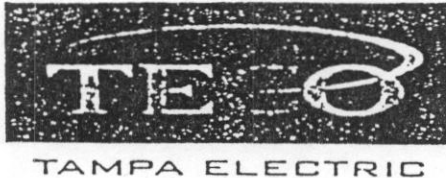


ORIGINAL



Power Sale and Purchase Agreement  
Between  
Farmland Hydro, L.P.  
and  
Tampa Electric Company

Seller: Farmland Hydro, L.P.

Buyer: Tampa Electric Company

990001-EI

Capacity  
and Energy  
Resource:

The capacity and energy resource for this Agreement shall be the Seller's cogeneration facility located in Bartow, Florida ("Farmland Cogen"). The Farmland Cogen is located within the Buyer's control area and is interconnected with the Buyer's transmission system.

Type of  
Service:

The type of service provided under this Agreement shall be firm, unit contingent capacity and energy.

Agreement  
Term:

The term of this Agreement shall commence on June 1, 1999 and continue through September 30, 2000 ("Agreement Term"); however, service under this Agreement shall be provided as follows: (1) from June 1, 1999 through September 30, 1999 ("First Service Term"); and (2) from June 1, 2000 through September 30, 2000 ("Second Service Term"). The First Service Term and the Second Service Term are also identified hereinafter individually, as a "Service Term" and collectively, as the "Service Terms".

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
MAS \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
SEC   I    
WAW \_\_\_\_\_  
OTH \_\_\_\_\_

Delivery Point:

The Delivery Point for service under this Agreement shall be the Buyer's 69 kV substation that interconnects the Farmland Cogen with the Buyer's 69 kV transmission system. The capacity and energy provided under this Agreement shall be delivered by the Seller in accordance with the terms and conditions of "Tampa Electric Company's Interconnection Agreement" between the Seller (as

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successor in interest to Farmland Industries, Inc.) and the Buyer dated August 10, 1990, as amended.

**Service  
Month:**

Service Month shall mean a calendar month within a Service Term.

**Reserved  
Capacity:**

Reserved Capacity shall mean four megawatts (4 MW) of firm, unit contingent capacity and energy.

**On-Peak  
Hour(s):**

On-Peak Hour(s) shall mean the clock hour(s) from hour ending 8 to hour ending 23, inclusive (also referred to as the hours from 7:00 a.m. through 11:00 p.m., inclusive) each day (e.g., Monday through Sunday, inclusive) during a Service Term.

**Off-Peak  
Hour(s):**

Off-Peak Hour(s) shall mean all clock hours that are not defined as On-Peak Hours.

**Reserved  
Energy:**

Reserved Energy shall mean the energy associated with Reserved Capacity that the Buyer schedules, and the Seller delivers, to the Delivery Point during the On-Peak Hours of a Service Month.

**Supplemental  
Capacity:**

Supplemental Capacity shall mean any amount of firm, unit contingent capacity from the Farmland Cogen in excess of the amount of Reserved Capacity.

**Supplemental  
Energy:**

Supplemental Energy shall mean the energy associated with Supplemental Capacity that the Seller offers to make available, the Buyer schedules, and the Seller delivers, to the Delivery Point during the On-Peak Hours and/or Off-Peak Hours of a Service Month.

**Seller's  
Commitment:**

The Seller agrees to make Reserved Energy available a minimum of ninety percent (90%) of the On-Peak Hours that the Buyer schedules Reserved Energy for delivery during each Service Month ("90% Threshold Energy Commitment").



The Seller agrees to make Supplemental Capacity and Supplemental Energy available to the Buyer during the On-Peak Hours and/or Off-Peak Hours of each Service Month that the Farmland Cogen is capable of generating Supplemental Energy for a minimum of two consecutive hours and the Buyer schedules Supplemental Energy for delivery. Any Supplemental Energy that is scheduled by the Buyer and delivered by the Seller during a Service Month shall not be included in determining whether the Seller has satisfied the 90% Threshold Energy Commitment for that Service Month.

**Buyer's  
Commitment:**

During each Service Term, the Buyer agrees to schedule and pay for a minimum of five thousand megawatt-hours (5,000 MWh) of Reserved Energy; provided that, the Seller can make available and deliver 5,000 MWh of Reserved Energy to the Delivery Point when scheduled by the Buyer during the On-Peak Hours of each Service Term.

