer For the Purchase of Firm Energy and Capacity From A Qualifying Facility dated July 1989 (the "Timber Contract") between Timber Energy Resources, Inc. ("Timber") and Florida Power Corporation ("FPC")**

Gentlemen:

You have previously advised us that you intend to assign all of your right, title and interest in the Timber Contract to Florida CoGen Development Company ("FCDC") who in turn intends to assign all of its right, title and interest to Tiger Bay Limited Partnership ("Tiger Bay") and that Tiger Bay intends to provide the services required to be provided by Timber under the Timber Contract from Tiger Bay's proposed 218 megawatt gas fired cogeneration power plant located in Polk County, Florida (the "Tiger Bay Project"). We understand that in connection with the assignment of the Timber Contract, FCDC and Tiger Bay have asked for the following assurances with respect to the Timber Contract.

FPC hereby certifies with respect to the Timber Contract that:

1. The Timber Contract has been duly executed and delivered by FPC, is in full force and effect and constitutes the legal, valid and binding obligation of FPC, enforceable in accordance with its terms.
2. To our knowledge, there exists no default nor Event of Default under the Timber Contract and no event has occurred or circumstance exists which, with the passage of time or the giving of notice, or both, would result in a default or Event of Default under the Timber Contract.

In addition to the foregoing: FPC hereby further consents to the aforesaid assignments and hereby (a) waives any rights that it might have to require that the services to be provided to FPC under the Timber Contract be provided from the Facility described in Section 1 of the Timber Contract, (b) agrees that the Timber Contract shall be subject to the terms of (i) the clarification letter dated August 17, 1993 (a copy of which is attached hereto) as if the Timber Contract were included in the definition of "Contract" contained in the first sentence of said letter, except that upon the assignment of the Timber Contract to Tiger Bay, the percentage "80%" in paragraph 1(c) of said clarification letter shall be deemed to be changed to read "78%" and (ii) Section 2 through (and including) 9 of the clarification letter dated

Timber Energy Resources, Inc.  
November 9, 1993  
Page 2

February 22, 1993 (a copy of which is attached hereto) as if the Timber Contract were included in the definition of "Contract" contained in the first sentence of said letter and (c) agree that for purposes of determining energy payments and on-peak capacity factors with respect to the Timber Contract and any other contracts serviced from the Tiger Bay Project, kilowatts and kilowatt hours shall be allocated in accordance with the respective committed capacity under each of the contracts.

FLORIDA POWER CORPORATION

By: 


Philip C. Henry  
Senior Vice President



Accepted and Agreed

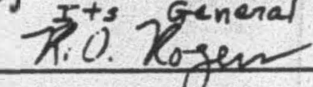
FLORIDA COGEN DEVELOPMENT COMPANY, L.P.

By: Florida Cogen Development, Inc.  
Its General Partner

 XE

TIGER BAY LIMITED PARTNERSHIP

By: Central Florida DGE, Inc.  
Its General Partner

 XE



## CONSENT AND AGREEMENT

This Consent and Agreement (the "Consent") dated as of December 30, 1993 by and among THE FUJI BANK AND TRUST COMPANY, as Collateral Agent (together with its successors and assigns, the "Collateral Agent"), TIGER BAY LIMITED PARTNERSHIP, a Delaware limited partnership (together with its successors and assigns, the "Borrower") and FLORIDA POWER CORPORATION, a private utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

### WITNESSETH:

WHEREAS, the Contracting Party and the Borrower have contracted or corresponded in the following documents: (1) Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility -- Unit 1, dated November 30, 1988, between Contracting Party and General Peat Resources, L.P., ("General Peat"), including its appendices, of even date between such parties, assigned to the Borrower, (the "Unit 1 Power Contract"); (2) Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility -- Unit 2, dated November 30, 1988, between Contracting Party and General Peat, including its appendices, of even date between such parties, as assigned to the Borrower (the "Unit 2 Power Contract"); (3) Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility -- Unit 3, dated November 30, 1988, between Contracting Party and General Peat, including its appendices, of even date between such parties, as assigned to the Borrower (the "Unit 3 Power Contract"); (4) Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, dated as of March 28, 1991, between Contracting Party and EcoPeat Avon Park, a general partnership ("EcoPeat"), as assigned to the Borrower (the "Avon Park Power Contract"); (5) Each of the Consent to Assignment, dated as of June 14, 1990, between Contracting Party and General Peat, regarding the Unit 1 Power Contract, Unit 2 Power Contract and Unit 3 Power Contract; (6) Each of the (i) letter dated December 2, 1991 from Contracting Party to Borrower, (ii) letter dated August 10, 1992 between Borrower and Contracting Party, (iii) letter dated October 16, 1992 from Destec Engineering Inc. to the Contracting Party, (iv) letter dated February 22, 1993 between the Contracting Party and the Borrower, (v) letter dated February 22, 1993 from Contracting Party to EcoPeat Avon Park, (vi) letter dated August 17, 1993 between Contracting Party and Borrower, (vii) letter dated November 9, 1993 between Contracting Party and Borrower, and (viii) letter dated November 9, 1993 between Contracting Party and the Borrower to Timber Energy Resources, Inc., (ix) letter dated December 23, 1993 from Contracting Party to Borrower, and (x) letter dated December 23, 1993 between Contracting Party and Borrower (collectively the "Letters"); (7) Lease Termination Agreement, dated February 22, 1993, among Contracting Party, EcoPeat and then Borrower (then known as Central Florida Power, L.P.) the "Lease Termination Agreement"; (8) this Consent and Agreement.

Each of the documents identified in items 1 through 8 above are individually and collectively referred to herein as the "Contracting Party Documents."



**WHEREAS**, in order to finance the development, acquisition, construction, equipping and start-up of the Borrower's combined cycle cogeneration power plant located near Fort Meade, Florida (the "Project") and certain related expenditures, the Borrower has entered into various agreements with the Collateral Agent and certain other parties;

**WHEREAS**, as of the date of the execution of this Consent, the Borrower and the Collateral Agent are entering into an assignment and a security agreement dated as of December 30, 1993, pursuant to which the Borrower is pledging, assigning and transferring to the Collateral Agent for the benefit of secured parties, and granting to the Collateral Agent a lien on, among other things, all of the Borrower's right, title and interest in and to the Contracting Party Documents; and

**WHEREAS**, the Contracting Party is agreeable to consenting to such assignment of and lien and security interest on the Borrower's right, title and interest in the Contracting Party Documents;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**Section 1. Collateral Assignment and Duties of the Borrower.** (a) The Contracting Party acknowledges and consents to the collateral pledge and assignment by the Borrower to, and creation by the Borrower of a lien and security interest in favor of the Collateral Agent pursuant to a security agreement on all of the right, title and interest of the Borrower in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Contracting Party Documents, as security for the payment and performance of all or any part of the Borrowers's obligations to the secured parties.

(b) The Borrower hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Borrower under the Contracting Party Documents.

**Section 2. Representations and Warranties.** The Contracting Party represents and warrants as follows:

(a) **Corporate Power and Authority.** Each of this Consent and the Agreements has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified to do business in the State of Florida, the only jurisdiction in which the performance of its obligations under the Agreement makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute, deliver, and perform its obligations under this Consent and the Agreements.

(c) No Default. To the best knowledge of the Contracting Party, except as set forth in the letter dated December 10, 1993 from Contracting Party to Destec, the Borrower is not in default under any material covenant or obligation under the Agreements, and no such default has occurred prior to the date hereof. The Contracting Party has duly performed and complied with all covenants, agreements and conditions contained in the Agreements, and except with respect to the letter dated August 17, 1993 between Contracting Party and Borrower and the letter dated November 9, 1993 between Contracting Party and Borrower to Timber Energy Resources, Inc., to the best knowledge of the Contracting Party, none of the Borrower's rights under the agreement have been waived.

(d) Approvals. Except for any proceedings or approvals required with respect to Contracting Party's operating problems associated with Contracting Party's minimum load conditions including, without limitations, pursuant to Florida Public Service Rule 25-17.086, as well as any approval required with respect to the letter dated November 9, 1993, between Contracting Party and the Borrower to Timber Energy Resources, Inc., the only consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any governmental authority required to be obtained by the Contracting Party after the date hereof in order for the Contracting Party to execute, deliver and perform its obligations under this Consent and the Agreements are those required in connection with the Interconnection Facilities (as defined in the Agreements) which are not yet required and can reasonably be expected to be obtained when needed.

(e) No Violation. The execution and delivery of this Consent and the Contracting Party Documents by the Contracting Party have not resulted in any violation of any applicable law, rule, or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse affect on the ability of the Contracting Party to perform its obligations under this Consent or the Contracting Party Documents.

Section 3. Collateral Agent Cure Rights. (a) The Contracting Party agrees that it will not suspend or terminate the performance of its obligations under any of the Agreements without first giving the Collateral Agent notice as provided in paragraph 4(b) below. Notice of any such suspension or termination shall be given by the Contracting Party at least five Business Days prior to the proposed date of suspension or termination. For the purposes of this Consent, "Business Day" means Monday through and including



Friday other than any such day on which banking institutions in New York or Florida are authorized or required to close.

(b) Following receipt of a notice of suspension or termination pursuant to Section 3(a), the Collateral Agent shall have the right to an additional period of time not to exceed 120 days from the receipt of such notice of suspension to cure the Borrower's default under the Contracting Party Documents on the terms set forth in this Section 3(b). Such additional cure time may be obtained by the Collateral Agent in bi-weekly increments upon at least two Business Day's advance written notice to the Contracting Party prior to the date of suspension identified in the suspension notice (or prior to the end of the then current additional bi-weekly cure period, as the case may be). In no event shall such additional bi-weekly cure periods extend the additional cure time beyond 120 days from the Collateral Agent's receipt of said notice of suspension. If the Collateral Agent elects to acquire such additional bi-weekly cure period, the Collateral Agent shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Agreement (to the extent that replacement power is unavailable for any reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under such Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Agreements. "Lost Profits" shall mean the lost non-fuel revenues associated with the Contracting Party's unserved firm lead that would have been served had the Project been operating in accordance with the terms and provisions of the Agreements. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable administrative and general expenses incurred in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail) and shall upon request be made available no more frequently than monthly. The Collateral Agent shall pay the Contracting Party bi-weekly in advance the Contracting Party's reasonable good faith estimate of the amount that will be owing by the Collateral Agent in respect of such period of cure time pursuant to the foregoing provisions; at the end of each such cure period, the Contracting Party shall notify the Collateral Agent if additional amounts are due (giving the Contracting Party's calculation of such amounts in reasonable detail) and the Collateral Agent shall promptly pay such amounts or the Contracting Party shall rebate or credit against additional cure periods (if elected by the Collateral Agent) any excess amount previously paid.

Section 4. Notice. (a) The Contracting Party will deliver to the Collateral Agent in a timely fashion copies of all material notices it delivers to the Borrower under the Contracting Party Documents (including all notices of the occurrence of any default or force majeure event under the Contracting Party Documents and, in the case of monetary defaults, the amount of such default, excluding day-to-day operational notices that are delivered to



the Borrower in the ordinary course). The costs associated with the delivery of all such notices shall be paid by the Borrower.

(b) Notices to the Collateral Agent hereunder may be given by hand delivery, by means of an independent commercial overnight courier, by tested or otherwise authenticated telex, telecopy or facsimile or by registered or certified mail, postage prepaid, return receipt requested. Notice to any party hereto shall be deemed to be delivered on the earlier of (a) the date of personal delivery or (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or deposited with an independent commercial overnight courier in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, in each case as evidenced by the return receipt. Notices hereunder shall be delivered to the following entities at the following addresses:

**The Collateral Agent:**

The Fuji Bank and Trust Company  
Two World Trade Center  
New York, New York 10048

**The Borrower:**

Tiger Bay Limited Partnership  
2500 Citywest Boulevard  
Houston, Texas 77042

**The Contracting Party:**

**Federal Express Address:**

Florida Power Corporation  
3201 34th Street South  
St. Petersburg, Florida 33711

**Mail Delivery:**

Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733

Section 5. Obligations. (a) Except as expressly provided below, the Collateral Agent shall not have any obligation to the Contracting Party for the

performance of any obligations under any of the Contracting Party Documents; provided, however, that if the Collateral Agent elects to assume the obligations of the Borrower under the Contracting Party Documents, the Collateral Agent must first provide written notice thereof to the Contracting Party, and the Collateral Agent must comply in all respects with paragraphs (b) and (c) below. The Contracting Party agrees that it will accept performance by the Collateral Agent or its designee of the obligations of the Borrower under and in accordance with the Contracting Party Documents subject to paragraph 5(b) and (c) below.

(b) The Collateral Agent agrees that in the event it gives notice to the Contracting Party and operates the Project directly, or indirectly through an agent or through a subsidiary, affiliate, or other entity in which it holds an ownership interest (provided, that the foregoing shall not include operation by a court appointed receiver or similar person during the pendency of foreclosure or similar proceedings), the Collateral Agent (or such subsidiary, affiliate or other entity, as aforesaid) shall assume each and every duty and obligation of the Borrower arising out of or in connection with the Agreement so assumed, including but not limited to each and every such duty and obligation arising prior to the date of such assumption, and shall also at such time exercise and enjoy whatever right, title and interest in and to such Agreement as was assigned to it under Section 1 hereof, and in such event, Contracting Party agrees that the Collateral Agent shall have the right to enforce directly against the Contracting Party under the Contracting Party Documents and exercise all rights and remedies of the Borrower thereunder.

(c) The parties acknowledge and agree that operation of the Project must at all times be in the hands of a competent operator. In the event of a foreclosure or similar proceeding, including the appointment of a receiver, the Collateral Agent agrees to seek the appointment by the court of such a competent operator.

Section 6. Payments to Collateral Agent. (a) The Contracting Party has been informed that all revenues derived from the Project are to be deposited with the Collateral Agent for disbursement by the Collateral Agent, and the Contracting Party hereby agrees to make all payments required to be made by it to the Borrower by wire transfer to the Collateral Agent at an account at The Fuji Bank and Trust Company, the account number for which shall be set forth in a notice to be given to the Contracting Party by the Collateral Agent, or at such other account as the Collateral Agent shall reasonably from time to time notify the Contracting Party. All parties hereto agree that the deposit with the Collateral Agent of amounts due to the Borrower from the Contracting Party under the Contracting Party Documents shall satisfy the Contracting Party's payment obligations under the Contracting Party Documents.

(b) To the extent provided by law or under the terms of the Contracting Party Documents, each of the parties hereto agrees that the Contracting



Party shall have the right to set off or deduct from payments due to the Borrower each and every amount due the Contracting Party arising out of or in connection with the Contracting Party Documents.

Section 7. Restriction on Further Assignment. The Collateral Agent hereby agrees that it will not assign its right, title or interest in and to the Contracting Party Documents without the prior written consent of the Contracting Party, which consent shall not be unreasonably withheld; provided, that the Collateral Agent shall be entitled to assign the Agreements to a successor collateral agent; provided, however, that in each such case, such a successor Collateral Agent shall be a bank or trust company organized under the laws of the United States or any political subdivision thereof having a combined capital and surplus of at least \$100,000,000 and willing, and legally qualified, to perform the duties of the Collateral Agent upon reasonable and customary terms. In the event of any such transfer reasonably consented to by the Contracting Party, the Contracting Party agrees to negotiate in good faith a consent to assignment of the Contracting Party Documents by such transferee to its financing parties (which consent may be substantially in the form of this Consent).

Section 8. Amendments. This Consent and Agreement is neither a modification of nor an amendment to the Contracting Party Documents. The Contracting Party agrees to give 10 days notice to the Collateral Agent before the Contracting Party executes any amendment or material modification of the Contracting Party Documents.

Section 9. Non-Party. The Contracting Party is not a party to, has no obligation under, and has no knowledge of the existence or content of any of the documents referenced herein other than those which it has signed.

Section 10. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 11. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof. In the event of any conflict between the terms of this Agreement and the Contracting Party Documents, the terms of this Agreement shall control.

Section 12. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.



Section 13. Governing Law. This Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

Dated: December 30, 1993.

**FLORIDA POWER CORPORATION**

By: \_\_\_\_\_  
Philip C. Henry  
Senior Vice President

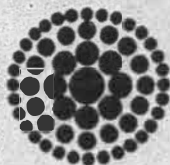
**THE FUJI BANK AND TRUST COMPANY,  
as Collateral Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and Agreed this  
30th day of December, 1993

**By: TIGER BAY LIMITED PARTNERSHIP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Florida  
Power  
CORPORATION

November 9, 1993

Tiger Bay Limited Partnership  
111 Second Ave., N.E., Suite 700  
St. Petersburg, Fla. 33701

RE: Tiger Bay Limited's proposed gas fired combined cycle cogeneration plant located near Ft. Meade, Florida (the "Facility").

Ladies and Gentlemen:

The purpose of this letter is to clarify Florida Power Corporation's (the "Company") understanding of certain terms and provisions of (a) three Contracts For the Purchase of Firm Energy and Capacity from a Qualifying Facility, each dated November 30, 1988 (collectively, the "GPR Contract") between General Peat Resources L.P., whose interest was assigned to Tiger Bay Limited ("QF") and the Company and (b) the Negotiated Contract For the Purchase of Firm Capacity and Energy From a Qualifying Facility dated March 29, 1991, between EcoPeat Avon Park, whose interest was assigned to QF, and the Company (the "ECO" Contract); (the ECO Contract and GPR Contract are collectively referred to as the "Contract") which are to be serviced by the Facility. Terms which are not otherwise defined herein shall have the meaning provided them in the Contract. The Company clarifies and confirms the following:

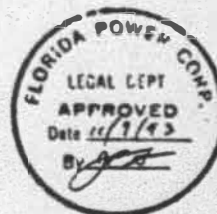
1. The Facility is located south of the latitude of the Company's Central Florida Substation referred to in Section 2.1 of the ECO Contract.
2. For purposes of determining the on-peak capacity factors and energy payments with respect to the GPR Contracts and the ECO Contracts, kilowatts and kilowatt hours shall be allocated to the ECO Contract and the GPR Contract in accordance with the respective committed capacities under each of the contracts.

Very truly yours,

FLORIDA POWER CORPORATION

By: 

Philip C. Henry  
Senior Vice President



ACCEPTED AND AGREED  
TIGER BAY LIMITED PARTNERSHIP

By: 

GENERAL OFFICE: 3201 Thirty-fourth Street South • P.O. Box 14042 • St. Petersburg, Florida 33733 • (813) 866-5151

a Florida Power Corporation

## SUMMARY

### EL DORADO ENERGY (03/18/91 Negotiated contract)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 03/09/93: FPC consents to Assignment to Auburndale Power Partners, L.P. pursuant to the terms and conditions of the Assumption and Release
  - Auburndale is merely a name change from El Dorado
  - The 03/09/93 Assumption and Release between El Dorado and Auburndale whereby Auburndale assumes all of the obligations, duties and liabilities of El Dorado under the contract with FPC, provides that El Dorado is released from all of its obligations, duties and liabilities under the contract with FPC

- Regulatory Delay

- Contract expressly authorizes extensions for regulatory delays (§4.2.1)
- 02/07/92: FPC agrees to a 37 day extension of commencement and commercial in-service date due to regulatory delays

- Force Majeure Delay

- Contract expressly authorizes extensions for force majeure delays (§4.2.2)
- 02/07/92: FPC agrees to a 180 day force majeure delay

- Routine Contract Administration and Performance

- 02/07/92: FPC acknowledges a typographical error in the contract



CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into as of [ MARCA 9 ], 1993, by and among FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), EL DORADO ENERGY COMPANY, a California corporation ("Assignor") and AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP, a Delaware limited partnership ("Assignee").

R E C I T A L S

WHEREAS, Assignor and FPC are parties to that certain Negotiated Contract for the Purchase of Firm Energy and Capacity From a Qualifying Facility, executed by FPC on March 18, 1991 and by Assignor on March 14, 1991 (the "Sale Contract"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Sale Contract);

WHEREAS, Assignor desires to assign all of the right, title and interest in, to and under, and to delegate all of the obligations, duties and liabilities arising under, the Sale Contract to Assignee pursuant to that certain Assumption and Release dated as of even date herewith (the "Assumption and Release");

WHEREAS, Article XXIII of the Sale Contract provides that Assignor may assign the obligations, benefits and duties under the Sale Contract with the written consent of FPC and FPC is willing to grant such written consent as set forth in this Consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FPC hereby agrees as follows:

1. Consent to Assignment. FPC hereby consents to the assignment of the Sale Contract by Assignor to Assignee pursuant to the terms and conditions of the Assumption and Release in the form attached.

2. Security Deposit. FPC agrees that the amount of \$1,038,000 transferred by Assignor to FPC pursuant to, and as security under, the Sale Contract plus accrued interest thereon shall now be held as security for Assignee in connection with the assignment of the Sale Contract by the Assignor to the Assignee under the Assumption and Release.

3. Contract Not Modified. Except as set forth in Section 4 of this Consent, neither the Assumption and Release nor

this Consent shall alter, waive or modify the Sale Contract, or FPC's rights under the Sale Contract.

4. Amendment to Sale Contract. FPC agrees that all references to Assignor in the Sale Contract shall be deemed to be references to Assignee and that Assignee shall be deemed to be the "QF" for purposes of the Sale Contract. Section 28.1 of the Sale Contract shall be amended to reflect that all notices and other communications by FPC to the QF under the Sale Contract shall be addressed to Assignee at the following address:

Auburndale Power Partners, Limited Partnership  
12500 Fair Lakes Circle, Suite 420  
Fairfax, Virginia 22033  
Phone: (703) 222-0445  
Facsimile: (703) 222-0516  
Attention: Executive Director

5. Representations and Warranties. Assignee represents and warrants to FPC that it possesses all necessary partnership power and authority to enter into and perform, in the State of Florida and elsewhere, the obligations under the Sale Contract.

6. Governing Law. This Consent shall be governed by, and construed in accordance with, the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their officers duly authorized as of the date first above written.

Attest

Robert D. Dolan  
Name: ROBERT D DOLAN

FLORIDA POWER CORPORATION

By: Philip C. O'Leary  
Title: SENIOR VICE PRESIDENT



Attest

Christie Sunday  
Name:

EL DORADO ENERGY COMPANY (Assignor)

By: Robert D. Dolan  
Title: Vice President

CONSENT TO ASSIGNMENT

100617



Attest

AUBURNDALE POWER PARTNERS,  
LIMITED PARTNERSHIP (Assignee)  
By El Dorado Energy Company,  
Its General Partner

Name: Christie Sunday

By: Paul Clayton  
Title: Vice President

100618

CONSENT TO ASSIGNMENT



ASSUMPTION AND RELEASE

ASSUMPTION AND RELEASE dated as of [March 9], 1993 between EL DORADO ENERGY COMPANY, a California corporation ("El Dorado") and AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP, a Delaware limited partnership ("Auburndale").

W I T N E S S E T H:

WHEREAS, El Dorado and Florida Power Corporation, a Florida corporation ("FPC") are parties to that certain Negotiated Contract for the Purchase of Firm Energy and Capacity From a Qualifying Facility, executed by FPC on March 18, 1991 and by El Dorado on March 14, 1991 (the "Sale Contract"), pursuant to which FPC has agreed to purchase electricity to be generated by the Facility (such term is used herein as defined in the Sale Contract);

WHEREAS, El Dorado desires to assign all of its right, title and interest in the Facility arising under the Sale Contract and be released from all of its obligations, duties and liabilities arising under the Sale Contract;

WHEREAS, Auburndale has agreed to assume all of the obligations, duties and liabilities arising under the Sale Contract and succeed to all of the rights, title and interest of El Dorado in the Facility in, to and under the Sale Contract.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION I. ASSUMPTION.

1.01. As of the Effective Date (as hereinafter defined), Auburndale hereby agrees to, and shall, succeed to all of the rights, title and interest of El Dorado in the Facility in, to and under the Sale Contract and assume all of the obligations, duties and liabilities of El Dorado arising under the Sale Contract.

SECTION II. RELEASE.

2.01. As of the Effective Date, El Dorado is hereby released from all of its obligations, duties and liabilities arising under the Sale Contract.

100613

SECTION III. CONDITIONS TO EFFECTIVENESS.

3.01. The provisions of this Assumption and Release shall become effective on and as of the date (the "Effective Date") upon which:

- a. FPC shall have received counterparts of this Assumption and Release duly executed by each of the parties hereto; and
- b. FPC shall have received counterparts of the Consent to Assignment dated as of [ March 9 ], 1993 among FPC, El Dorado and Auburndale, duly executed by each of the parties thereto.

SECTION IV. REPRESENTATIONS AND WARRANTIES.

4.01. Each of El Dorado and Auburndale hereby represents and warrants (i) that it has full power and authority, and has taken all action necessary, to execute and deliver this Assumption and Release and any other documents required or permitted to be executed or delivered by it in connection with this Assumption and Release and to fulfill its obligations under, and to consummate the transactions contemplated by, this Assumption and Release, and no governmental authorizations or other authorizations are required in connection therewith and (ii) that this Assumption and Release constitutes the legal, valid and binding obligation of it enforceable against it in accordance with its terms.

SECTION V. MISCELLANEOUS.

5.01. ~~THIS ASSUMPTION AND RELEASE SHALL BE DEEMED TO BE A CONTRACTUAL OBLIGATION UNDER, AND SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.~~

5.02. This Assumption and Release shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that no party shall assign its rights hereunder without the prior written consent of both parties and any purported assignment, absent such consent, shall be void. No provision of this Assumption and Release may be amended, waived or otherwise modified except by an instrument in writing signed by each party hereto.

5.03. This Assumption and Release may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute one and the same instrument.

ASSUMPTION AND RELEASE

100614



IN WITNESS WHEREOF, the parties have caused this Assumption and Release to be executed and delivered by their duly authorized officers as of the date first above written.

EL DORADO ENERGY COMPANY

By:   
Title: Vice President 

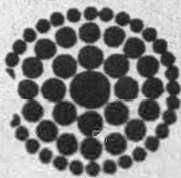
AUBURNDALE POWER PARTNERS,  
LIMITED PARTNERSHIP  
By El Dorado Energy Company,  
Its General Partner

By:   
Title: Vice President 

ASSUMPTION AND RELEASE

100615





**Florida  
Power**  
CORPORATION

February 7, 1992

Mr. Jerome L. Glazer  
El Dorado Energy Company  
12500 Fair Lakes Circle, Suite 420  
Fairfax, Virginia 22033

Dear Jerry:

This letter confirms your request for verification of the location of the Facility in Article 3.1 as Section 10 and for 15, Township 20S, Range 25E. We recognize Range 26E as a typographical error.

This letter also confirms your 37 Day Regulatory Delay and your 180 Day Force Majeure delay. The attached document will show confirmation of the following dates:

|                                |        |
|--------------------------------|--------|
| Transmission Service Agreement | 2-3-94 |
| Construction Commencement      | 7-6-93 |
| In-Service                     | 8-6-94 |

Please feel free to call me at 813/866-4525 with any questions you may have.

Sincerely,

Allen J. Honey  
Senior Cogeneration Engineer

AJH/kdh

cc: R. D. Dolan  
J. P. Farris

AJH/PJG:LL

100517

## SUMMARY

SUN BANK OF TAMPA BAY (04/05/89 Standard Offer contract  
-- "LFC Jefferson")

---

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (\$9.6)
- 06/14/89: FPC consents to Assignment to LFC No. 47 Corp.
- The LFC facility is located in Northern Florida which is further from the load than the Auburndale facility. In addition, as one of the earliest cogeneration facilities, service from the LFC facility is less reliable due to the nature of its interconnection

**FEDERAL EXPRESS**

June 14, 1989

Florida Power Corporation  
3201 34th Street South  
St. Petersburg, FL 33732

Attn: Robert D. Dolan  
Senior Cogeneration Engineer

Re: Jefferson Project

Dear Mr. Dolan:

Attached is a copy of an Assignment of Power Purchase Contract and  
Interconnection Agreement dated as of April 14, 1989 between San Bank  
of Tampa Bay and LFC No. 47 Corp.

Kindly acknowledge your receipt of this notice and signify your consent  
to this Assignment by signing the enclosed copy of this letter and  
returning it to us.

Very truly yours,

LFC No. 47 Corp.

By:

Henry A. Lyzjak  
Title: Vice President

:kb

**LFC FINANCIAL CORP**

Three Radnor Corporate Center, Suite 400  
Radnor, Pennsylvania 19087

Telephone: (215) 684-3600  
FAX: (215) 687-0170  
Telex: 52-4706

8.5

ACKNOWLEDGED AND CONSENTED TO:

FLORIDA POWER CORPORATION

By: [Signature]

Title: Senior Vice-President - Operations



101056



## SUMMARY

SUN BANK OF TAMPA BAY (04/05/87 Standard Offer contract  
== "LFC Madison")

---

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (\$9.6)
- 05/14/89: FPC consents to Assignment to LFC No. 47 Corp.
- The LFC facility was located in Northern Florida which is further from the load than the Auburndale facility. In addition, as one of the earliest cogeneration facilities, service from the LFC facility is less reliable due to the nature of its interconnection

**FEDERAL EXPRESS**

June 14, 1989

Florida Power Corporation  
3201 34th Street South  
St. Petersburg, FL 33733

Attn: Robert D. Dolan  
Senior Cogeneration Engineer

Re: Madison Project

Dear Mr. Dolan:

Attached is a copy of an Assignment of Power Purchase Contract and Interconnection Agreement dated as of April 14, 1989 between Sun Bank of Tampa Bay and LFC No. 47 Corp.

Kindly acknowledge your receipt of this notice and signify your consent to this Assignment by signing the enclosed copy of this letter and returning it to me.

Very truly yours,

LFC NO. 47 CORP.

By: [Signature]  
Barry M. Lyssak  
Title: Vice President

ikb

**LFC FINANCIAL CORP**

Three Radnor Corporate Center, Suite 400  
Radnor, Pennsylvania 19087

Telephone (215) 664-2000  
FAX (215) 627-0170  
Telex 63-4700

ACKNOWLEDGED AND COMMENTED TO:

FLORIDA POWER CORPORATION

[Signature]  
Title: Senior Vice-President - Operations



101069

## SUMMARY

### LAKE COGEN LIMITED (03/13/91 Negotiated contract)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 08/12/92: FPC consents to an Assignment to Citizens & Southern National Bank of Florida and TIFD III-C Inc. as security in connection w/financing

- Regulatory Delay

- Contract expressly authorizes extensions for regulatory delays (§4.2.1)
- 09/17/91: FPC agrees to a 37 day extension of commencement and commercial in-service date due to regulatory delays

- One-Time Change in Committed Capacity

- Contract expressly authorizes the cogenerator to change its committed capacity (§7.2)
- 06/27/94: Lake Cogen advises FPC that its committed capacity is changed to 110 MW

- Curtailement

- FPC and Lake Cogen have an informal agreement whereby, during off-peak hours, Lake Cogen will reduce its output as much as possible
  - FPC will not apply the Performance Adjustment during the off-peak hours that Lake Cogen curtails at FPC's request

- Routine Contract Administration and Performance

- 03/19/93: Change of address for Lake Cogen, Limited



### CONSENT AND AGREEMENT

This Consent and Agreement (the "Consent"), dated as of August , 1992, by and among The Citizens and Southern National Bank of Florida (together with its successors and assigns, the "Owner Trustee"), TIFD III-C Inc. (together with its successors and assigns, the "Collateral Agent"), Lake Cogen, Ltd., a Florida limited partnership (together with its successors and assigns, the "Borrower") and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

### W I T N E S S E T H :

WHEREAS, the Contracting Party and the Borrower have entered into a Negotiated Contract for the Purchase of Firm Capacity and Energy dated March 13, 1991 (as amended, modified or supplemented from time to time, the "Agreement");

WHEREAS, in order to finance the development, acquisition, construction, equipping and start-up of the Facility (as defined in the Agreement) and certain related expenditures, the Borrower has entered into, and will enter into, various agreements with the Owner Trustee and the Collateral Agent;

WHEREAS, as of the date of the execution of this Consent, the Borrower and the Collateral Agent are entering into a Security Agreement dated as of July 29, 1992, (as amended, modified or supplemented from time to time, the "Security Agreement"), pursuant to which the Borrower is pledging, assigning and transferring to the Collateral-Agent for the benefit of the secured parties, and granting to the Collateral Agent a lien on, among other things, all of the Borrower's right, title and interest in and to the Agreement;

WHEREAS, as of the Lease Commencement Date (as defined in the Participation Agreement referred to below), the Borrower will sell, convey, transfer and assign all of its right, title and interest in the Facility and certain other property and interests, including all of the Borrower's rights (but, except as otherwise expressly provided below, not its obligations) under the Agreement, to the Owner Trustee which assignment to the Owner Trustee will be evidenced by an Assignment of Certain Facility Contracts to be

dated as of the Lease Commencement Date which will be substantially in the form of Annex I attached hereto the ("Assignment");

WHEREAS, as of the Lease Commencement Date, the Owner Trustee will lease the Facility to the Borrower and assign the Owner Trustee's rights and interests in the Agreement to the Borrower for the Assignment Term (as defined in the Lease referred to below); and

WHEREAS, the Contracting Party is agreeable to consenting to such assignment of and lien on the Borrower's right, title and interest in the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Receipt of Security Agreement. The Contracting Party acknowledges receipt of a copy of the Security Agreement and the Participation Agreement, dated as of the date hereof, among the Borrower, the Owner Trustee, the Collateral Agent and General Electric Capital Corporation (including the form of Lease attached thereto).

Section 2. Assignment and Duties of the Borrower.  
(a) The Contracting Party acknowledges and consents to the collateral pledge and assignment by the Borrower to, and the creation by the Borrower of a lien in favor of, the Collateral Agent pursuant to the Security Agreement, of all of the right, title and interest of the Borrower in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Agreement, as security for the payment and performance of all or any part of the secured obligations.

(b) The Contracting Party acknowledges and consents to (i) the absolute transfer and assignment by the Borrower to the Owner Trustee pursuant to the Assignment and (ii) the reassignment by the Owner Trustee to the Borrower for the Assignment Term (as defined in the Lease), if and when the Lease Commencement Date shall occur, of all the right, title and interest of the Borrower in, to and under the Agreement.

(c) The Contracting Party acknowledges and consents to any collateral pledge or assignment from time to time effected by the Owner Trustee to, and the creation by the Owner Trustee of a lien in favor of, any person or entity (a "Leveraged Lease Person") of all of the right, title and interest of the Owner Trustee in, to and under the Agreement and this Consent, as security for the full payment and performance of any obligations of the Owner Trustee that are also secured by a collateral pledge or assignment of any



of the Owner Trustee's right, title and interest in, to and under the Lease.

(d) The Borrower hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Borrower under the Agreement.

Section 3. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Agreement has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and binding obligation of the Contracting Party enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified to do business in the State of Florida, the only jurisdiction in which the performance of its obligations under the Agreement makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Agreement.

(c) No Default. To the best knowledge of the Contracting Party, the Borrower is not in default under any material covenant or obligation under the Agreement, and no such default has occurred prior to the date hereof. The Contracting Party has duly performed and complied with all covenants, agreements and conditions contained in the Agreement, and, to the best knowledge of the Contracting Party, none of the Borrower's rights under the Agreement has been waived.

(d) Approvals. The only consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority required to be obtained by the Contracting Party after the date hereof in order for the Contracting Party to execute, deliver and perform its obligations under this Consent and the Agreement are those required in connection with the Interconnection Facilities (as defined in the Agreement).



(e) No Violation. The execution, delivery and performance of this Consent and the Agreement by the Contracting Party will not result in any violation of any applicable law, rule, statute or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse effect on the ability of the Contracting Party to perform its obligations under this Consent or the Agreement.

Section 4. Certain Cure Rights. (a) The Contracting Party agrees that it will not terminate or suspend the performance of its obligations under the Agreement without first giving the Owner Trustee and Collateral Agent notice as provided in paragraph 5(b) below. Notice of any such termination shall be given by the Contracting Party at least five business days prior to the proposed date of termination.

(b) Following receipt of a notice of termination pursuant to Section 4(a), the Owner Trustee or Collateral Agent shall have the right to an additional period of time not to exceed 120 days from receipt of such notice of termination to cure the Borrower's default under the Agreement on the terms set forth in this Section 4(b). Such additional cure time may be obtained by either the Owner Trustee or Collateral Agent in biweekly increments upon at least two business days' advance written notice to the Contracting Party prior to the date of termination identified in the termination notice (or prior to the end of the then current additional biweekly cure period, as the case may be). If either the Owner Trustee or Collateral Agent elects to acquire such additional biweekly cure period, either the Owner Trustee or Collateral Agent, as the case may be, shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Agreement (to the extent that replacement power is unavailable for any reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under the Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Agreement. "Lost Profits" shall mean the lost non-fuel revenues associated with the Contracting Party's unserved firm load that would have been served had the Facility (as defined in the Agreement) been operating in accordance with the terms and provisions of the Agreement. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable administrative and general expenses incurred

in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail and shall, upon request, be made available no more frequently than monthly to the Owner Trustee or Collateral Agent, as the case may be). Either the Owner Trustee or Collateral Agent, as the case may be, shall pay the Contracting Party biweekly in advance the Contracting Party's reasonable good faith estimate of the amount that will be owing by the Owner Trustee or Collateral Agent, as the case may be, in respect of such period of cure time pursuant to the foregoing provisions; at the end of each such cure period, the Contracting Party shall notify the Owner Trustee or Collateral Agent, as the case may be, if additional amounts are due (giving the Contracting Party's calculation of such amounts in reasonable detail), and the Owner Trustee or Collateral Agent, as the case may be, shall promptly pay such amounts or the Contracting Party shall rebate or credit against additional cure periods (if elected by the Owner Trustee or Collateral Agent, as the case may be) any excess amount previously paid. Each of the Owner Trustee or the Collateral Agent, as the case may be, shall have the right but not the obligation to cure a default by the Borrower as provided herein.