**Schedule:**

Unless mutually agreed to otherwise, Reserved Capacity, Reserved Energy, Supplemental Capacity, and Supplemental Energy shall be scheduled as follows:

The Buyer shall schedule Reserved Capacity and Reserved Energy one (1) day prior to the date that the Buyer desires delivery of such Reserved Capacity and Reserved Energy ("Scheduling Day"). By no later than 12:00 noon of the Scheduling Day, the Buyer shall notify the Seller of the amount of Reserved Capacity and Reserved Energy that the Buyer wishes to schedule in each of the On-Peak Hours of the following day. By no later than 1:00 p.m. of the Scheduling Day, the Seller shall notify the Buyer of the amount of Reserved Capacity and Reserved Energy that the Seller expects to make available for delivery to the Buyer during each On-Peak Hour of the following day ("Reserved Schedule"). Once the Reserved Schedule is established by 1:00 p.m. of the Scheduling Day, the Seller shall make available and deliver the Reserved Capacity and Reserved Energy to the Delivery Point and the Buyer shall accept delivery of the Reserved Capacity and Reserved Energy.

The Seller shall notify the Buyer that Supplemental Energy will be available for a minimum of two (2) consecutive hours from the Farmland Cogen by no later than 12:00 noon of the Scheduling Day. By no later than 1:00 p.m. of the Scheduling Day, the Buyer shall notify the Seller of the amount of Supplemental Energy that the

Buyer wishes to schedule in each of the clock hours of the following day ("Supplemental Schedule"); provided that, the Supplemental Schedule shall provide for deliveries of Supplemental Energy for a minimum of two (2) consecutive hours. Once the Supplemental Schedule is established by 1:00 p.m. of the Scheduling Day, the Seller shall make available and deliver such Supplemental Energy to the Delivery Point and the Buyer shall accept delivery of such Supplemental Energy.

For purposes of this Agreement, the Reserved Schedule and Supplemental Schedule are also identified hereinafter collectively as the Schedule. For purposes of this Agreement, the actual amount(s) of Reserved Energy and Supplemental Energy delivered by the Seller to the Delivery Point during each clock hour of the Schedule shall be referred to as the Reserved Delivery and Supplemental Delivery, respectively. For purposes of this Agreement, the Reserved Delivery and Supplemental Delivery are also identified hereinafter collectively as the Delivery.

**Reservation  
Fee:**

The Buyer agrees to pay the Seller a Reservation Fee of [REDACTED] for Reserved Capacity and Reserved Energy; provided that the Seller satisfied the 90% Threshold Energy Commitment.

If the Seller does not satisfy the 90% Threshold Energy Commitment, the Reservation Fee may be reduced by 2.5% for each 1% reduction in availability below 90%. If the Seller makes Reserved Energy available less than 70% of the On-Peak Hours during which the Buyer schedules Reserved Energy each Service Month for delivery, the Reservation Charge shall be reduced to zero for that Service Month.

At the buyer's sole discretion, alternative remedies may be offered to the Seller in lieu of the Reservation Fee reduction stated above.

**Reserved  
Energy  
Fee:**

The Buyer agrees to pay the Seller [REDACTED] per megawatt-hour ([REDACTED]) for each MWh of Reserved Energy.

**Supplemental  
Energy  
Fee:**

The Buyer agrees to pay the Seller [REDACTED]  
[REDACTED] for each MWh of Supplemental Energy.

**Billing  
Information:**

Each clock hour that the Delivery is less than the Schedule (e.g., the Reserved Delivery and Supplemental Delivery are less than the Reserved Schedule and Supplemental Schedule, respectively) the Buyer shall reduce the Schedule (e.g., the Reserved Delivery and Supplemental Delivery, respectively) to the amount of whole megawatts delivered. The Delivery (e.g., Reserved Delivery and Supplemental Delivery) so adjusted shall be referred to as the Delivery Billing (e.g., the Reserved Billing and Supplemental Billing, respectively).

Each clock hour that the Delivery is greater than or equal to the Schedule (e.g., the Reserved Delivery and Supplemental Delivery are greater than or equal to the Reserved Schedule and Supplemental Schedule, respectively), the Schedule (e.g., the Reserved Schedule and Supplemental Schedule, respectively) shall be reduced to the amount of whole megawatts delivered. The Schedule (e.g., the Reserved Schedule and Supplemental Schedule, respectively) so adjusted shall be referred to as the Delivery Billing (e.g., the Reserved Billing and Supplemental Billing, respectively).