Section 5. Notice. (a) The Contracting Party will deliver to the Collateral Agent in a timely fashion copies of all material notices it delivers to the Borrower under the Agreement (including all notices of the occurrence of any default under the Agreement (and, in the case of monetary defaults, the amount of such default) but excluding day-to-day operational notices that are delivered to the Borrower in the ordinary course). The costs associated with the delivery of all such notices shall be paid by the Borrower.

(b) Notices to the Collateral Agent hereunder may be given by hand delivery, by means of an independent commercial overnight courier, by tested or otherwise authenticated telex, telecopy or facsimile or by registered or certified mail, postage prepaid, return receipt requested. Notice to any party hereto shall be deemed to be delivered on the earlier of (a) the date of personal delivery or (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or deposited with an independent commercial overnight courier in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, in each case as evidenced by the return receipt. Notices hereunder shall be delivered to the following entities at the following addresses:

100912



The Collateral Agent:

TIFD III-C Inc.  
c/o General Electric Capital  
Corporation  
Transportation and Industrial  
Funding Division  
1600 Summer Street, 6th Floor  
Stamford, Connecticut 06927  
Attention: Manager - Energy  
Portfolio  
Administration and  
Managing Counsel

with a copy to:

Susan Webster, Esq.  
Cravath, Swaine & Moore  
825 Eighth Avenue  
New York, New York 10019

The Borrower:

Lake Cogen, Ltd.  
c/o North Canadian Power  
Incorporated  
1100 Town & Country Road  
Suite 800  
Orange, California 92668  
Attention: Greg B. Lawyer

The Owner Trustee:

The Citizens and Southern National  
Bank of Florida  
c/o NationsBank of Georgia, N.A.  
600 Peachtree Street, N.E.  
Suite 900  
Atlanta, Georgia 30308  
Attention: Leveraged Lease  
Administration

The Contracting Party:

Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Attention: Manager, Cogeneration  
Contracts and  
Administration

Section 6. Bankruptcy. Subject to the receipt of any required regulatory or judicial approvals, in the event that (i) the Agreement is rejected by a debtor in possession or a trustee in bankruptcy in any bankruptcy or insolvency proceeding involving the Borrower, and (ii) the Collateral Agent, Owner Trustee or a successor in interest is in possession and control of the Facility (as defined in the Agreement), then the Contracting Party shall, if requested by the Collateral Agent, Owner Trustee or such successor in interest, as the case may be, within thirty (30) days after the conditions set forth in the foregoing clauses (i)

100913



and (ii) are satisfied (provided, that the Collateral Agent, Owner Trustee or such successor in interest shall have undertaken and certified in writing to the Contracting Party that (subject to the second sentence of Section 7(a) below) it will cure all defaults then existing under the Agreement (including the payment of damages for defaults that cannot be cured) and perform all of the obligations of the Borrower as specified in the Agreement), execute and deliver to the Collateral Agent, Owner Trustee or its successor in interest, as the case may be, a new agreement (the "New Agreement") to be in effect (x) for the remainder of the term of the original Agreement and (y) with substantially the same terms as those contained in the original Agreement. References in this Consent to the "Agreement" shall be deemed also to refer to the New Agreement.

Section 7. Obligations. (a) Except as expressly provided below, neither the Owner Trustee, Collateral Agent, nor any secured party shall have any obligation to the Contracting Party for the performance of any obligations under the Agreement; provided, however, that if any of such parties shall elect to assume the obligations of the Borrower under the Agreement, such parties must first provide written notice thereof to the Contracting Party, and such parties must comply in all respects with paragraphs (b) and (c) below. If the Owner Trustee, Collateral Agent or any successor in interest or designee shall assume the Agreement, liability in respect of any and all obligations thereunder shall be limited solely to such party's interest in the Facility following the assumption of liability under the Agreement (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto). The Contracting Party agrees that it will accept performance by the Owner Trustee, Collateral Agent or any successor in interest or assigns or designees of the obligations of the Borrower under and in accordance with the Agreement. After the Owner Trustee, Collateral Agent or any successor in interest shall give the Contracting Party notice that an Event of Default (as defined in Appendix A to the Participation Agreement) exists and that it or a successor in interest is exercising its rights upon the occurrence of such an event, the Contracting Party agrees that the Owner Trustee, Collateral Agent or any successor in interest shall have the right to enforce directly against the Contracting Party all obligations of the Contracting Party under the Agreement and otherwise to exercise all rights and remedies of the Borrower thereunder.

(b) If, after the exercise of its remedies under the Security Agreement, the Owner Trustee or Collateral Agent intends to take ongoing advantage of the Agreement and to operate the Facility (as defined in the Agreement), then the Owner Trustee and/or Collateral Agent, as the case may be, shall provide the Contracting Party with written notice thereof prior to undertaking such operation. In such event, either or both of the Owner Trustee

and Collateral Agent, as the case may be, agrees that in the event that one or the other or both of such parties operates the Facility (as defined in the Agreement) directly, or indirectly through an agent or through a subsidiary, affiliate, or other entity in which one or more of such parties holds an ownership interest (provided, that the foregoing shall not include operation by a court appointed receiver or similar person during the pendency of foreclosure or similar proceedings), the Owner Trustee and/or Collateral Agent (or such subsidiary, affiliate or other entity, as aforesaid), as the case may be, shall (subject to the second sentence of Section 7(a) above) assume each and every duty and obligation of the Borrower arising out of or in connection with the Agreement, including but not limited to each and every such duty and obligation arising prior to the date of such assumption.

(c) The parties acknowledge and agree that operation of the Facility (as defined in the Agreement) must at all times be in the hands of a competent operator. In the event of a foreclosure or similar proceeding, including the appointment of a receiver, each of the Owner Trustee and Collateral Agent agrees to seek the appointment by the court of such a competent operator.

Section 8. Payments to Lenders. (a) The Contracting Party has been informed that all revenues derived from the Facility are to be deposited with the Escrow Agent (as designated by the Collateral Agent) for disbursement by the Escrow Agent in accordance with the provisions of the Escrow Agreement, and the Contracting Party hereby agrees to make all payments required to be made by it to the Borrower pursuant to the Agreement by wire transfer to the Escrow Agent at ABA account number 061000052, reference account 3060 at The Citizens and Southern National Bank of Florida, c/o NationsBank of Georgia, N.A., Attention: David Dawes, or at such other account as the Collateral Agent shall reasonably from time to time notify the Contracting Party. All parties hereto agree that the deposit with the Escrow Agent of amounts due to the Borrower from the Contracting Party under the Agreement shall satisfy the Contracting Party's payment obligations under the Agreement.

(b) To the extent provided by law or under the terms of the Agreement, each of the parties hereto agrees that the Contracting Party shall have the right to set off or deduct from payments due to the Borrower each and every amount due the Contracting Party arising out of or in connection with the Agreement.

Section 9. Restriction on Further Assignment. Subject to Section 2 hereof, each of the Owner Trustee and Collateral Agent



hereby agree that it will not assign its rights, title or interest in and to the Agreement without the prior written consent of the Contracting Party, which consent shall not be unreasonably withheld; provided, that the Owner Trustee and Collateral Agent each shall be entitled to assign the Agreement to a successor functioning in the respective same capacities; provided, however, that in each such case, such a successor Owner Trustee or Collateral Agent, as the case may be, shall be a bank or trust company organized under the laws of the United States or any political subdivision thereof having a combined capital and surplus of at least \$100,000,000 and willing, and legally qualified, to perform the duties of the Owner Trustee or Collateral Agent, as the case may be, upon reasonable and customary terms. In the event of any such transfer reasonably consented to by the Contracting Party, the Contracting Party agrees to negotiate in good faith a consent to assignment of the Agreement by such transferee to its financing parties (which consent may be substantially in the form of this Consent).

Section 10. Amendments to Agreement. (a) Until the date on which the Borrower purchases the Facility from the Owner Trustee, the Contracting Party will not, without the prior written consent of the Collateral Agent, agree to any amendment to or modification of the Agreement that materially adversely affects the interests of the Collateral Agent, Owner Trustee or the Facility of the Agreement; provided, however, that the Collateral Agent's consent for the Contracting Party to enter into any amendment or modification requiring such consent shall be deemed given if the Collateral Agent has not given notice to the Contracting Party of objection to such action within ten (10) business days after receipt of notice from the Contracting Party of such proposed action (provided that such notice from the Contracting Party states that the Collateral Agent's consent will be deemed given if such notice of objection has not been given within such period).

(b) This Consent and Agreement is neither a modification of nor an amendment to the Agreement.

Section 11. Non-Party. The Contracting Party is not a party to and has no obligation under any of the documents referenced herein other than those which it has signed.

Section 12. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 13. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

100916



Section 14. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.

Section 15. Governing Law. This Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

FLORIDA POWER CORPORATION

By \_\_\_\_\_  
Wallace L. Barron, Jr.  
Vice President, Customer  
and Energy Management Services

Acknowledged and Agreed this  
12<sup>th</sup> day of ~~July~~ 1992

THE CITIZENS ~~AND~~ SOUTHERN NATIONAL  
BANK OF FLORIDA

By \_\_\_\_\_  
Name: Howard Shellkopf  
Title: Vice President

TIFD III-C Inc.

By \_\_\_\_\_  
Name: John A. Urquhart, Jr.  
Title: Vice President

LAKE COGEN, LTD.

By NCP Lake Power Incorporated.  
GADAKAL PAKSONE

By \_\_\_\_\_  
Name: Kenneth M. Ross  
Title: Vice President

100917

Section 14. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.

Section 15. Governing Law. This Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

FLORIDA POWER CORPORATION

By Wallace L. Barron, Jr.  
Wallace L. Barron, Jr.  
Vice President, Customer  
and Energy Management Services

Acknowledged and Agreed this  
day of July, 1992

THE CITIZENS AND SOUTHERN NATIONAL  
BANK OF FLORIDA

By \_\_\_\_\_  
Name:  
Title:

TIFD III-C Inc.

By \_\_\_\_\_  
Name:  
Title:

LAKE COGEN, LTD.

By NCP Lake Power Incorporated.  
General Partner

By \_\_\_\_\_  
Name:  
Title:



100918



**Florida  
Power**  
CORPORATION

September 17, 1991

Mr. Elliott E. White  
Lake Cogen Limited  
PO Box 2562  
Tampa, Fla. 33601

Dear Elliott:

The following items are confirmed as referenced in Jim Clements letters dated September 12 and 13 to Robert Dolan and myself:

1. The "Construction Commencement Date" now becomes February 6, 1992 due to the requested 37 day regulatory delay.
2. The "Contract In-Service Date" now becomes September 6, 1993 due to the requested 37 day regulatory delay.
3. The "Voltage Delivery Adjustment" referenced in 9.2 will apply to the Performance Adjustment as it is part of the energy payment.
4. A review of the specific conditions surrounding your future facility indicates a .85 lagging to a .92 leading power factor at the metering point will be acceptable.

Nothing in this letter should be interpreted as a change in the contract.

Please call me at 813/866-4523 with any questions you may have.

Sincerely,



Allen J. Honey  
Senior Cogeneration Engineer

AJH/kdh

cc: J. R. Clements  
R. D. Dolan

ADP/CHM/ST

100920



**LAKE COGEN, LTD.**

**NCP LAKE POWER, INC., GENERAL PARTNER**

June 27, 1994

Mr. Robert D. Dolan  
Manager, Cogeneration Contracts & Administration  
Florida Power Corporation  
3201 34th Street South  
St. Petersburg, Florida 33711

RE: **LAKE COGEN, LTD. COMMITTED CAPACITY INCREASE**

Dear Mr. Dolan:

In accordance with Section 7.2 of the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Lake Cogen Limited and Florida Power Corporation (the Agreement), this letter serves as notice to Florida Power Corporation that the Committed Capacity for the Lake Cogeneration facility is increased to 110 MW to be effective on June 30, 1994. This change in Committed Capacity is being made within one year after the Contract In-Service Date as allowed by the Agreement. For billing purposes, the redesignated Committed Capacity of 110 MW will become effective on the commencement of the next billing period which is July 1, 1994 as provided by Section 7.5 of the Agreement.

Very truly yours,

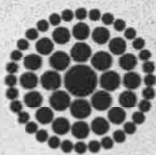
**LAKE COGEN, LTD.**  
by **NCP LAKE POWER INCORPORATED**  
General Partner  
by



Greg B. Lawyer  
Vice President - Business Management

~~SC~~ NORTH CANADIAN POWER, INC.  
1551 N. TUSTIN AVENUE  
SUITE 900  
SANTA ANA, CALIFORNIA 92701  
FAX (714) 867-7625  
TELEPHONE (714) 550-4300





**Florida  
Power**  
CORPORATION

August 12, 1993

Mr. Donald D. McKechnie  
President  
Lake Cogen, Ltd.  
c/o NCP Lake Power Incorporated  
1551 North Tustin Avenue, Suite 900  
Santa Ana, CA. 92701

RE: Negotiated Contract For the Purchase of Firm Capacity and Energy from a  
Qualifying Facility between Lake Cogen Limited and Florida Power Corporation  
dated March 13, 1991

Dear Mr. McKechnie:

During the off-peak hours that Lake Cogen Limited curtails their output at Florida Power Corporation's (FPC) request, FPC shall waive the application of the Performance Adjustment. FPC does not waive any other rights under our contract or our right to pursue remedies under Florida Public Service Commission (FPSC) Rule 25-17.086.

Sincerely,

Robert D. Dolan  
Manager, Cogeneration Contracts & Administration

cc: M.B.Foley Jr.  
J.P.Fama

DWG #226x211r



100905



# **NCP LAKE POWER INCORPORATED**

a subsidiary of  
**NORTH CANADIAN POWER**

March 19, 1993

Mr. Robert D. Dolan  
Manager, Cogeneration Contracts and Administration  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733

RE: Lake Cogen, Ltd. Documents - Notice of Address Change, Lake Cogen, Ltd., North Canadian Power, Inc., and related organizations

Dear Mr. Dolan:

In accordance with various Lake Cogen, Ltd. documents, notice is hereby provided that effective March 15, 1993, Lake Cogen, Ltd., North Canadian Power and related organizations have moved to the address shown at the bottom of this page.

The documents which involve Florida Power Corporation are:

1. **POWER PURCHASE AGREEMENT:**

In Appendix B, change address of the QF (Lake Cogen, Ltd.).

In APPENDIX B, PARALLEL OPERATING PROCEDURES, Paragraph 5.1 add to the QF section to read:

Name: Lake Cogen, Ltd, Keith Trostle  
Title: Senior Asset Manager  
Telephone: (714) 550-4312  
Telecopier: (714) 667-7852

2. **FLORIDA POWER CONSENT AND AGREEMENT:**

In Appendix B, change address of Borrower (Lake Cogen, Ltd.).

Please call if there are any questions.

Sincerely:

For: Lake Cogen, Ltd., A Florida Limited Partnership  
By: NCP Lake Power Incorporated, Its General Partner

By:



Keith Trostle

Its: Senior Asset Manager

100919





## SUMMARY

NRG RECOVERY GROUP (10/12/88 Standard Offer contract  
-- Lake County)

---

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (\$9.6)
- 11/09/88: FPC consents to Assignment to Ogden Martin Systems of Lake County, Inc.
- 11/09/88: FPC consents to an Assignment to National Westminster Bank PLC and Southeast Bank as security in connection w/financing

- One-Time Change in Committed Capacity

- ~~Contract expressly authorizes the~~ cogenerator to change its committed capacity (\$4.2.2)
- 04/01/93: FPC agrees to a change in committed capacity from 10.25 to 12.75 MW

CONSENT TO ASSIGNMENT



This Consent to Assignment is given by FLORIDA POWER CORPORATION, a Florida corporation ("FPC"), as of November 9, 1988, under the terms set forth herein, with respect to the assignment under the terms set forth herein, of (i) the Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility dated as of October 12, 1988; (ii) the Interconnection Agreement dated as of October 12, 1988; and (iii) the Letter Agreement dated October 12, 1988 (relating to possible modifications of the Standard Offer Contract in certain circumstances), each of which agreements is entered into between FPC and NRG Recovery Group, Inc., a Florida corporation ("Old NRG"). Collectively, the agreements referenced in (i) through (iii) above are referred to hereafter as the "Sale Contract."

1. Consent to Absolute Assignment. FPC hereby consents to the assignment of the Sale Contract by Old NRG, absolutely, to F. Browne Gregg, and by F. Browne Gregg, absolutely, to Ogden Martin Systems of Lake County, Inc., a Florida corporation ("OMSL"). FPC acknowledges that OMSL may subsequently change its corporate name to "NRG/Recovery Group, Inc." Both of such assignments are collectively referred to hereafter as the "Absolute Assignments."

2. Consent to Security Assignment. FPC hereby consents to the assignment of the Sale Contract, as security,

in connection with the financing of the Facility (hereafter referred to as the "Security Assignment") to the parties to the financing listed in Schedule I hereto (the "Financing Parties").

3. Contract Not Modified. The Absolute Assignments and the Security Assignment do not alter, waive or modify in any respect whatsoever, the Sale Contract or FPC's rights under the Sale Contract or its rights against OMSL or any future assignee or assignor of the Sale Contract.

4. No Default. FPC agrees and acknowledges that no assignment under Sections 1 and 2 shall constitute a breach of any provision of or a default under the Sale Contract.

5. Payments. FPC shall make all payments due from it to the QF (as defined in the Sale Contract) under the Sale Contract to the person designated in writing by the QF, which writing may be irrevocable except by a revocation joined in by the designated payee.

6. Notices. FPC agrees to provide to the Financing Parties copies of any notice sent by FPC to the QF pursuant to the Sale Contract contemporaneously with sending such notice to the QF. FPC shall endeavor in good faith to provide notice to the Financing Parties of termination of the Sale Contract 30 days prior to any intended termination date or such lesser prior notice as may be reasonable under the circumstances. However, failure to provide any notice





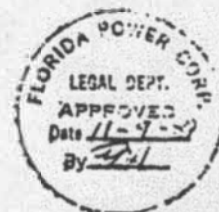
provided for in this Section 6 shall not affect FPC's rights under the Sale Contract and the QF shall not have any right of action against FPC therefor. Notices pursuant to this Consent to Assignment shall be given in the manner specified in the Sale Contract, to the persons and at the addresses specified herein or as otherwise specified by written notice from any such person.

7. Representations and Warranties. FPC represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Florida with all corporate power and authority to enter into and perform the Sale Contract and this Consent to Assignment;

(b) it has duly executed and delivered the Sale Contract and this Consent to Assignment; and

(c) to the best of FPC's knowledge, neither its execution and delivery of the Sale Contract or this Consent to Assignment nor its consummation of the transactions contemplated hereby or thereby nor its compliance with any of the terms and provisions hereof or thereof does nor will require any approval of its stockholders or approval or consent of any trustee or holders of any of its indebtedness or obligations.



8. Severability. If any provision of this Consent to Assignment shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. Governing Law. This Consent to Assignment shall be governed by and construed in accordance with the internal laws of the State of Florida.

10. Headings. The headings hereof are for convenience only and are not intended to affect the meaning or interpretation of this Consent to Assignment.

IN WITNESS WHEREOF, the undersigned has caused this Consent to Assignment to be duly executed by its officer thereunto duly authorized as of the day and year first above written.

FLORIDA POWER CORPORATION

by: *[Signature]*  
Title: \_\_\_\_\_

Address  
for Notices:

Attest:

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



0531d

SCHEDULE I TO  
CONSENT TO ASSIGNMENT  
OF FLORIDA POWER CORPORATION

PARTIES TO WHOM REFERENCE  
IS MADE IN CONSENT TO ASSIGNMENT

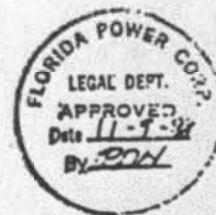
1. National Westminster Bank PLC  
New York Branch  
175 Water Street  
New York, New York 10038-4924

Attention: Manager's Department

2. Southeast Bank, National Association  
One Southeast Financial Center  
Miami, Florida 33131

Attention: Corporate Trust Department

The foregoing addresses may be changed upon written notice to Florida Power Corporation at its address specified in the Consent to Assignment.





SCHEDULE II  
FORM OF NOTICE

TO: Florida Power Corporation

Dear \_\_\_\_\_ :

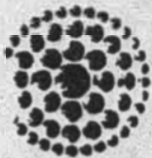
Ogden Martin Systems, Inc. ("OMSL") as the QF under the Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility between OMSL and Florida Power Corporation ("FPC") dated as of October 12, 1988. assigned to OMSL pursuant to the Consent to Assignment by FPC dated as of November \_\_\_\_\_, 1988, hereby notifies FPC Pursuant to Section 5 of such Consent to Assignment that all payments due to OMSL as the QF under such Standard Offer Contract should be made by FPC to Southeast Bank, A National Association, Trustee, [address], attention of \_\_\_\_\_ (NRG Resource Recovery Facility Project). This notice shall be irrevocable except by a revocation jointly signed by the QF and the Trustee and National Bank of Westminster, PLC, New York Branch.

Sincerely,

[OMSL officer]

0531d





**Florida  
Power**  
CORPORATION

April 1, 1993

Mr. Kyle Garrett  
Manager of Facility Administration  
Ogden Martin Systems of Lake County  
3830 Rogers Industrial Park Road  
Ocala, Fla. 34762

Dear Mr. Garrett:

Florida Power Corporation is in receipt of your letter dated December 17, 1992, specifying a change in your committed capacity as permitted in Section 4.2.2 of our Power Purchase Agreement. This letter serves as notice that the committed capacity in subsection 4.2.1 of the Agreement is hereby amended to 12.750 MW.

Sincerely,

Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. P. Fama  
A. Haines  
R. E. Henderson

RDD:#garrett.kf

101014

GENERAL OFFICE

## SUMMARY

### ORLANDO COGEN LIMITED (03/13/91 Negotiated contract)

- Assignments

- Contract expressly authorizes FPC to consent to assignments of obligations, benefits & duties (Art. XXIII)
- 09/29/92: FPC consents to an Assignment to The Sumitomo Bank, Ltd., as security in connection w/financing

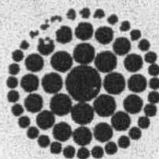
- Regulatory Delay

- Contract expressly authorizes extensions for regulatory delays (§4.2.1)
- 12/13/91: FPC agrees to a 37 day extension of commencement and commercial in-service date due to regulatory delays

- Clarification

- FPC agrees with OCL and Reedy Creek (with whom OCL has a dispatchable contract) that, to the extent Reedy Creek exercises its dispatch rights, FPC will not be required to take power above its committed capacity





**Florida  
Power**  
CORPORATION

September 29, 1992

Mr. Roger Yott  
Orlando CoGen Limited L.P.  
c/o Air Products & Chemicals  
7201 Hamilton Blvd.  
Allentown, PA 18195-1501

The Sumitomo Bank, Limited  
New York Branch, As Collateral Agent  
One World Trade Center  
New York, NY 10048

Dear Mr. Yott:

**RE: Assignment of Orlando Cogen Limited L.P. Contract for Financing**

Enclosed is eight copies of the Consent and Agreement required by your potential lender with Sumitomo Bank the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Agreement) dated March 13, 1991 between Orlando CoGen Limited L.P. (OCL) and Florida Power Corporation (Company) executed by the Company. Please return one signed original. Also enclosed is the Opinion of Counsel requested from James P. Fama, Senior Counsel and a letter regarding Qualifying Facility Status. It is our understanding that your new financial closing date will be on September 29, 1992.

With respect to your request, this letter is intended to clarify certain provisions of the Agreement. The Company confirms the following:

(a) The Facility is located south of the latitude of the Central Florida Substation of the Company and, consequently, Article II of the Agreement is not applicable to the Facility.

(b) The geographic location of the Facility satisfies the requirements of Section 3.1 of the Agreement.

(c) The Construction Commencement Date (as defined in the Agreement) has been achieved.

(d) The letter of credit delivered by or on behalf of OCL to the Company satisfy the Completion Security Guaranty requirement set forth in Section 13.1 of the Agreement.

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(e) The delivery by OCL to the Company on the date upon which the Facility achieves Commercial In-Service Status of a letter of credit in the form enclosed will satisfy the Operational Security Guaranty requirement set forth in Section 13.2 of the Agreement provided that the issuer of such letter of credit is acceptable to the Company.

(f) The Company has granted OCL a 37 day delay in the Construction Commencement Date and the Commercial In-Service Date to October 8, 1992 and February 7, 1994 respectively due to the 37 day delay in regulatory approval of the Agreement.

(g) The Delivery Voltage Adjustment applies to the entire energy payment including the Performance Adjustment.

(h) The Company will only require OCL to operate the Facility at power factors of .9 leading to .9 lagging.

(i) The Company will use its best efforts to complete the construction, installation and testing of the Company's Interconnection Facilities (as defined in the Agreement) on or before May 3, 1993.

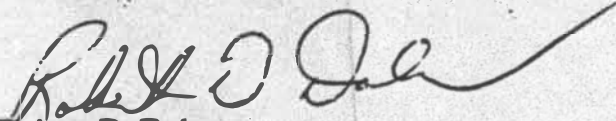
(j) If OCL elects to increase the initial Committed Capacity by the full ten percent under as provided for in Section 7.2 of the Agreement, the revised Committed Capacity will be 79,200 KW.

(k) The Point of Delivery and Point of Metering, as defined in the Agreement, will be at the Company's 69 KV Parkway Substation.

(l) The Point of Ownership, as defined in the Agreement, will be at the 69 KV terminal structure of the OCL Substation.

The Company will deliver to OCL a duly executed blanket resale certificate in the form described in Florida Administrative Code Rule 12A-1.039.

FLORIDA POWER CORPORATION

  
Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. Sturgis  
J. P. Fama  
M. B. Foley, Jr.

RDD:shyout111

101286



FLORIDA POWER CORPORATION

CONSENT AND AGREEMENT

This Consent and Agreement (the "Consent"), dated as of September 29, 1992, by and among The Sumitomo Bank, Limited, as agent (together with its successors and assigns, the "Collateral Agent"), Orlando CoGen Limited, L.P., a Delaware limited partnership (together with its successors and assigns, the "Borrower") and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

**W I T N E S S E T H :**

WHEREAS, the Contracting Party and the Borrower have entered into a Negotiated Contract for the Purchase of Firm Capacity and Energy dated March 13, 1991 (as amended, modified or supplemented from time to time, the "Agreement");

WHEREAS, in order to finance the development, acquisition, construction, equipping and start-up of the Facility (as defined in the Agreement) and certain related expenditures, the Borrower has entered into, and will enter into, various agreements with the Collateral Agent;

WHEREAS, as of the date of the execution of this Consent, the Borrower and the Collateral Agent are entering into an Assignment and Security Agreement dated as of the date hereof (as amended, modified or supplemented from time to time, the "Security Agreement"), pursuant to which the Borrower is pledging, assigning and transferring to the Collateral Agent for the benefit of the secured parties, and granting to the Collateral Agent a lien on, among other things, all of the Borrower's right, title and interest in and to the Agreement;

WHEREAS, the Contracting Party is agreeable to consenting to such assignment of and lien on the Borrower's right, title and interest in the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Receipt of Security Agreement. The Contracting Party acknowledges receipt of a copy of the Security Agreement.

Section 2. Assignment and Duties of the Borrower.  
(a) The Contracting Party acknowledges and consents to the



collateral pledge and assignment by the Borrower to, and the creation by the Borrower of a lien in favor of, the Collateral Agent pursuant to the Security Agreement, of all of the right, title and interest of the Borrower in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Agreement, as security for the payment and performance of all or any part of the secured obligations.

(b) The Borrower hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Borrower under the Agreement.

Section 3. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Agreement has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and binding obligation of the Contracting Party enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified to do business in the State of Florida, the only jurisdiction in which the performance of its obligations under the Agreement makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Agreement.

(c) No Default. To the best knowledge of the Contracting Party, the Borrower is not in default under any material covenant or obligation under the Agreement, and no such default has occurred prior to the date hereof. The Contracting Party has duly performed and complied with all covenants, agreements and conditions contained in the Agreement, and, to the best knowledge of the Contracting Party, none of the Borrower's rights under the Agreement has been waived.

(d) Approvals. The only consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority required to be obtained by the Contracting Party after the date hereof in order for

the Contracting Party to execute, deliver and perform its obligations under this Consent and the Agreement are those required in connection with the Interconnection Facilities (as defined in the Agreement).

(e) No Violation. The execution, delivery and performance of this Consent and the Agreement by the Contracting Party will not result in any violation of any applicable law, rule, statute or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse effect on the ability of the Contracting Party to perform its obligations under this Consent or the Agreement.

Section 4. Certain Cure Rights. (a) The Contracting Party agrees that it will not terminate or suspend the performance of its obligations under the Agreement without first giving the Collateral Agent written notice as provided in paragraph 5(b) below. Notice of any such termination shall be given by the Contracting Party at least five business days prior to the proposed date of termination.

(b) Following receipt of a notice of termination pursuant to Section 4(a), the Collateral Agent shall have the right to an additional period of time not to exceed 120 days from receipt of such notice of termination to cure the Borrower's default under the Agreement on the terms set forth in this Section 4(b). Such additional cure time may be obtained by the Collateral Agent in biweekly increments upon at least two business days' advance written notice to the Contracting Party prior to the date of termination identified in the termination notice (or prior to the end of the then current additional biweekly cure period, as the case may be). If the Collateral Agent elects to acquire any such additional biweekly cure period, the Collateral Agent, as the case may be, shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Agreement (to the extent that replacement power is unavailable for any reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under the Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Agreement. "Lost Profits" shall mean the lost non-fuel revenues associated with the Contracting Party's unserved firm load that would have been served had the Facility (as defined in the



Agreement) been operating in accordance with the terms and provisions of the Agreement. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable administrative and general expenses incurred in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail and shall, upon request, be made available no more frequently than monthly to the Collateral Agent. The Collateral Agent shall pay the Contracting Party biweekly in advance the Contracting Party's reasonable good faith estimate of the amount that will be owing by the Collateral Agent in respect of such period of cure time pursuant to the foregoing provisions; at the end of each such cure period, the Contracting Party shall notify the Collateral Agent if additional amounts are due (giving the Contracting Party's calculation of such amounts in reasonable detail), and the Collateral Agent, shall promptly pay such amounts or the Contracting Party shall rebate or credit against additional cure periods (if elected by the Collateral Agent) any excess amount previously paid. The Collateral Agent shall have the right but not the obligation to cure a default by the Borrower as provided herein.

**Section 5. Notices.** (a) The Contracting Party will deliver to the Collateral Agent in a timely fashion copies of all material notices it delivers to the Borrower under the Agreement (including all notices of the occurrence of any default under the Agreement (and, in the case of monetary defaults, the amount of such default) but excluding day-to-day operational notices that are delivered to the Borrower in the ordinary course). The costs associated with the delivery of all such notices shall be paid by the Borrower.

(b) Notices to the Collateral Agent hereunder may be given by hand delivery, by means of an independent commercial overnight courier, by tested or otherwise authenticated telex, telecopy or facsimile or by registered or certified mail, postage prepaid, return receipt requested. Notice to any party hereto shall be deemed to be delivered on the earlier of (a) the date of personal delivery or (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or deposited with an independent commercial overnight courier in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, in each case as evidenced by the return receipt. Notices hereunder shall be delivered to the following entities at the following addresses:



**The Collateral Agent:**

The Sumitomo Bank, Limited,  
 New York Branch  
 One World Trade Center, Suite 9549  
 New York, New York 10048  
 Attn: \_\_\_\_\_

Telephone No.: \_\_\_\_\_  
 Telecopy No.: (212) 553-0118

**The Borrower:**

Orlando Cogen Limited, L.P.  
 c/o Air Products and Chemicals, Inc.  
 7201 Hamilton Boulevard  
 Allentown, PA 18195-1501  
 Attention: Corporate Secretary  
 Telecopy No.: (215) 481-5765

**The Contracting Party:**

Florida Power Corporation  
 P.O. Box 14042  
 St. Petersburg, Florida 33733  
 Attention: Manager, Cogeneration  
 Contracts and  
 Administration.

**Section 6. Bankruptcy.** Subject to the receipt of any required regulatory or judicial approvals, in the event that (i) the Agreement is rejected by a debtor-in-possession or a trustee in bankruptcy in any bankruptcy or insolvency proceeding involving the Borrower, and (ii) the Collateral Agent or a successor in interest is in possession and control of the Facility (as defined in the Agreement), then the Contracting Party shall, if requested by the Collateral Agent or such successor in interest, as the case may be, within thirty (30) days after the conditions set forth in the foregoing clauses (i) and (ii) are satisfied (provided, that the Collateral Agent or such successor in interest shall have undertaken and certified in writing to the Contracting Party that (subject to the second sentence or Section 7(a) below) it will cure all defaults then existing under the Agreement (including the payment of damages for defaults that cannot be cured) and perform all of the obligations of the Borrower as specified in the Agreement), execute and deliver to the Collateral Agent or its successor in interest, as the case may be, a new agreement (the "New Agreement") to be in effect (x) for the remainder of the term of the original Agreement and (y) with substantially the same terms as those contained in the original Agreement. References in this Consent to the "Agreement" shall be deemed also to refer to the New Agreement.

**Section 7. Obligations.** (a) Except as expressly provided below, neither the Collateral Agent, nor any secured party shall have any obligation to the Contracting Party for the performance of any obligations under the Agreement; provided, however, that if any of such parties shall elect to assume the obligations of the Borrower under the Agreement, such parties

must first provide written notice thereof to the Contracting Party, and such parties must comply in all respects with paragraphs (b) and (c) below. If the Collateral Agent or any successor in interest or designee shall assume the Agreement, liability in respect of any and all obligations thereunder shall be limited solely to such party's interest in the Facility following the assumption of liability under the Agreement (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto). The Contracting Party agrees that it will accept performance by the Collateral Agent or any successor in interest or assigns or designees of the obligations of the Borrower under and in accordance with the Agreement. After the Collateral Agent or any successor in interest shall give the Contracting Party notice that an Event of Default (as defined in the Credit Agreement referred to in the Security Agreement) exists and that it or a successor in interest is exercising its rights upon the occurrence of such an Event, the Contracting Party agrees that the Collateral Agent or any successor in interest shall have the right to enforce directly against the Contracting Party all obligations of the Contracting Party under the Agreement and otherwise to exercise all rights and remedies of the Borrower thereunder.

(b) If, after the exercise of its remedies under the Security Agreement, the Collateral Agent intends to take ongoing advantage of the Agreement and to operate the Facility (as defined in the Agreement), the Collateral Agent shall provide the Contracting Party with written notice thereof prior to undertaking such operation. In such event the Collateral Agent agrees that in the event that it operates the Facility (as defined in the Agreement) directly, or indirectly through an agent or through a subsidiary, affiliate, or other entity in which it holds an ownership interest (provided, that the foregoing shall not include operation by a court appointed receiver or similar person during the pendency of foreclosure or similar proceedings), the Collateral Agent (or such subsidiary, affiliate or other entity, as aforesaid), as the case may be, shall (subject to the second sentence of Section 7(a) above) assume each and every duty and obligation of the Borrower arising out of or in connection with the Agreement, including but not limited to each and every such duty and obligation arising prior to the date of such assumption.

(c) The parties acknowledge and agree that operation of the Facility (as defined in the Agreement) must at all times be in the hands of a competent operator. In the event of a foreclosure or similar proceeding, including the appointment of a receiver, the Collateral Agent agrees to seek the appointment by the court of such a competent operator.

Section 8. Payments to Lenders. (a) The Contracting Party has been informed that all revenues derived from the Facility are to be deposited with Sumitomo Bank of New York Trust Company, as agent for the Collateral Agent (such Bank,

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or such other institution designated by the Collateral Agent being herein called the Security Agent) for disbursement by the Security Agent in accordance with the provisions of the Security Deposit Agreement dated as of the date hereof, and the Contracting Party hereby agrees to make all payments required to be made by it to the Borrower pursuant to the Agreement by wire transfer to the Security Agent for deposit in the Orlando CoGen Revenue Account at One World Trade Center, New York, New York 10048, Suite 8505, Attention: John McFadden (212) 524-5400, or at such other account as the Collateral Agent shall reasonably from time to time notify the Contracting Party. All parties hereto agree that the deposit with the Security Agent of amounts due to the Borrower from the Contracting Party under the Agreement shall satisfy the Contracting Party's payment obligations under the Agreement.