The Delivery Billing (e.g., the Reserved Billing and Supplemental Billing) amounts shall be determined for each clock hour of each Service Month in accordance with the previous two paragraphs. The Delivery Billing (e.g., the Reserved Billing and Supplemental Billing) amounts will be provided to the Seller during the first business week following each Service Month during which the Seller delivers Reserved Energy and Supplemental Energy, if any.

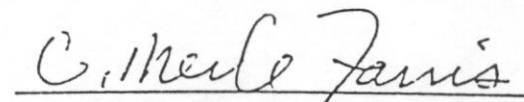
**Payment:**

The Seller will submit a statement within one (1) week of the date of receipt of the Buyer's billing information. The Buyer will pay the amount(s) due within twenty (20) days of receipt of the Seller's billing statement.

**Tampa Electric Company**

**Farmland Hydro, L.P.**

  
W. Lynn Brown  
Director  
Wholesale Marketing and Sales

  
C. Merle Farris  
Vice President  
Operations

Date: 5/28/99

Date: May 28, 1999



TAMPA ELECTRIC

April 30, 1999

## Short Term Power Purchase Agreement Between Tampa Electric Company and Okeelanta Corporation

Buyer: Tampa Electric Company

Seller: Okeelanta Corporation

Term: May 3 through June 30, 1999; provided that the commencement date will be modified pursuant to Condition No. 2 below.

Quantity: 50 MW per hour

Delivery Point: Into the Florida Power & Light Company ("FPL") transmission system at the Seller's Okeelanta 138 kV substation.

Conditions:

1. The Okeelanta Plant will be committed as a base load resource for the term of this Agreement; however, capacity and energy shall be delivered on a unit-contingent basis;
2. The commencement date of this Agreement is contingent on the availability of firm point-to-point transmission service and associated ancillary services through the transmission system of FPL and the ability of the Buyer to purchase that type of transmission service and associated ancillary services from the Delivery Point to the Buyer's interconnection(s) with FPL; and
3. For every day of delay in the commencement date of the term of this Agreement, the Reservation Fee, described below, will be reduced by [REDACTED] and the amount of energy to be scheduled by the Buyer will be reduced by 800 MWh per day.

Schedule: The Buyer will schedule 50 MW per hour every calendar day, including holidays, from HE 8:00 to HE 23:00, Eastern Standard Time (24,800 MWh for May and 24,000 MWh for June; provided that the amounts of energy will be adjusted pursuant to Condition No. 3 above).

Plant  
Availability:

The Seller will exercise reasonable efforts to maintain at least a 90% availability rate for the schedule contemplated in this Agreement. The Plant Availability for each month will be determined according to the following formula:

$$\frac{(\text{On-Peak Energy Delivered} \times 0.85 + \text{Off-Peak Energy Delivered} \times 0.15)}{\text{Energy Scheduled for the Month}}$$

(or a portion of a month if the commencement date of this Agreement is delayed due to Condition No. 2).

For purposes of this Agreement, "On-Peak" is defined as Monday through Friday, excluding holidays, and "Off-Peak" is defined as weekends and holidays.

In each month that the Plant Availability is less than 90% but greater than or equal to 78% an Adjusted Reservation Fee will be determined according to the following formula:

$(A + B) \times \text{Reservation Fee}$ , where

$A = 100.00\%$

$B = (\text{Actual Availability (expressed to two significant decimal places)} - 90.00\%) \times 5$

In each month that the Plant Availability is less than 78% there will be no Reservation Fee.

Pricing:

The Buyer will pay the Seller the fees and rates set forth below:

For May:

1. A Reservation Fee of:
  - A. \$[REDACTED]-month for Plant Availability greater than or equal to 90%; or
  - B. An Adjusted Reservation Fee, as applicable.
2. An Energy Rate of [REDACTED].

For June:

1. A Reservation Fee of:
  - A. \$[REDACTED]th for Plant Availability greater than or equal to 90%; or
  - B. An Adjusted Reservation Fee, as applicable.
2. An Energy Rate of [REDACTED].



Scheduling:

If the Seller makes it available, the Buyer commits to purchase 50 MW per hour each calendar day beginning on the commencement day and continuing through remainder of the term of this Agreement. The Buyer will not be required to pre-schedule capacity and energy with the Seller. The Seller will promptly advise the Buyer of any potential, or actual, scheduled maintenance outages, forced outages, and/or derations of the Okeelanta Plant.