(b) To the extent provided by law or under the terms of the Agreement, each of the parties hereto agrees that the Contracting Party shall have the right to set off or deduct from payments due to the Borrower each and every amount due the Contracting Party arising out of or in connection with the Agreement.

#### Section 9. Restriction on Further Assignment.

Subject to Section 2 hereof, the Collateral Agent hereby agrees that it will not assign its rights, title or interest in and to the Agreement without the prior written consent of the Contracting Party, which consent shall not be unreasonably withheld; provided, that the Collateral Agent shall be entitled to assign the Agreement to a successor functioning in the same capacity; provided, however, that in such case, such a successor Collateral Agent shall be a bank or trust company authorized to do business in the United States or any political subdivision thereof having a combined capital and surplus of at least \$100,000,000 (or its foreign currency equivalent) and willing, and legally qualified, to perform the duties of the Collateral Agent upon reasonable and customary terms. In the event of any such transfer reasonably consented to by the Contracting Party, the Contracting Party agrees to negotiate in good faith a consent to assignment of the Agreement by such transferee to its financing parties (which consent may be substantially in the form of this Consent).

#### Section 10. Amendments to Agreement.

(a) The Contracting Party will not, without the prior written consent of the Collateral Agent, agree to any amendment to or modification of the Agreement that is likely to materially adversely affect the Facility, the Borrower or the lenders represented by the Collateral Agent; provided, however, that the Collateral Agent's consent for the Contracting Party to enter into any amendment or modification



requiring such consent shall be deemed given if the Collateral Agent has not given notice to the Contracting Party of objection to such action within ten (10) business days after receipt of notice from the Contracting Party of such proposed action (provided that such notice from the Contracting Party states that the Collateral Agent's consent will be deemed given if such notice of objection has not been given within such period).

(b) This Consent and Agreement is neither a modification of nor an amendment to the Agreement.

Section 11. Non-Party. The Contracting Party is not a party to and has no obligation under any of the documents referenced herein other than those which it has signed.

Section 12. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 13. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

Section 14. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.

Section 15. Governing Law. This Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

FLORIDA POWER CORPORATION

By Wallace L. Barron

Name: WALLACE L. BARRON  
Title: VICE PRESIDENT



Acknowledged and Agreed as of the  
29th day of September 1992

THE SUMITOMO BANK, LIMITED,  
NEW YORK BRANCH, as Collateral Agent

By Yoshinori Kawamura

Name: YOSHINORI KAWAMURA

Title: JOINT GENERAL MANAGER

101293

ORLANDO COGEN LIMITED, L.P.

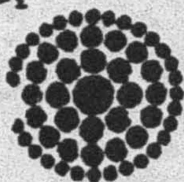
By Orlando CoGen (I), Inc.  
Managing General Partner

By 

Name: JOHN C. EVANS

Title: ASSISTANT TREASURER

101294



**Florida  
Power**  
CORPORATION

December 13, 1991

Mr. Roger Yott  
Orlando CoGen Limited L.P.  
c/o Air Products  
7201 Hamilton Blvd.  
Allentown, PA 18195

Dear Roger:

This letter confirms your request for the 37 day regulatory delay in your letter dated October 23, 1991. Pursuant to section 4.2 of your power sales agreement, the Construction Commencement Date and the Commercial In-Service Date will each be extended. These dates are October 8, 1992 and February 7, 1994 respectively.

Pursuant to your letter dated October 23, 1991, this letter confirms the application of the Delivery Voltage Adjustment to the entire energy payment. There appears to have been some confusion to the reference in 9.1.2 in the Contract for the Purchase of Firm Capacity and Energy on the application of this multiplier to the Performance Adjustment. The Performance Adjustment is part of the energy and will be multiplied by the Voltage Delivery Adjustment.

Your letter, involving Energy Payments should Crystal River 1 & 2 fail to burn the coal specified in the contract, was premature. The context surrounding such an event would have to be evaluated at that time to determine the most appropriate course of action. Please call me on 813/866-4523 with any questions you may have.

Sincerely,

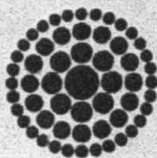
Allen J. Honey  
Senior Cogeneration Engineer

AJH/kdh

cc: R. D. Dolan  
J. P. Fama

101290





**Florida  
Power**  
CORPORATION

Wayne A. Hinman  
Orlando CoGen Limited, L.P.  
c/o Air Products and Chemicals, Inc.  
7201 Hamilton Blvd.  
Allentown, PA. 18195-1501

Thomas M. Moses  
Reedy Creek Improvement  
District  
1675 Buena Vista Dr.  
Lake Buena Vista, Fla. 32830

Re: Allocation Of Capacity And Energy From  
Orlando CoGen Limited's Qualifying Facility

Ladies and Gentlemen:

This Letter Agreement sets forth certain agreements among Florida Power Corporation, a Florida corporation ("FPC"), Orlando CoGen Limited, L.P., a Delaware limited partnership ("OCL") and Reedy Creek Improvement District, a public corporation organized under the laws of the State of Florida ("RCID") (collectively, "the Parties") concerning allocation of electric capacity and energy from OCL's cogeneration facility being constructed pursuant to the "Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility" dated March 13, 1991 between FPC and OCL (the "FPC Contract").

OCL is constructing a cogeneration facility (the "Facility") having a net generating capacity of approximately 115 megawatts ("MW"), a portion of which capacity has been committed to FPC for the duration of the FPC Contract. In a separate "Firm Power Purchase Agreement" dated December 10, 1991 between OCL and RCID (the "RCID Contract"), OCL also has agreed to sell a portion of the capacity and energy from the Facility to RCID. The Facility is expected to be in commercial service on or before October, 1993. The Facility will be located within FPC's service territory and will be electrically interconnected directly to FPC's transmission system in accordance with the terms of the FPC Contract. Because the Facility will not be directly interconnected with RCID's system, RCID desires to have FPC transmit capacity and energy associated with RCID's capacity entitlement to RCID's existing or future points of transmission interconnection with FPC. The RCID Contract provides RCID with certain dispatch rights associated with its capacity purchase from OCL, which allows, among other things, RCID to curtail up to all of the associated energy deliveries.

FPC currently provides partial requirements and transmission services to RCID pursuant to the September 15, 1989 Agreement For Partial Requirements Resale Service And Transmission/Distribution Service ("PR and Transmission Contract"). This Letter Agreement recognizes that under the PR and Transmission Contract the RCID Contract will be a District Resource, as defined in the PR and Transmission Contract. This Letter Agreement does not amend the rates and charges or terms and conditions provided under the PR and Transmission Contract.

The Parties agree that it is necessary to enter into this Letter Agreement to calculate RCID's energy deliveries separately for each hour, and for RCID to provide FPC with advance notice of hourly dispatch levels.

In consideration of the mutual understandings and agreements set forth herein, OCL, RCID and FPC agree as follows:

1. **TERM**

This Letter Agreement will become effective upon execution by all Parties hereto; provided however, that the Parties' obligations to allocate capacity and energy and make available to RCID their share hereunder shall not begin prior to the date on which this Letter Agreement is allowed to become effective by the Federal Energy Regulatory Commission ("FERC") without any material change or additional conditions.

The Term will continue until 31 December 2013, and year to year thereafter unless and until

- (a) this Letter Agreement is terminated in accordance with its terms or otherwise upon written agreement between OCL and RCID, or
- (b) the RCID Contract, the FPC Contract, or the PR and Transmission Contract, is cancelled or terminated for any reason, or
- (c) at RCID's option, if RCID were to interconnect other than through FPC.

2. **CALCULATION OF ENERGY DELIVERIES**

The following obligations to calculate energy and capacity deliveries to the Parties shall arise upon the date OCL first delivers energy to RCID under the RCID Contract in accordance with this Agreement.

- 2.1 At least forty (40) minutes prior to each hour in which OCL expects to deliver energy to the FPC "Point of Delivery" (as defined in the FPC Contract), OCL will specify to FPC and RCID the level of projected net



output expected to be delivered from the Facility (as defined as "Projected GEN" in Attachment A) and the amount of turnback (as defined as "PTB" in Attachment A hereto) that OCL is willing to provide in response to RCID's Declined Energy (as defined in Attachment A hereto). At least thirty (30) minutes prior to each hour, RCID will specify to FPC and OCL the level of RCID's Declined Energy. Based on the Projected GEN, PTB, and the Declined Energy, FPC will calculate the MWH share of Projected GEN to be (i) retained by FPC (the "FPC Share" as defined in Attachment A hereto), and (ii) available for delivery to RCID (the "RCID Share" as defined in Attachment A hereto).

- 2.2 The parties recognize that in any hour the actual net energy delivered from the Facility to the FPC Point of Delivery (metered by FPC and defined as "Actual GEN" in Attachment B) can differ from Projected GEN. Except as provided in Section 3.1 during each hour in which OCL is delivering energy to the FPC Point of Delivery, FPC will purchase FPC Actual (determined according to Attachment B) to the extent required by and pursuant to the terms and conditions of the FPC Contract, and RCID will purchase RCID Actual (determined according to Attachment B) to the extent required by and pursuant to the terms and conditions of the RCID Contract. RCID acknowledges that it will be responsible for obtaining energy from alternative sources to compensate for OCL's failure to deliver any portion of the RCID Share. FPC will have no obligation to RCID to make up for or to deliver any shortfalls in the RCID Share that may occur for any reason, including a difference between Actual GEN and Projected GEN; provided, however, that inadvertent energy shall be accounted for in accordance with the effective operating agreement (currently the Contract for Interchange Service between FPC and RCID dated September 15, 1989) between FPC and RCID and the applicable Florida Coordinating Group guidelines.
- 2.3 FPC agrees that OCL may redesignate Projected GEN once during an hour due to a partial or full forced outage of the Facility (a "Permitted Redesignation"), provided, however, that Permitted Redesignations may not occur more frequently than twice daily unless otherwise agreed by FPC in its sole discretion. Following a Permitted Redesignation, FPC will permit RCID to redesignate its Declined Energy (if any) for that hour as described in Section 2.1, and FPC will recalculate the RCID Share accordingly. Redesignations permitted by this Section 2.3 will be made as promptly as practicable but adjustments to RCID Actual will not be made retroactively.
- 2.4 It is recognized that the calculations made in according to Attachments A and B will be rounded to the nearest kilowatt or kilowatt-hour, while



delivered amounts will be expressed in whole megawatts. RCID and FPC agree that these differences will be recorded on a continuous basis and the residual kilowatts resulting from the rounding of delivered amounts will be carried forward to the next interval of time such that these differences are reconciled.

**3. PRICING OF DECLINED ENERGY**

- 3.1** FPC will pay for the Actual Declined Energy, (as defined in Attachment B hereto), in accordance with FPC's As-Available Energy Tariff entitled "Agreement for the Purchase of As Available Energy and or Parallel Operation with a Qualifying Facility" dated March 31, 1992, as superseded or amended from time to time.

**4. VOLTAGE SCHEDULE**

- 4.1** OCL agrees to follow the voltage schedule or schedules established from time to time by FPC.
- 4.2** In the event that OCL fails, in accordance with prudent utility practices, to follow any required voltage schedule, FPC may, in its sole discretion, bill OCL, in which case OCL will pay, a cost-based reactive power charge associated with providing the additional reactive power support (beyond that provided by the Facility) required to deliver the RCID Actual to RCID's system.
- 4.3** FPC acknowledges and agrees that, under this Letter Agreement, reactive power charges are the sole responsibility of OCL, and that RCID will not be held liable for such amounts.

**5. TRANSMISSION SERVICE**

- 5.1** FPC shall provide transmission service to RCID for the RCID Contract in accordance with the PR and Transmission Contract, or a successor tariff or rate schedule, as may be in effect from time to time. Nothing contained in this Letter Agreement shall be construed as affecting in any way the right of FPC to unilaterally make application to the FERC for changes in rates, terms or conditions of the PR and Transmission Contract or any other contract, tariff or rate schedule.
- 5.2** The share (RCID Actual) determined to be delivered to RCID in accordance with this Letter Agreement and Actual GEN will be electronically transferred by FPC to RCID and OCL on continuous basis.

- 5.3 FPC shall supply a report to RCID and OCL showing the energy deliveries to RCID each month.
- 5.4 If FPC is able to accept physical delivery of energy from OCL but is excused from purchasing some or all of the capacity and energy from OCL provided for under the FPC Contract, FPC will transmit the RCID Actual to RCID in accordance with the PR and Transmission Contract, or a successor tariff or rate schedule, as may be in effect from time to time. If FPC is not able to accept physical delivery of energy from OCL, FPC shall have no obligation to transmit the RCID Actual to RCID.

## 6.0 COST OF SOFTWARE MODIFICATIONS

- 6.1 OCL will be responsible for the cost of software modifications required to calculate the respective shares of energy output from the Facility for FPC and RCID. Except as provided in Section 6.3 hereof, OCL will be responsible for all costs incurred by FPC for future software upgrades required to accommodate the proration and/or delivery of the Facility's energy output. Unless otherwise agreed by FPC in its sole discretion, all cost reimbursements under this Section 9.1 will be due and payable in accordance with the FPC Contract.
- 6.2 FPC acknowledges and agrees that under this Letter Agreement software upgrade costs are the sole responsibility of OCL, and that RCID will not be held liable for such amounts.
- 6.3 OCL will have the one-time option to pay a lump sum fee of \$35,000 upon execution of this Letter Agreement as compensation for all future software upgrades. OCL and FPC agree that this figure represents a reasonable estimate of future software upgrade costs on a net present value basis.

## 7.0 OPERATING REPRESENTATIVES

FPC, OCL and RCID will each designate in writing an appropriate operating representative and an alternate representative for purposes of exchanging operational information pursuant to this Letter Agreement. A Party's representative or alternate may be changed at any time by delivery of a written notice to the other Parties. Any notice required by this Letter Agreement must be in writing and will be deemed to have been delivered when properly addressed as designated below and deposited first class postage prepaid in the United States mail, transmitted by confirmed facsimile, delivered to a recognized next day delivery service or delivered by hand:

Emergency and Operational

To FPC: System Dispatcher on Duty  
Title: System Dispatcher  
Telephone: 813/866-5888  
Telecopier: 813/384-7865

To OCL: Plant Operator on Duty  
Title: Plant Operator  
Telephone: 407/851-1350  
Telecopier: 407/851-1686

To RCID:  
Title: Energy System Coordinator  
Telephone: 407/824-4990  
Telecopier: 407/824-3655  
Non-Emergency

To FPC:  
Title: Manager, Cogeneration Contacts & Administration  
Florida Power Corporation  
3201 34th St. S.  
St. Petersburg, Fla. 33711  
Telephone: 813/866-4745  
Telecopier: 813/866-4994

To OCL: Orlando CoGen Limited, L.P.  
c/o Air Products and Chemicals, Inc.  
Title: Vice President and General Manager,  
Environmental and Energy Systems.  
7201 Hamilton Blvd.  
Allentown, PA 18195-1501  
Telephone: 215/481-4911

To RCID:  
Title: Thomas M. Moses  
District Administrator  
Reedy Creek Improvement District  
1675 Buena Vista Dr.  
Lake Buena Vista, Fla. 32830  
Telephone: 407/828-2241



0 MISCELLANEOUS

- 8.1 Nothing contained in this Letter Agreement is intended to or is to be construed as creating any association, joint venture, partnership or other type of entity between or among any of the parties hereto and no Party shall be deemed to act as agent or representative of any other Party.
- 8.2 None of the Parties hereto may assign its obligations, benefits, and duties under this Letter Agreement without prior written consent of the other Parties, which consent will not be unreasonably withheld or delayed.
- 8.3 FPC and RCID each acknowledge receipt of a copy of the Assignment and Security Agreement (the "Security Agreement"), dated September 29, 1992 between OCL (together with its successors and assigns, the "Borrower") and the Sumitomo Bank, Limited (together with its successors and assigns, the "Collateral Agent"). Notwithstanding the restriction on assignment established in Section 8.2 but subject to the assignment of the RCID Contract and the FPC Contract to the same entity, FPC and RCID each acknowledge and consent to the collateral pledge and assignment by the Borrower to the Collateral Agent pursuant to the Security Agreement, of all the right, title, and interest of the Borrower in, to, and under (but not its obligations, liabilities or duties with respect to) this Letter Agreement, as security for the payment and performance of all or any part of the secured obligations. The Borrower hereby acknowledges that it shall remain liable to FPC and RCID for each and every duty, liability, and obligation of the Borrower under this Letter Agreement.
- 8.4 Nothing contained in this Letter Agreement is intended to or shall be construed as amending or waiving any provision of the FPC Contract.

9.0 FERC FILING

Upon execution of this Letter Agreement, FPC will tender for filing with the FERC:

- (a) This Letter Agreement, and
- (b) A Supplement to RCID's Service Agreement under the PR and Transmission Contract in substantially the form appended to this Letter Agreement as Attachment C, and
- (c) Information relevant to OCL's contribution in aide of construction.

OCL and RCID agree to support any such filings before the FERC and to provide any information or assistance reasonably requested by FPC in connection with such filings. OCL and RCID each shall reimburse FPC for one-half of any required filing fees paid in connection with such FERC filings.

0.0 SCHEDULING CHARGES

FPC will not, during the term of the Letter Agreement, assess any scheduling charges to either OCL or RCID in connection with the scheduling activities undertaken pursuant to this Letter Agreement.

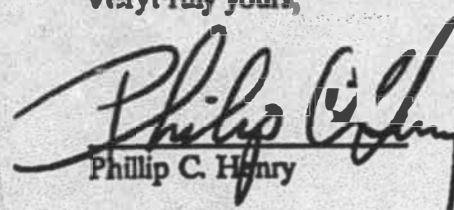
If you are in agreement with all of the foregoing understandings and commitments, please so indicate by providing the signature of an authorized officer below.

Very truly yours,

Attest:



Date: 10/1/83



Phillip C. Henry

Senior Vice President  
Florida Power Corporation

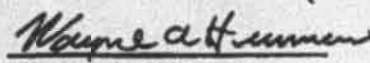


Attest:

  
Assistant Secretary

Date: 10/4/93

128

  
Wayne A. Hinman

President  
Orlando CoGen (I), Inc., in \_\_\_\_\_ as  
Managing General Partner of  
Orlando CoGen Limited, L.P.