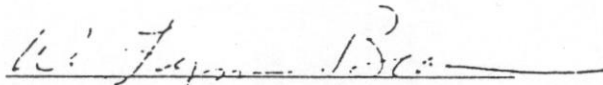
Confirming  
Transactions:

The Buyer will provide the Seller with monthly confirmation of the amount of energy delivered to the Delivery Point during the prior month. Such confirmation will be provided during the first business week of the calendar month following delivery of energy by the Seller.

Settlement:

The Seller will submit a statement promptly after the end of the month and the Buyer will pay amounts due twenty (20) days after the end of the month of the sale.

Tampa Electric Company

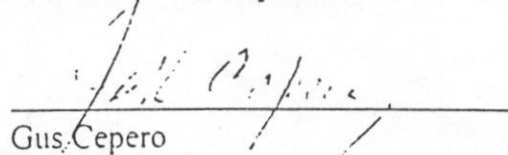


W. Lynn Brown

Director

Wholesale Marketing and Sales Department

Okeelanta Corporation



Gus Cepero

Vice President

Date: 4/30/99

Date: 4/30/99

## Plant

Availability: The Seller will exercise reasonable efforts to maintain at least a ninety percent (90.00%) plant availability rate for the schedule contemplated in this Agreement. The Actual Plant Availability Rate (%) for each month (or a portion of a month if the commencement date of this Agreement is delayed due to Condition No. 2) will be the sum of the weighted actual on-peak plant availability rate and the weighted actual off-peak plant availability rate and will be determined according to the following formula:

Actual Plant  
Availability

$$\text{Rate} = \{[(\text{Energy Delivered On-Peak}) / (\text{Energy Scheduled On-Peak})] \times 0.8500\} + \{[(\text{Energy Delivered Off-Peak}) / (\text{Energy Scheduled Off-Peak})] \times 0.1500\}$$

For purposes of this Agreement, "On-Peak" is defined as Monday through Friday, excluding holidays, and "Off-Peak" is defined as weekends and holidays.

In each month that the Actual Plant Availability Rate is less than 90.00% but greater than or equal to 78.00%, an Adjusted Reservation Fee will be determined according to the following formula:

Adjusted  
Reservation

$$\text{Fee} = (A + B) \times \text{Reservation Fee (described below)}$$

where:

$$A = 100.00\%$$

$$B = (\text{Actual Plant Availability Rate (expressed in percent to two significant decimal places)} - 90.00\%)$$

In each month that the Actual Plant Availability Rate is less than 78.00%, there will be no Reservation Fee.

## Pricing:

The Buyer will pay the Seller the fees and rates set forth below:

### For May:

1. A Reservation Fee of:
  - A. [REDACTED] for an Actual Plant Availability Rate greater than or equal to 90.00%; or
  - B. An Adjusted Reservation Fee, as applicable.
2. An Energy Rate of [REDACTED]

### For June:

1. A Reservation Fee of:
  - A. [REDACTED] month for an Actual Plant Availability Rate greater than or equal to 90.00%; or
  - B. An Adjusted Reservation Fee, as applicable.
2. An Energy Rate of [REDACTED]

**CONTRACT**  
**FOR THE**  
**SALE AND PURCHASE**  
**OF**  
**CAPACITY AND ENERGY**  
**BETWEEN**  
**AUBURNDALE POWER PARTNERS,**  
**LIMITED PARTNERSHIP**  
**AND**  
**TAMPA ELECTRIC COMPANY**

**CONTRACT  
FOR THE  
SALE AND PURCHASE  
OF  
CAPACITY AND ENERGY  
BETWEEN  
AUBURNDALE POWER PARTNERS,  
LIMITED PARTNERSHIP  
AND  
TAMPA ELECTRIC COMPANY**

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**EXHIBIT A**

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**CONTRACT  
FOR THE  
SALE AND PURCHASE  
OF  
CAPACITY AND ENERGY  
BETWEEN  
AUBURNDALE POWER PARTNERS,  
LIMITED PARTNERSHIP  
AND  
TAMPA ELECTRIC COMPANY**

**THIS CONTRACT** by and between AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP, a Delaware limited partnership ("APP"), and TAMPA ELECTRIC COMPANY, a Florida corporation ("TAMPA ELECTRIC"), is effective as of the 1st day of July, 1999. TAMPA ELECTRIC and APP are also identified hereinafter, individually, as a "Party," and collectively, as the "Parties".