Attest:



Date: 10/7/93

  
Thomas M. Moses

District Administrator  
Reedy Creek Improvement  
District

## ATTACHMENT A

### Hourly Calculation of Reedy Creek Improvement District's and Florida Power Corporation's Respective Shares of Orlando CoGen Limited's Projected Net Output

FPCC = Florida Power Corporation's (FPC) Committed Capacity (specified in the "Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility" between Orlando CoGen Limited, L.P. (OCL) and FPC dated March 13, 1991)

RCCC = Reedy Creek Improvement District's (RCID) Committed Capacity (specified in the "Firm Power Purchase Agreement" by and between OCL and RCID dated December 10, 1991)

Projected GEN = Projected net output from the Facility to be provided to FPC and RCID by OCL at the FPC Delivery Point

Declined Energy (DE) = Declined Energy which RCID notifies FPC that it does not want delivered by FPC to RCID from OCL.

Projected Turnback (PTB) = Maximum level up to which OCL designates it will reduce Projected GEN to partially or fully match the RCID designated Declined Energy.

Effective Turnback (ETB) = Lesser of OCL's Projected Turnback or Declined Energy.

If Projected GEN > (FPCC + RCCC), then

$$\text{RCID Share} = \text{RCCC} - \text{DE}$$

and

$$\text{FPC Share} = \text{Projected GEN} - \text{RCID Share} - \text{ETB}$$

where

$$0 \leq \text{DE} \leq \text{RCCC}$$



## ATTACHMENT A (continued)

### Hourly Calculation of Reedy Creek Improvement District's and Florida Power Corporation's Share of Orlando CoGen Limited's Projected Net Output

If Projected GEN  $\leq$  (FPCC + RCCC), then

$$\text{RCID Share} = (\text{Projected GEN} * (\text{RCCC} / \text{FPCC} + \text{RCCC})) - \text{DE}$$

$$\text{FPC Share} = \text{Projected GEN} - \text{RCID Share} - \text{ETR}$$

where

$$0 \leq \text{DE} \leq \text{Projected GEN} * (\text{RCCC} / \text{FPCC} + \text{RCCC})$$

## ATTACHMENT B

Continuous calculation of Reedy Creek Improvement District's and Florida Power Corporation's Respective Shares of Orlando CoGen Limited's Actual Net Output

|               |   |   |
|---------------|---|---|
| Actual GEN    | = | Actual Net Output (MW) From the Facility provided to FPC and RCID by OCL as metered at the FPC Point of Interconnection   |
| RCID Share    | = | As defined in Attachment A hereto unless redesignated to comply with Section 5.4 herein such that RCID share would be the same amount as if FPC were able to accept all of the capacity and energy from OCL |
| FPC Share     | = | As defined in Attachment A hereto unless redesignated to comply with Section 5.4 herein   |
| Projected GEN | = | As defined in Attachment A hereto   |
| PCC           | = | As defined in Attachment A hereto   |
| RCCC          | = | As defined in Attachment A hereto   |
| ETB           | = | As defined in Attachment A hereto   |
| ATB           | = | The Actual Turnback evidenced by reduced output calculated as:  |

If Actual GEN  $\geq$  Projected GEN/hour, then:

$$ATB = 0$$

If Actual GEN  $<$  Projected GEN/hour, then:

ATB = Minimum of:

Projected GEN/hour - Actual GEN

and

ETB/hour

## ATTACHMENT B (continued)

If  $(\text{Actual GEN} + \text{ATB}) \geq (\text{RCCC} + \text{FPCC})$ , then:

$\text{RCID Actual} = \text{Maximum of } (\text{RCCC} - \text{DE/hour}) \text{ and } 0$

If  $(\text{Actual GEN} + \text{ATB}) < (\text{RCCC} + \text{FPCC})$ , then:

$\text{RCID Actual} = \text{Maximum of:}$

$(\text{Actual GEN} + \text{ATB}) * \text{RCCC} / (\text{RCCC} + \text{FPCC}) - \text{DE/hour}$   
and

0 (zero)

In all conditions:

$\text{FPC Actual} = \text{Actual GEN} - \text{RCID Actual}$

and

If  $\text{Actual GEN} > 0$

$\text{Actual Declined Energy} = \text{DE/hour} - \text{ATB}$

If  $\text{Actual GEN} = 0$

$\text{Actual Declined Energy} = 0$



## ATTACHMENT C

Supplement to RCID's Service Agreement under the  
"Agreement for Partial Requirements  
Resale and Transmission/Distribution Services"  
dated September 15, 1989

Rate Schedule 118  
EXHIBIT A, Schedule 2  
First Revised Sheet No. 22  
Effective:  
Cancels Original Sheet No. 22

points. The District's Internal Resources are those generation resources located within the District's system and power supply resource delivered through direct interconnections with utilities other than the Company.

The District's resources shall be the following: (1) the contract for a long-term capacity and energy purchase by Reedy Creek Improvement District from the Orlando Utilities Commission dated 9/15/89; (2) Letter of Commitment, Schedule D, Firm Interchange Service dated 6/30/93 between Reedy Creek Improvement District and the Orlando Utilities Commission; (3) Letter of Commitment, Schedule G, Reserve Interchange Service dated 9/15/89 between Reedy Creek Improvement District and the Orlando Utilities Commission; (4) Letter of Commitment, Schedule D, Firm Interchange Service dated 9/15/89 between Reedy Creek Improvement District and the City of Gainesville until Resource (2) above becomes activated; (5) Letter of Commitment, Schedule D, Interchange Service dated 10/16/91 as amended 3/16/92 between Tampa Electric Company and Reedy Creek Improvement District; (6) the Firm Power Purchase Agreement between Orlando Cogen Limited, L.P. and Reedy Creek Improvement District dated 12/10/91; (7) such other additional resources as the District may obtain if and so long as the Company's facilities have adequate capacity to transmit the capacity and energy from such other resources. If mutually agreeable, the Company and the District may, by separate contract, provide for a fixed term for Transmission/Distribution service from those other resources.

If the Transmission/Distribution Service for the District resources identified in item (7) above would require the Company to install new facilities, would cause it to install additional facilities or would require it to modify existing facilities earlier than it otherwise would do, or would otherwise cause it to incur additional expense, the Company reserves the right to decline to serve under this rate schedule and shall offer Transmission/Distribution Service under a special compensatory contract or rate schedule filed with the Federal Energy

## SUMMARY

PANDA-KATHLEEN, L.P. (11/25/91 Standard Offer contract)

- W
- 04/29/93: FPC agrees to waive the contractual "early in service date" (and to allow a corresponding delay in the construction commencement date) with Panda to receive normal payments rather than early in service payments
- Panda had contract option of beginning in-service in January, 1995 instead of January, 1997, and thus receiving capacity payments at that time. This agreement will benefit the ratepayers since additional capacity will not be needed in January, 1995





April 29, 1993

Mr. Mark E. Beniley  
Attorney  
Panda-Kathleen, L.P.  
4100 Spring Valley, Suite 1001  
Dallas, Texas 75244

MAY - 3 1993

RE: Standard Offer Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility  
Less Than 75 MW or a Solid Waste Facility Between Panda-Kathleen L.P. and Florida Power  
Corporation

Dear Mark:

This letter concerns our earlier meetings and your letters dated January 26, 1993 and March 23, 1993. In consideration of Florida Power Corporation's (FPC) waiver of the early in-service date to January 1, 1997, Panda-Kathleen, LP waives early payments and thereby elects normal payments pursuant to Schedule 3, Page 1. In addition, FPC will allow a corresponding delay of the construction commencement date.

If the foregoing accurately reflects your understanding of our agreement with respect to the subject matter set out above, please so indicate by signing in the space provided below, and returning a signed counterpart hereof to me.

Very truly yours,

Florida Power Corporation

By: Robert D. Dolan  
Robert D. Dolan

ACCEPTED AND AGREED TO THIS 3 DAY OF May, 1993.

Panda-Kathleen, L.P.

By: Robert W. Carter  
Robert W. Carter

cc: M. B. Foley, Jr.  
J. P. Fama

A. J. Honey  
D. W. Gummon

RDT:ef:Beniley,lr



101364



## SUMMARY

### PASCO COGEN LIMITED (03/13/91 Negotiated contract)

#### • Assignments

- ~~Contract assigns~~ it to assignments of obligations, benefits & duties (Art. XXIII)
- 01/24/92: FPC consents to an Assignment to Prudential and Bankers Trust as security in connection w/financing

#### • Regulatory Delay

- Contract expressly authorizes extensions for regulatory delays (§4.2.1)
- 09/17/91: FPC agrees to a 37 day extension of commencement and commercial in-service date due to regulatory delays

#### • One-Time Change in Committed Capacity

- Contract expressly authorizes the cogenerator to change its committed capacity (§7.5)
- 06/30/94: Pasco Cogen advises FPC that its committed capacity is changed to 109 MW

#### • Curtailment

- FPC and Pasco Cogen have an informal agreement whereby, ~~during~~ off-peak hours, Pasco Cogen will reduce its output as much as possible
  - FPC will not apply the Performance Adjustment during the off-peak hours that Pasco Cogen curtails at FPC's request

#### • Routine Contract Administration and Performance

- 03/23/93: Change of address for NCP Dade Power, Inc. (an entity referenced in the Consent to Assignment)

CONSENT AND AGREEMENT

This Consent and Agreement (the "Consent"), dated as of January , 1992, by and among The Prudential Insurance Company of America, as Agent (together with its successors and assigns, the "Agent"), Bankers Trust Company, as Collateral Agent (together with its successors and assigns, the "Collateral Agent"), Pasco Cogen, Ltd., a Florida limited partnership (together with its successors and assigns, the "Borrower") and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

W I T N E S S E T H :

WHEREAS, the Contracting Party and the Borrower have entered into a Negotiated Contract for the Purchase of Firm Capacity and Energy dated March 13, 1991 (as amended, modified or supplemented from time to time, the "Agreement");

WHEREAS, in order to finance the development, acquisition, construction, equipping and start-up of the Project and certain related expenditures, the Borrower has entered into various agreements with the Agent and the Collateral Agent;

WHEREAS, as of the date of the execution of this Consent, the Borrower and the Collateral Agent are entering into an Assignment and Security Agreement dated as of January , 1992 (as amended, modified or supplemented from time to time, the "Security Agreement"), pursuant to which the Borrower is pledging, assigning and transferring to the Collateral Agent for the benefit of the Secured Parties, and granting to the Collateral Agent a lien on, among other things, all of the Borrower's right, title and interest in and to the Agreement; and

WHEREAS, the Contracting Party is agreeable to consenting to such assignment of and lien on the Borrower's right, title and interest in the Agreement;



NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Receipt of Security Agreement. The Contracting Party acknowledges receipt of a copy of the Security Agreement.

Section 2. Collateral Assignment and Duties of the Borrower. (a) The Contracting Party acknowledges and consents to the collateral pledge and assignment by the Borrower to, and the creation by the Borrower of a lien in favor of, the Collateral Agent pursuant to the Security Agreement, of all of the right, title and interest of the Borrower in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Agreement, as security for the payment and performance of all or any part of the Secured Obligations.

(b) The Borrower hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Borrower under the Agreement.

Section 3. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Agreement has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and binding obligation of the Contracting Party enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified to do business in the State of Florida, the only jurisdiction in which the performance of its obligations under the Agreement makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Agreement.

(c) No Default. To the best knowledge of the Contracting Party, the Borrower is not in default under any material covenant or obligation under the Agreement,

and no such default has occurred prior to the date hereof. The Contracting Party has duly performed and complied with all covenants, agreements and conditions contained in the Agreement, and, to the best knowledge of the Contracting Party, none of the Borrower's rights under the Agreement has been waived.

(d) Approvals. The only consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority required to be obtained by the Contracting Party after the date hereof in order for the Contracting Party to execute, deliver and perform its obligations under this Consent and the Agreement are those required in connection with the Interconnection Facilities (as defined in the Agreement).

(e) No Violation. The execution, delivery and performance of this Consent and the Agreement by the Contracting Party will not result in any violation of any applicable law, rule, statute or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse effect on the ability of the Contracting Party to perform its obligations under this Consent or the Agreement.

Section 4. Lender Cure Rights. (a) The Contracting Party agrees that it will not terminate or suspend the performance of its obligations under the Agreement without first giving the Collateral Agent notice as provided in paragraph 5(b) below. Notice of any such termination shall be given by the Contracting Party at least three Business Days prior to the proposed date of termination.

(b) Following receipt of a notice of termination pursuant to Section 4(a), the Collateral Agent shall have the right to an additional period of time not to exceed 120 days from receipt of such notice of termination to cure the Borrower's default under the Agreement on the terms set forth in this Section 4(b). Additional cure time may be obtained by the Collateral Agent in bi-weekly increments upon at least two Business Day's advance written notice to the Contracting Party prior to the date of termination identified in the termination notice (or prior to the end of the then current additional bi-weekly cure period, as the case may be). If the Collateral Agent elects to acquire such additional bi-weekly cure period, the Collateral Agent shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Agreement (to the extent that replacement power is unavailable for any



reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under the Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Agreement. "Lost Profits" shall mean the lost non-fuel revenues associated with the Contracting Party's unserved firm load that would have been served had the Facility (as defined in the Agreement) been operating in accordance with the terms and provisions of the Agreement. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable administrative and general expenses incurred in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail.) The Collateral Agent shall pay the Contracting Party bi-weekly in advance the Contracting Party's reasonable good faith estimate of the amount that will be owing by the Collateral Agent in respect of such period of cure time pursuant to the foregoing provisions; at the end of each such cure period, the Contracting Party shall notify the Collateral Agent if additional amounts are due (giving the Contracting Party's calculation of such amounts in reasonable detail) and the Collateral Agent shall promptly pay such amounts or the Contracting Party shall rebate or credit against additional cure periods (if elected by the Collateral Agent) any excess amount previously paid.

**Section 5. Notice.** (a) The Contracting Party will deliver to the Collateral Agent in a timely fashion copies of all material notices it delivers to the Borrower under the Agreement (including all notices of the occurrence of any default under the Agreement (and, in the case of monetary defaults, the amount of such default) but excluding day-to-day operational notices that are delivered to the Borrower in the ordinary course). The costs associated with the delivery of all such notices shall be paid by the Borrower.

(b) Notices to the Collateral Agent hereunder may be given by hand delivery, by means of an independent commercial overnight courier, by tested or otherwise authenticated telex, telecopy or facsimile or by registered or certified mail, postage prepaid, return receipt requested. Notice to any party hereto shall be deemed to be delivered on the earlier of (a) the date of personal delivery or (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or deposited with an independent commercial overnight courier in each case



addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, in each case as evidenced by the return receipt. Notices hereunder shall be delivered to the following entities at the following addresses:

The Collateral Agent: Bankers Trust Company  
Four Albany Street  
New York, New York 10015  
Attention: Corporate Trust and  
Agency Group

with copies to: The Prudential Insurance Company  
of America  
Four Gateway Center  
Newark, New Jersey 07102-4069  
Attention: Project Management Team

and The Prudential Insurance Company  
of America  
Three Gateway Center  
Newark, New Jersey 07102-4077  
Attention: Asset Management Unit/IAU

The Borrower: Pasco Cogen, Ltd.  
220 East Madison Street  
Suite 526  
Tampa, Florida 33602  
Attention: E. Elliott White

with a copy to: NCP Dade Power Incorporated  
c/o North Canadian Power Inc.  
1100 Town & Country Road  
Suite 800  
Orange, California 92668

The Contracting Party: Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Attention: Manager, Cogeneration  
Contracts and  
Administration

Section 6. Bankruptcy. Subject to the receipt of any required regulatory or judicial approvals, in the event that (i) the Agreement is rejected by a debtor in possession or a trustee in bankruptcy in any bankruptcy or insolvency proceeding involving the Borrower, and (ii) the Collateral Agent is in possession and control of the Facility (as defined in the

Agreement), then the Contracting Party shall, if requested by the Collateral Agent within thirty (30) days after the conditions set forth in the foregoing clauses (i) and (ii) are satisfied (provided, that the Collateral Agent shall have undertaken and certified in writing to the Contracting Party that (subject to the second sentence of Section 6(a) below) it will cure all defaults then existing under the Agreement (including the payment of damages for defaults that cannot be cured) and perform all of the obligations of the Borrower as specified in the Agreement), execute and deliver to the Collateral Agent or its designee a new agreement (the "New Agreement") to be in effect (x) for the remainder of the term of the original Agreement and (y) with substantially the same terms as those contained in the original Agreement. References in this Consent to the "Agreement" shall be deemed also to refer to the New Agreement.

Section 7. Obligations. (a) Except as expressly provided below, neither the Collateral Agent, the Agent nor any Secured Party shall have any obligation to the Contracting Party for the performance of any obligations under the Agreement; provided, however, that if any of such parties shall elect to assume the obligations of the Borrower under the Agreement, such parties must first provide written notice thereof to the Contracting Party, and such parties must comply in all respects with paragraph (b) below. If the Collateral Agent or its designee shall assume the Agreement, liability in respect of any and all obligations thereunder shall be limited solely to such party's interest in the Project following the assumption of liability under the Agreement (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto). The Contracting Party agrees that it will accept performance by the Collateral Agent or its successor or assigns or designees of the obligations of the Borrower under and in accordance with the Agreement. After the Collateral Agent shall give the Contracting Party notice that an Event of Default exists, the Contracting Party agrees that the Collateral Agent shall have the right to enforce directly against the Contracting Party all obligations of the Contracting Party under the Agreement and otherwise to exercise all rights and remedies of the Borrower thereunder.

(b) If, after the exercise of its remedies under the Security Agreement, the Collateral Agent or the Agent intends to take ongoing advantage of the Agreement and to operate the Facility (as defined in the Agreement), then the Collateral Agent or the Agent shall provide the Contracting Party with written notice thereof prior to undertaking such operation. In such event, each of the Collateral Agent and the Agent agrees that in the event that one or more of such parties operates the Facility (as defined in the Agreement) directly, or indirectly



through an agent or through a subsidiary, affiliate, or other entity in which one or more of such parties holds an ownership interest (provided, that the foregoing shall not include operation by a court appointed receiver or similar person during the pendency of foreclosure or similar proceedings), the Collateral Agent or Agent (or such subsidiary, affiliate or other entity, as aforesaid) shall (subject to the second sentence of Section 6(a) above) assume each and every duty and obligation of the Borrower arising out of or in connection with the Agreement, including but not limited to each and every such duty and obligation arising prior to the date of such assumption, and shall also at such time exercise and enjoy whatever right, title and interest in and to the Agreement as was assigned to it.