**WITNESSETH**

**WHEREAS**, APP owns and operates a "Qualifying Facility" (as defined herein) that is directly electrically interconnected with the electric transmission system of TAMPA ELECTRIC; and

**WHEREAS**, APP desires to sell and TAMPA ELECTRIC desires to purchase electric Capacity (as defined herein) and associated Energy (as defined herein) on a Unit Contingent basis (as defined herein), and APP has such Capacity and Energy available for that purpose; and

**WHEREAS**, each Party desires to establish the terms, conditions, rights, and obligations with respect to the sale and purchase of such Capacity and associated Energy;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual benefits to be obtained from the covenants and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TAMPA ELECTRIC and APP, each intending to be legally bound, hereby covenant and agree as follows:

**SECTION 1. - Definitions.** For all purposes of this Contract (as defined herein), the terms identified in this Section 1 shall be defined as set forth in this Section 1. Except where the context otherwise requires, definitions and other terms expressed in the singular will include the plural and vice versa.

"Actual Capacity Factor" shall mean the ratio calculated pursuant to Section 5(d).

"Administrative Representative" shall mean the individual designated by a Party under this Contract to represent such Party in all matters arising under this Contract.



"Annual Planned Maintenance Outage" shall mean a planned outage of the APP Generating Unit that occurs once each year during the Month(s) of October and/or November and extends for up to the following number of Days as determined in APP's sole discretion:

- (a) twenty-six (26) Days during calendar year 1999; and for which APP has provided notice to TAMPA ELECTRIC in accordance with Section 3.
- (b) seven (7) Days during calendar year 2000 and for which APP has provided notice to TAMPA ELECTRIC in accordance with Section 3.

"APP Generating Unit" shall mean APP's cogeneration facility, which includes without limitation APP's natural-gas-fired combustion turbine generator (the "APP CT") and APP's heat recovery steam generator and associated steam turbine generator (the "APP HRSG").

"APP's Lenders" shall mean the financial institutions providing financing for the APP Generating Unit that are parties to that certain Project Loan and Letter of Credit Facility entered into by and among APP and the Sanwa Bank Limited, New York Branch, as Agent, and the banks signatory thereto, as amended, modified, supplemented or replaced.

"APP's Prior Firm Contractual Commitments" shall mean the power sale agreements between APP and FPC executed prior to the Effective Date of this Contract. Exhibit B, which is attached hereto and incorporated herein by reference, identifies APP's Prior Firm Contractual Commitments.

"APP's Taxes" shall have the meaning set forth in Section 5(g).

"Assigning Party" shall have the meaning set forth in Section 8.

"Business Day" shall mean a Day, exclusive of a Saturday, a Sunday or a federal government holiday.

"Capacity" shall mean the electric generating capacity that APP shall, pursuant to the terms, conditions and limitations set forth in this Contract, make available to TAMPA ELECTRIC from the APP Generating Unit.

"Capacity Payment Adjustment Factor" shall mean the factor calculated pursuant to Section 5(e).

"Capacity Rate" shall mean the price per MW per Month for Capacity, as set forth in Section 5(c).

"Claims" shall mean any and all claims, demands, actions, causes of action, responsibilities, damages, fines, penalties, deficiencies, losses, expenses, costs, disbursements, liabilities and obligations, including, without limitation, liability in tort, interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment and whether at law or in equity.

"Commencement Date" shall mean July 1, 1999.

"Commercial Paper Rate" shall mean a rate utilized pursuant to Section 2(b) herein, which is equal to the rate for Commercial Paper (73 to 119 days), as quoted on the due date (or, if the due date is not on a Day on which the Wall Street Journal is published, on the next Day on which the Wall Street Journal is published) in the Money Rate Table of the Wall Street Journal, subject to applicable Law.

"Contract" shall mean this Contract for the Sale and Purchase of Capacity and Energy consisting of: (a) this contract; (b) the exhibits attached hereto and made a part hereof; and (c) any amendments thereto in writing and duly executed pursuant to the provisions of this contract, each of which (a - c) as may be amended from time to time. In the event of conflict between or among these documents, the documents shall take precedence in the following order: (c), (a), (b).