(c) The parties acknowledge and agree that operation of the Facility (as defined in the Agreement) must at all times be in the hands of a competent operator. In the event of a foreclosure or similar proceeding, including the appointment of a receiver, each of the Collateral Agent and the Agent agrees to seek the appointment by the court of such a competent operator.

Section 8. Payments to Lenders. (a) The Contracting Party has been informed that all revenues derived from the Project are to be deposited with the Collateral Agent for disbursement by the Collateral Agent in accordance with the provisions of the Disbursement Agreement, and the Contracting Party hereby agrees to make all payments required to be made by it to the Borrower pursuant to the Agreement by wire transfer to the Collateral Agent at account # \_\_\_\_\_ at Bankers Trust Company, (wire information), Attention: Corporate Trust and Agency Group, or at such other account as the Collateral Agent shall reasonably from time to time notify the Contracting Party. All parties hereto agree that the deposit with the Collateral Agent of amounts due to the Borrower from the Contracting Party under the Agreement shall satisfy the Contracting Party's payment obligations under the Agreement.

(b) To the extent provided by law or under the terms of the Agreement, each of the parties hereto agrees that the Contracting Party shall have the right to set off or deduct from payments due to the Borrower each and every amount due the Contracting Party arising out of or in connection with the Agreement.

Section 9. Restriction on Further Assignment. The Collateral Agent hereby agrees that it will not assign its rights, title or interest in and to the Agreement without the prior written consent of the Contracting Party, which consent



shall not be unreasonably withheld; provided, that the Collateral Agent shall be entitled to assign the Agreement to a successor collateral agent under the Loan Documents or to co-collateral agents appointed to satisfy the requirements of law; provided, however, that in each such case, such a successor Collateral Agent shall be a bank or trust company organized under the laws of the United States or any political subdivision thereof having a combined capital and surplus of at least \$100,000,000.00 and willing, and legally qualified, to perform the duties of the Collateral Agent upon reasonable and customary terms. In the event of any such transfer reasonably consented to by the Contracting Party, the Contracting Party agrees to negotiate in good faith a consent to assignment of the Agreement by such transferee to its financing parties (which consent may be substantially in the form of this Consent).

Section 10. Amendments to Agreement. (a) Until the date on which the Collateral Agent notifies the Contracting Party in writing that the security interests created by the Security Agreement have been terminated and released, the Contracting Party will not, without the prior written consent of the Collateral Agent, agree to any amendment, modification or termination of the Agreement; provided, that the Collateral Agent's consent for the Contracting Party to enter into any such amendment, modification or termination shall be deemed given if the Collateral Agent has not given notice to the Contracting Party of objection to such action within five Business Days after receipt of notice from the Contracting Party of such proposed action (provided that such notice from the Contracting Party states that the Collateral Agent's consent will be deemed given if such notice of objection has not been given within such period).

(b) This Consent and Agreement is neither a modification of nor an amendment to the Agreement.

Section 11. Non-Party. The Contracting Party is not a party to, has no obligation under, and has no knowledge of the existence or content of any of the documents referenced herein other than those which it has signed.

Section 12. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 13. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

Section 14. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so waived, and shall not constitute a continuing waiver of the same.

Section 15. Governing Law. The Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

Dated: January 24, 1992

FLORIDA POWER CORPORATION

By Maurice H. Phillips  
Maurice H. Phillips  
Executive Vice President

Acknowledged and Agreed this  
day of January, 1992

PASCO COGEN, LTD.

By: NCP Dade Power Incorporated,  
a General Partner

By Kenneth W. Adams  
Kenneth W. Adams  
Vice President

By: Pas Power Co.,  
a General Partner

By E. Elliott White  
E. Elliott White  
Executive Vice President

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,  
as Agent

By Henry J. Wayne  
Title: Vice President

BANKERS TRUST COMPANY,  
as Collateral Agent

By Vice President  
Title: Vice President



101453





**PASCO COGEN, LTD.**  
**NCP DADE POWER, INC., GENERAL PARTNER**

June 30, 1994

Mr. Robert D. Dolan  
Manager, Cogeneration Contracts & Administration  
Florida Power Corporation  
3201 34th Street South  
St. Petersburg, Florida 33711

**RE: PASCO COGEN, LTD. COMMITTED CAPACITY INCREASE**

Dear Mr. Dolan:

In accordance with section 7.2 of the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Pasco Cogen Limited and Florida Power Corporation (the Agreement), this letter serves as notice to Florida Power Corporation that the Committed Capacity for the Pasco Cogeneration facility is increased to 109 MW to be effective on June 30, 1994. This change in Committed Capacity is being made within one year after the Contract In-Service Date as allowed by the Agreement. For billing purposes, the redesignated Committed Capacity of 109 MW will become effective on the commencement of the next billing period which in July 1, 1994 as provided by Section 7.3 of the Agreement.

Very truly yours,

**PASCO COGEN, LTD.**  
by **NCP DADE POWER INCORPORATED**  
General Partner  
by



Greg B. Lawyer  
Vice President - Business Management

~~5-NORTH SAN ANTONIO POWER INC.~~  
1861 N. TUSTIN AVENUE  
SUITE 900  
SANTA ANA, CALIFORNIA 92701  
FAX (714) 867-7828  
TELEPHONE (714) 550-6900



**NCP DADE POWER INCORPORATED**

a subsidiary of  
**NORTH CANADIAN POWER**

March 23, 1993

~~Florida Power Corporation~~

P.O. Box 14042

SE: Petersburg, Florida 33733

Attention: Manager, Cogeneration Contracts and Administration

RE: Pasco Cogen, Ltd. Documents - Change of Address, NCP Dade Power Incorporated, North Canadian Power, Inc., and related organizations

In accordance with the Notice provisions in the various documents which define the Pasco Cogen project, notice is hereby given that effective March 15, 1993, the address of NCP Dade Power, Inc. as well as North Canadian Power, Inc. and related organizations has changed to that at the bottom of this page. This notice shall be deemed to have been delivered to the addressee upon delivery as evidenced by return receipt of this certified mail.

The document which involves Florida Power Corporation is:

CONSENT AND AGREEMENT of FPC:

In Section 5(b), change the address of NCP Dade Power Incorporated to

c/o North Canadian Power, Inc.  
1551 N. Tustin Avenue, Suite 900  
Santa Ana, California 92701

Please call if there are any questions.

Sincerely:

For: Pasco Cogen, Ltd., A Florida Limited Partnership  
By: NCP Lake Power Incorporated, Its General Partner

By:



Keith Trostle

Its: Senior Asset Manager

NORTH CANADIAN POWER, INC.  
1551 N. TUSTIN AVENUE  
SUITE 900  
SANTA ANA, CALIFORNIA 92701  
FAX (714) 667-7825  
TELEPHONE (714) 550-4300





## SUMMARY

### PASCO COUNTY (03/28/89 Negotiated contract)

- Curtailment

- 06/23/94:

- FPC and Pasco County agree that Pasco County will reduce output by 1/3 for a total of six weeks during the Spring & Fall by scheduling maintenance outages on each of their three boiler units on two weeks notice from FPC

- Since Pasco County burns garbage as fuel, it is more difficult for Pasco County to curtail production on a regular basis

- Routine Contract Administration and Performance

- 02/13/92 & 10/12/92:

- FPC and Pasco County acknowledge six typographical errors in the contract with respect to dates

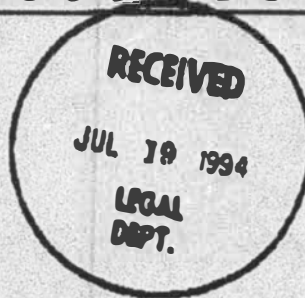


# PASCO COUNTY, FLORIDA

DADS CITY  
WEST PASCO  
FAX

(904) 521-4120  
(813) 847-8115  
(813) 847-9021

June 23, 1994



COUNTY ADMINISTRATOR'S OFFICE  
7330 LITTLE ROAD  
NEW PORT RICHEY, FL 34654

Mr. Robert Dolan, Manager  
Cogeneration Contracts  
and Administration  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, FL 33733

RE: Letter of Understanding, Pasco County Waste-  
to-Energy Facility Energy Capacity Reductions  
per Florida Power Corporation Request

Dear Mr. Dolan:

1. This letter formalizes the understanding between Pasco County ("the County") and Florida Power Corporation ("FPC") concerning each party's commitments and responsibilities with respect to reducing energy capacity during periods of low energy demand.
2. FPC has requested the cooperation of contracted cogenerators and small power producers to reduce energy generation during certain periods of low energy demand. Pasco County owns a waste-to-energy (WTE) facility and is contracted to supply FPC with twenty-three (23) megawatts (MW) of capacity. At full operating capacity, the County's WTE facility generates about twenty-seven (27) MW for export to FPC. In response to FPC's request, Pasco County has reviewed its WTE operations and agrees to assist FPC during certain periods of low energy demand. The following details the understanding between FPC and the County as to how the County will assist FPC during periods of low energy demand and what consideration FPC will give to the County in return for such assistance.
3. Pasco County agrees to schedule semiannual maintenance on its three (3) boiler units during the periods of low energy demand. Pasco County agrees that the first scheduled maintenance outage of the year will take place during the months of March through May ("the Spring Period") and the second scheduled maintenance outage will occur in the months of October and November ("the Fall Period"). During a scheduled maintenance outage, the County will remove from service (or reduce load equivalent to) one (1) boiler unit for a period of not less than four (4) days on three (3) separate occasions so that FPC will be provided a total of twelve (12) days during the Spring Period and twelve (12) days during the Fall Period when the WTE facility will operate at two-thirds generating capacity or less. The County will notify FPC by October 1 of its intended maintenance schedule for the subsequent calendar year. The County and FPC will mutually agree upon the schedule. Both parties

Mr. Robert Dolan, Manager  
June 23, 1994

understand and recognize that the schedule must be flexible to accommodate weather conditions which affect changes in energy demand as well as solid waste production. The parties will exercise reasonable efforts to confirm scheduled outages fourteen (14) days prior to the occurrence of these outages.

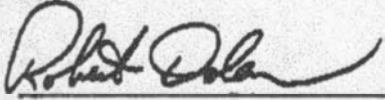
4. In consideration of the above, FPC will recognize these as periods during which FPC has required a curtailment of energy generation and these periods shall not be entered into the calculation of the twelve (12) month rolling average capacity factor.
5. The County and FPC further agree that if a) the County identifies other additional scheduled maintenance to be performed during either the Spring or Fall Period and b) such maintenance will result in reduced energy generation and c) FPC agrees that such reduced energy generation is of benefit, then these periods shall be treated as described in Paragraph 4. and omitted from the calculation of the County's capacity factor.
6. Finally, the County and FPC agree that if FPC should find it desirable for the County to reduce energy generation at other times in addition to those times described above, FPC may request the County to reduce energy generation. Such requests shall be in writing and delivered via facsimile. If the County is able to comply with such a request, the County shall notify FPC of its ability to comply by signing and returning, via facsimile, FPC's original request. The County's authorized agent shall be the WTE Facility Manager, Mr. Robert Sitz, or his designee. It is clearly understood that the County is under no obligation to comply with FPC's requests contemplated in this Paragraph 6. However, if the County is able to and does comply with FPC's requests, such periods of reduced energy generation shall be treated as described in Paragraph 4. and shall be omitted from the calculation of the County's capacity factor.
7. Nothing herein shall be deemed to alter the parties' rights and obligations pursuant to Florida Public Service Commission Rules 25-17.080 through 25-17.091.

Please indicate your acknowledgment and consent to this understanding by signing in the space provided below and returning one (1) original to me.

Sincerely,

  
John J. Gallagher  
County Administrator

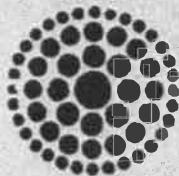
JJG/DSB/lpc:ut

  
Robert Dolan, Manager  
Cogeneration Contracts and Administration  
Florida Power Corporation



cc: Steve Bass, Ogden Martin Systems, Inc., 14230 Hayes Road, Spring Hill, FL 34610  
Robert Sitz, Facility Manager, Ogden Martin Systems, Inc., 14230 Hayes Road, Spring Hill, FL 34610  
Daniel E. Strobridge, CDM, One Tampa City Center, Suite 1750, Tampa, FL 33602  
Douglas S. Bramlett, Assistant County Administrator (Utilities Services)  
Board of County Commissioners





**Florida  
Power**  
CORPORATION

February 13, 1992

Mr. John J. Gallagher  
County Administrator  
Pasco Government Center  
7530 Little Rd.  
New Port Richey, Fla. 33553

Dear Mr. Gallagher:

Marcus Delaney of Ogden-Martin has called to our attention a typographical error in the Agreement dated March 28, 1989 between Pasco County and Florida Power Corporation on Page 5, Paragraph 5.1.2, first line:

January 1, 1992 should read January 1, 1993.

Sincerely,

T. L. Wetherington  
Corporate Cogeneration Engineer

TIW/kdh

cc: Nancy Delaney  
R. D. Dolan

TIW:03/04/92

101580



October 12, 1992

Mr. John J. Gallagher  
County Administrator  
Pasco Government Center  
7530 Little Road  
New Port Richey, Fla. 33553

Dear Mr. Gallagher:

As we discussed in our recent meeting, the following dates are in error in the Contract For The Purchase of Firm Capacity From Pasco County dated March 28, 1989:

| Section       | Should Read  |
|---------------|--|
| Section 5.1.1 | ....of Facility capacity, beginning on January 1, 1995                                   |
| Section 5.1.2 | Prior to January 1, 1993 the COUNTY shall have a one-time option....                     |
| Section 5.1.2 | If the COUNTY does not give such notice to the Company prior to January 1, 1993....      |
| Section 5.1.3 | On or after January 1, 1995 and prior to January 1, 2010....                             |
| Section 5.1.4 | If, on or after January 1, 1995, the COUNTY determines that it is permanently unable.... |
| Section 6.1.1 | ....beginning on or after January 1, 1995....  |

The above are typographical errors that occurred when the final contract was printed.

Sincerely,

David W. Gammon  
Senior Cogeneration Engineer

DWG/kdh

cc: R. D. Dolan  
T. I. Wetherington

DWG:RZP

APPROVED:

PASCO COUNTY BOARD OF COUNTY COMMISSIONERS

  
Ann Hildebrand, Chairman

Date: December 15, 1992

101579





## SUMMARY

### PINELLAS COUNTY (02/21/89 Amended & Restated Negotiated Contract -- Pinellas Resource Recovery)

- One-Time Change in Committed Capacity
  - Contract expressly authorizes the cogenerator to change its committed capacity (§5.1.2)
  - 12/29/92:  
FPC agrees to a change in committed capacity from 60 to 55.75 MW
- Clarification
  - 10/02/90: Contract formally amended to clarify that, if commercial operation was not achieved by January 1, 1995, Pinellas would receive the avoided unit rate at the time it came on line
    - Pinellas County is currently on line and is expected to achieve commercial in-service status by January 1, 1995
  - 11/23/93: Contract formally amended (in §9.2(ii)) to specifically identify the parameters to be applied in determining whether Pinellas has demonstrated that it can deliver the committed capacity
    - These parameters are expressly contained in FPC's other cogeneration contracts, and can be useful in avoiding disputes regarding whether the ability to deliver has been demonstrated





**Florida  
Power**  
CORPORATION

December 29, 1992

Mr. Charles E. Rainey  
Chairman - Representing Pinellas County  
Pinellas Board of County Commissioners  
315 Court St.  
Clearwater, Fla. 34616

Dear Mr. Rainey:

Florida Power Corporation is in receipt of your letter dated December 17, 1992, specifying a change in your committed capacity as permitted in Section 5.1.2 of our "Amended and Restated Electrical Power Purchase Agreement" dated February 21, 1989. This letter serves as notice that the committed capacity in subsection 5.1.1 of the Agreement is hereby amended to 55.75 MW.

Sincerely,

Robert D. Dolan  
Manager, Cogeneration Contracts &  
Administration

RDD/kdh

cc: J. P. Fama  
M. A. Handley  
RDD:pet@flpc.com

101609

AMENDMENT TO  
ELECTRIC POWER PURCHASE AGREEMENT

THIS AMENDMENT, made and entered into as of the 2 day of October, 1990, amending the Electric Power Purchase Agreement dated as of February 21, 1989 (the "Agreement"), by and between Pinellas County, a political subdivision of the State of Florida (the "County") and Florida Power Corporation, a private utility corporation having its principal place of business at St. Petersburg, Florida, and authorized to do business in the State of Florida ("FPC").

WITNESSETH:

WHEREAS, the County proposes to construct, own, and contract for the operation and maintenance of a Resource Recovery Facility (the "Facility") to be located at a site to be selected by the County in the County and having an installed electric generating capacity of approximately fifty megawatts (50 MW) of electric power; and

WHEREAS, the County and FPC entered into the Agreement on February 21, 1989, wherein the County agreed to sell and deliver and FPC agreed to purchase and accept net electric energy and capacity from the Facility subject to the terms and conditions of the Agreement; and

WHEREAS, the Agreement provides that if the Facility does not achieve commercial operation prior to January 1, 1995, FPC is relieved of its obligation to make specified capacity payments, but will make capacity payments based on an amount equal to its avoided capacity costs at the time; and

WHEREAS, FPC has determined that such capacity payments will be less than the avoided capacity payments specified in Column 1 of Appendix A attached to the Agreement; and

101736

WHEREAS, in order to facilitate siting and financing of the Facility, the County and FPC have agreed to enter into this Amendment to the Agreement to revise the agreed upon payments to the County in the event that the Facility does not achieve commercial operation prior to January 1, 1995.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree to amend the Agreement as follows:

1. Section 3.0 of the Agreement shall be amended by changing the reference in the fourth line from January 1, 1995 to January 1, 1996.

2. Section 3.0 of the Agreement shall be further amended so that the proviso beginning on line 5 is revised to read as follows:

"provided, however, that if the Facility does not achieve ~~commercial operation~~ by January 1, 1995, but does achieve commercial operation by January 1, 1996: (i) references to Appendix A attached to the Agreement shall be deemed to refer to Appendix I attached to the October 2, 1990 Amendment; and (ii) for purposes of energy payments under section 5.0, Appendix C, B.2. (a) attached to the Agreement shall be amended to read "the lesser of the average monthly inventory charge out price of coal burned at Florida Power & Light Company's St. Johns River Power Park site, or if no coal is burned at the St. John's Power Park, the inventory charged out price of coal burned at Florida Power Corporation's Crystal River Plants 1 & 2, in cents per million BTU"; and provided, further, that if the Facility achieves commercial operation ~~after~~ January 1, 1996: (i) FPC agrees to make capacity payments to the County thereafter based on the procedure and pricing parameters under subsection 5.1.8; and (ii) for purposes of



energy payments under section 6.0, Appendix C, B.2. (a) attached to the Agreement shall be amended as stated above.

3. Section 9.2 of the Agreement shall be amended so that the first sentence is revised to read as follows:

"FPC may declare the County to be in default under this Agreement: (i) if the County, after January 1, 1996, or such earlier date as the Facility first receives a capacity payment under this Agreement, fails to receive the applicable capacity payments per Column 1 of Appendix A to the Agreement or Appendix 1 to the October 2, 1990 Amendment for twenty-four (24) consecutive months, or (ii) because of the County's refusal or inability to deliver its Committed Capacity after January 1, 1996.

4. In accordance with section 24.0 of the Agreement, the County and FPC expressly acknowledge that this Amendment shall not be construed as a waiver or relinquishment of any right or as a modification of any provision of the Agreement other than as specifically provided for in this Amendment.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be executed the day and year first above written.

ATTEST:

Diaria Hussai  
Witness

FLORIDA POWER CORPORATION

By: M. H. Phillips  
M. H. Phillips  
Executive Vice President

\_\_\_\_\_  
Witness

PINELLAS COUNTY, FLORIDA  
By and Through Its Board of  
County Commissioners.

ATTEST: KARLEEN F. De BLAVER  
Clerk

By: Chairman  
Chairman

By: Deputy Clerk  
Deputy Clerk

Approved as to form:

County Attorney  
County Attorney



**APPENDIX I  
TO AMENDMENT**

**MONTHLY CAPACITY PAYMENTS - \$/KW**

| <u>YEAR</u> | <u>COLUMN 1*</u> | <u>COLUMN 2</u> | <u>COLUMN 3</u> |
|-------------|------------------|-----------------|-----------------|
| 1995        | 17.62            | 8.41            | 6.74            |
| 1996        | 18.59            | 8.95            | 7.17            |
| 1997        | 19.62            | 9.53            | 7.63            |
| 1998        | 20.70            | 10.13           | 8.12            |
| 1999        | 21.85            | 10.78           | 8.64            |
| 2000        | 23.06            | 11.47           | 9.91            |
| 2001        | 24.34            | 12.21           | 9.78            |
| 2002        | 25.69            | 12.98           | 10.40           |
| 2003        | 27.11            | 13.80           | 11.06           |
| 2004        | 28.61            | 14.68           | 11.76           |
| 2005        | 30.19            | 15.61           | 12.50           |
| 2006        | 31.87            | 16.60           | 13.29           |
| 2007        | 33.63            | 17.65           | 14.14           |
| 2008        | 35.49            | 18.77           | 15.04           |
| 2009        | 37.46            | 19.96           | 15.99           |
| 2010        | 39.53            | 21.23           | 17.01           |
| 2011        | 41.72            | 22.58           | 18.09           |
| 2012        | 44.03            | 24.01           | 19.23           |
| 2013        | 46.47            | 25.54           | 20.46           |
| 2014        | 49.05            | 27.16           | 21.76           |
| 2015        | 51.76            | 28.89           | 23.14           |
| 2016        | 54.63            | 30.73           | 14.61           |
| 2017        | 57.66            | 32.68           | 16.18           |
| 2018        | 60.85            | 34.76           | 27.84           |
| 2019        | 64.22            | 36.97           | 29.62           |
| 2020        | 67.78            | 39.33           | 31.50           |
| 2021        | 71.53            | 41.83           | 33.51           |
| 2022        | 75.50            | 44.49           | 35.64           |
| 2023        | 79.68            | 47.33           | 37.91           |
| 2024        | 84.09            | 50.35           | 40.33           |

Each price listed in Column 1 through Column 3 shall be applicable commencing with the first hour of each stated year. If there is (are) any force majeure event(s) and the contract is extended as provided in Section 18 of the Agreement, the capacity payments shall be extended at the 2024 payment level for the period of the extension by the sum of previous force majeure hours as provided in Section 18 of the Agreement.

101740



**AMENDMENT TO  
AMENDED AND RESTATED  
ELECTRICAL POWER PURCHASE AGREEMENT**

THIS AMENDMENT, made and entered into as of this 23<sup>rd</sup> day of December, 1992, amending the Amended and Restated Electrical Power Purchase Agreement dated as of February 21, 1989 (the "Revised Agreement"), by and between Pinellas County, a political subdivision of the State of Florida (the "County") and Florida Power Corporation, a private utility corporation having its principal place of business at St. Petersburg, Florida, and authorized to do business in the State of Florida ("FPC").

**WITNESSETH:**

WHEREAS, the County owns and contracts for the operation and maintenance of a Resource Recovery Facility (the "Facility") located at 3001 110th Avenue North, St. Petersburg, Pinellas County, Florida with an installed electric generating capacity of approximately seventy-five megawatts (75mw) of electric power; and

WHEREAS, the County and FPC entered into the Revised Agreement on February 21, 1989, wherein the County agreed to sell and deliver and FPC agreed to purchase and accept all the Net Electric Energy and the Committed Capacity from the Facility pursuant to the terms and conditions of the Revised Agreement; and

WHEREAS, pursuant to the Revised Agreement, FPC may declare the County to be in default thereunder if the County refuses or is unable to deliver the Committed Capacity after January 1, 1995; and

WHEREAS, relative to such default provision, FPC and the County agree that the Revised Agreement should be revised and clarified with respect to the extent of the County's Committed Capacity delivery obligation, including any demonstration of the County's ability to deliver the Committed Capacity.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree to amend the Revised Agreement as follows:

1. Strike subsection 9.2(ii) in its entirety and insert in lieu thereof the following:
  - (ii) if the County, after January 1, 1996, fails to re-demonstrate the Facility's ability to deliver the Committed Capacity in accordance with Rate Schedule COG-2 within sixty (60) days of a request by FPC to do so; provided, however, that requests for such re-demonstration shall not be made more than once in any twelve (12) month period and shall be coordinated with the county so that the sixty (60) day period for re-demonstration avoids, if practical, previously notified periods of scheduled outages and reductions in capacity pursuant to Section 4.0 et seq. hereof.
2. In accordance with Section 24.0 of the Revised Agreement, the County and FPC expressly acknowledge that this Amendment shall not be construed as a waiver or relinquishment

of any right or as a modification of any provision of the Revised Agreement other than specifically provided for in this Amendment.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be executed the day and year first above written.

ATTEST:

William L. Baran

Witness

Robert D. Dola

Witness

FLORIDA POWER CORPORATION

By:

M. H. Phillips

Executive Vice President

PINELLAS COUNTY, FLORIDA  
By and Through Its Board of  
County Commissioners.

By:

Chairman

ATTEST: KARLEEN F. DeBLAKER

Clerk

By:

Vernia Grant

Deputy Clerk

Approved as to form:

M. J. Yard

County Attorney

I, KARLEEN F. DeBLAKER, Clerk of the Circuit Court and Clerk Ex-Officio Board of County Commissioners, do hereby certify that the above and foregoing is a true and correct copy of the original instrument in and to the files of the Board of County Commissioners of Pinellas County, Florida.

Witness my hand and seal of said County Court Ex-Officio Clerk to the Board of County Commissioners, Pinellas County, Florida.

By: Vernia Grant  
Deputy Clerk





## SUMMARY

PINELLAS COUNTY (02/21/89 Negotiated contract -- Pinellas North)

- Capacity Payment Adjustment

- ~~10/02/90~~ ~~Contract~~ formally amended to change terms with respect to effect on capacity and energy payments if commercial in-service operation not achieved by 01/01/95

AMENDMENT TO  
ELECTRIC POWER PURCHASE AGREEMENT

THIS AMENDMENT, made and entered into as of the 2 day of October, 1990, amending the Electric Power Purchase Agreement dated as of February 21, 1989 (the "Agreement"), by and between Pinellas County, a political subdivision of the State of Florida (the "County") and Florida Power Corporation, a private utility corporation having its principal place of business at St. Petersburg, Florida, and authorized to do business in the State of Florida ("FPC").

WITNESSETH:

WHEREAS, the County proposes to construct, own, and contract for the operation and maintenance of a Resource Recovery Facility (the "Facility") to be located at a site to be selected by the County in the County and having an installed electric generating capacity of approximately fifty megawatts (50 MW) of electric power; and

WHEREAS, the County and FPC entered into the Agreement on February 21, 1989, wherein the County agreed to sell and deliver and FPC agreed to purchase and accept net electric energy and capacity from the Facility subject to the terms and conditions of the Agreement; and

WHEREAS, the Agreement provides that if the Facility does not achieve commercial operation prior to January 1, 1995, FPC is relieved of its obligation to make specified capacity payments, but will make capacity payments based on an amount equal to its avoided capacity costs at the time; and

WHEREAS, FPC has determined that such capacity payments will be less than the avoided capacity payments specified in Column 1 of Appendix A attached to the Agreement; and

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WHEREAS, in order to facilitate siting and financing of the Facility, the County and FPC have agreed to enter into this Amendment to the Agreement to revise the agreed upon payments to the County in the event that the Facility does not achieve commercial operation prior to January 1, 1995.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree to amend the Agreement as follows:

1. Section 3.0 of the Agreement shall be amended by changing the reference in the fourth line from January 1, 1995 to January 1, 1996.

2. Section 3.0 of the Agreement shall be further amended so that the proviso beginning on line 5 is revised to read as follows:

"provided, however, that if the Facility does not achieve commercial operation by January 1, 1995, but does achieve commercial operation by January 1, 1996: (i) references to Appendix A attached to the Agreement shall be deemed to refer to Appendix I attached to the October 2, 1990 Amendment; and (ii) for purposes of energy payments under section 6.0, Appendix C, B.2. (a) attached to the Agreement shall be amended to read "the lesser of the ~~average~~ daily inventory charge out price of coal burned at Florida Power & Light Company's St. Johns River Power Park site, or if no coal is burned at the St. John's Power Park, the inventory charged out price of coal burned at Florida Power Corporation's Crystal River Plants 1 & 2, in cents per million BTU"; and provided, further, that if the Facility achieves commercial operation after January 1, 1996: (i) FPC agrees to make capacity payments to the County thereafter based on the procedure and pricing parameters under subsection 6.1.8; and (ii) for purposes of



energy payments under section 6.0, Appendix C, B.2. (a) attached to the Agreement shall be amended as stated above.

3. Section 9.2 of the Agreement shall be amended so that the first sentence is revised to read as follows:

"FPC may declare the County to be in default under this Agreement: (i) if the County, after January 1, 1996, or such earlier date as the Facility first receives a capacity payment under this Agreement, fails to receive the applicable capacity payments per Column 1 of Appendix A to the Agreement or Appendix I to the October 2, 1990 Amendment for twenty-four (24) consecutive months, or (ii) because of the County's refusal or inability to deliver its Committed Capacity after January 1, 1996.

4. In accordance with section 24.0 of the Agreement, the County and FPC expressly acknowledge that this Amendment shall not be construed as a waiver or relinquishment of any right or as a modification of any provision of the Agreement other than as specifically provided for in this Amendment.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be executed the day and year first above written.

ATTEST:

Diane Huzar  
Witness

FLORIDA POWER CORPORATION

By: M. H. Phillips  
M. H. Phillips  
Executive Vice President

\_\_\_\_\_  
Witness

PINELLAS COUNTY, FLORIDA  
By and Through Its Board of  
County Commissioners.

ATTEST: KARLEEN F. De BLAVER  
Clerk

By: [Signature]  
Chairman

By: [Signature]  
Deputy Clerk

Approved as to form:

[Signature]  
County Attorney



APPENDIX I  
TO AMENDMENT

MONTHLY CAPACITY PAYMENTS - \$/KW

| <u>YEAR</u> | <u>COLUMN 1*</u> | <u>COLUMN 2</u> | <u>COLUMN 3</u> |
|-------------|------------------|-----------------|-----------------|
| 1995        | 17.62            | 8.41            | 6.74            |
| 1996        | 18.59            | 8.95            | 7.17            |
| 1997        | 19.62            | 9.53            | 7.63            |
| 1998        | 20.70            | 10.13           | 8.12            |
| 1999        | 21.85            | 10.78           | 8.64            |
| 2000        | 23.06            | 11.47           | 9.91            |
| 2001        | 24.34            | 12.21           | 9.78            |
| 2002        | 25.69            | 12.98           | 10.40           |
| 2003        | 27.11            | 13.80           | 11.06           |
| 2004        | 28.61            | 14.68           | 11.76           |
| 2005        | 30.19            | 15.61           | 12.50           |
| 2006        | 31.87            | 16.60           | 13.29           |
| 2007        | 33.63            | 17.65           | 14.14           |
| 2008        | 35.49            | 18.77           | 15.04           |
| 2009        | 37.46            | 19.96           | 15.99           |
| 2010        | 39.53            | 21.23           | 17.01           |
| 2011        | 41.72            | 22.58           | 18.09           |
| 2012        | 44.03            | 24.01           | 19.23           |
| 2013        | 46.47            | 25.54           | 20.46           |
| 2014        | 49.05            | 27.16           | 21.76           |
| 2015        | 51.76            | 28.89           | 23.14           |
| 2016        | 54.63            | 30.73           | 14.61           |
| 2017        | 57.66            | 32.68           | 16.18           |
| 2018        | 60.85            | 34.76           | 27.84           |
| 2019        | 64.22            | 36.97           | 29.62           |
| 2020        | 67.78            | 39.33           | 31.50           |
| 2021        | 71.53            | 41.83           | 33.51           |
| 2022        | 75.50            | 44.49           | 35.64           |
| 2023        | 79.68            | 47.33           | 37.91           |
| 2024        | 84.09            | 50.35           | 40.33           |

Each price listed in Column 1 through Column 3 shall be applicable commencing with the first hour of each stated year. If there is (are) any force majeure event(s) and the contract is extended as provided in Section 18 of the Agreement, the capacity payments shall be extended at the 2024 payment level for the period of the extension by the sum of previous force majeure hours as provided in Section 18 of the Agreement.

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## SUMMARY

RIDGE GENERATING STATION LIMITED PARTNERSHIP (03/08/91  
Negotiated contract)

- Regulatory Delay

- ~~Contract~~ expressly authorizes extensions for regulatory delays (\$4.2.1)
- 09/11/91: FPC agrees to Ridge's request for a 37 day extension of commencement and commercial in-service date due to regulatory delays

- Force Majeure Delay

- ~~Contract~~ expressly authorizes extensions for force majeure delays (\$4.2.2)
- 10/15/91: FPC agrees to a six month force majeure delay due to changes in the Comprehensive Land Use plan for Polk County

**DECKER ENERGY  
INTERNATIONAL**

September 11, 1991

Mr. Robert Dolan, Manager  
Cogeneration Contracts & Administration  
Florida Power Corporation  
3201 34th Street South  
St. Petersburg, FL 33711

Re: Extension of time

Dear Mr. Dolan,

Pursuant to Article IV, Section 4.2.1 of our March 8, 1991 "Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility" ("Contract"), Ridge Generating Station Limited Partnership ("Ridge") hereby requests extension of the dates specified in Section 4.2 of the Contract by 37 days. This request for extension is a result of the Contract Approval Date exceeding 120 days after submittal to the FPSC by 37 days. We arrived at this number based on the following dates/events which yields 157 days from the date of submittal of the agreement to the FPSC to Contract Approval Date as defined in Section 1.16.

|                 |   |  |
|-----------------|---|--|
| March 19, 1991  | - | Petition submitted to FPSC                       |
| July 1, 1991    | - | FPSC PAA order issued                            |
| July 22, 1991   | - | PAA order became effective                       |
| August 22, 1991 | - | Appeal period expired/<br>Contract Approval Date |

Accordingly, the date specified in Section 4.2(i) for Transmission Service Agreement execution shall be extended from January 1, 1993 to February 8, 1993; the date specified in Section 4.2(ii) for Construction Commencement shall be extended from November 1, 1992 to December 8, 1992; and, the date specified in Section 4.2(iii) for Commercial In-Service Status shall be extended from January 1, 1994 to February 7, 1994. (Days which fall on a weekend have been moved to the next weekday.)

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Mr. Robert Dolan  
September 11, 1991  
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We would appreciate it if you would acknowledge receipt of this request by executing a copy of this letter (which is provided in duplicate) where indicated and return it to us for our records.

Sincerely,

*Macauley Whiting, Jr.*  
Macauley Whiting, Jr.

cc: James P. Fama, Esquire

Acknowledged:

By:

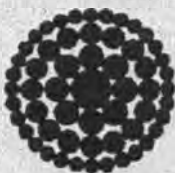
Title:

Date:

*Robert D. Dolan*  
*Manager, Cogeneration Contracts and Admin.*  
*10/17/91*

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**Florida  
Power**  
CORPORATION

**Charles F. Reinhardt**  
ASSISTANT COMMISSIONER

October 15, 1991

**Macaulay Whiting, Jr.**  
President  
Ridge Generating Station Limited Partnership  
Decker Energy - Ridge, Inc.  
General Partner

**Re: Negotiated Contract for the Purchase of Firm Capacity  
and Energy from a Qualifying Facility between Ridge Generating  
Station Limited Partnership and Florida Power Corporation**

**Dear Mr. Whiting:**

This letter will confirm the contents of my October 15, 1991 telephone conversation with Richard A. Zambo, Esq. At that time I explained to Mr. Zambo that the information provided to me by Michael S. Craig, Esq., the attorney handling the zoning and comprehensive land use plan issues associated with your site, and the information provided by Mr. Zambo, established sufficient grounds for a Force Majeure delay of your company's contract with Florida Power Corporation.

For that reason, this letter will serve as formal acknowledgement of a Force Majeure declaration by your company for a six month period based on delay caused by the Polk County Comprehensive Land Use Plan changes affecting your company. Because the contract between our companies only allows a maximum delay of six months, all other issues of delay are now moot. Accordingly, I do not address any of your other bases for delay.

Florida Power Corporation continues to be very concerned about any delays in your company's providing the firm capacity required by the contract at the operational date stated in the contract after adjustment for the Force Majeure delay. Any further delays would result in a breach of this contract by your company.

GENERAL OFFICE: 3201 Thirty-fourth Street South • Post Office Box 14042 • St. Petersburg, Florida 33733 • (813) 666-5737  
A Florida Progress Company

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Please call me if you have any further questions. Thank you  
for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Charles F. Reichmann', with a stylized flourish at the end.

Charles F. Reichmann  
Assistant Counsel

cc: Robert Dolan  
Richard Sambo, Esq.

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## SUMMARY

TIMBER ENERGY RESOURCES (12/31/84 standard Offer contract)

- None