"Day" shall mean a period of twenty-four (24) consecutive hours commencing at 12:00 midnight, Eastern Prevailing Time. "Daily" has a meaning correlative to that of Day.

"Delivery Point(s)" shall mean the point(s) of interconnection between the APP Generating Unit and the electric transmission system of TAMPA ELECTRIC where Energy shall be delivered by APP to TAMPA ELECTRIC, as more fully described in Exhibit A, which is attached hereto and incorporated herein by reference.

"Disputed Amount" shall have the meaning that is set forth in Section 11(c).

"Eastern Prevailing Time" (or "EPT") shall mean the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Time.

"Effective Date" shall mean the date on which this Contract becomes effective, which shall be the date first written above.

"Energy" shall mean electric energy of the character commonly known as three phase, sixty-hertz electric energy (expressed in MWh) that is made available to TAMPA ELECTRIC from the APP Generating Unit pursuant to the terms, conditions and limitations set forth in this Contract.

"Energy Rate" shall mean the price per MWh of Energy, as set forth in Section 5(a).

"Escrowed Portion" shall have the meaning set forth in Section 2(b).

"Event of Force Majeure" shall mean an occurrence in which either Party is delayed in or prevented from performing or carrying out any of the provisions of this Contract, or any covenants and obligations (other than the obligation to pay money) made by and imposed upon such Party by this Contract by reason of any cause, whether or not foreseeable, beyond such Party's reasonable control, including, without limitation, any strike, stoppage in labor, failure of contractors or suppliers of materials to perform, riot, fire, explosion, flood, earthquake, landslide, geohydraulic subsidence, tornado, lightning, storm, ice, uncommonly severe weather conditions for the affected geographical area, invasion, civil war, insurrection, military or usurped governmental power, order of any court or

jurisdictional regulatory body granted in any bona fide adverse legal proceeding or action (provided, however, that government action does not include the imposition of any taxes); order of any civil or military authority, either de facto or de jure, act of God or the public enemy, or failure or malfunction of TAMPA ELECTRIC's system facilities (including the TAMPA ELECTRIC facilities described in Exhibit A), to the extent such occurrence is not due to TAMPA ELECTRIC's or APP's negligence or willful misconduct. Notwithstanding anything to the contrary set forth in this Contract, an Event of Force Majeure shall not include, among other things, (i) the loss of TAMPA ELECTRIC's markets or TAMPA ELECTRIC's inability economically to resell Energy purchased hereunder, or (ii) interruption by any transmitting utility other than TAMPA ELECTRIC. In addition, and notwithstanding anything in this Contract to the contrary, the term Event of Force Majeure shall not apply to events of non-performance under this Contract which are caused by or connected with the non-performing Party's; (a) negligent or intentional acts, errors or omissions; (b) failure to comply with any Law, or Government Authority; or (c) breach or default of this Contract. Notwithstanding anything in this Contract to the contrary, the term Force Majeure shall include, without limitation, (y) an event affecting APP's supplier(s) of firm natural gas or APP's provider(s) of firm natural gas transportation, as the case may be, as a result of which the supply or transportation of fuel that is essential to the production of Capacity and Energy is curtailed or interrupted in whole or in part, and (z) an event that is determined to be a force majeure event under the terms and conditions of TAMPA ELECTRIC's open access transmission tariff, as a result of which the transmission of Energy on TAMPA ELECTRIC's transmission system which is essential to the receipt of Energy from the APP Generating Unit is curtailed or interrupted in whole or in part.

"FERC" shall mean the Federal Energy Regulatory Commission or any successor federal agency.

"FPC" shall mean Florida Power Corporation.

"Governmental Authority" shall mean any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity, but excluding any such agency, court, commission, department or other such entity acting in its capacity as lender, guarantor or mortgagee.

"Interest Rate" shall mean a rate equal to the sum of: (a) two percent (2%) and (b) the Prime Rate, as quoted on the due date (or, if the due date is not on a Day on which the Wall Street Journal is published, on the next Day on which the Wall Street Journal is published) in the Money Rate Table of the Wall Street Journal, subject to applicable Law.

"Law" shall mean any existing or future federal, state, county, municipal, local or other governmental constitution, statute, ordinance, code, regulation, rule, injunction, requirement, or directive, and any decision, judgment, writ, injunction, order, decree or demand of a Governmental Authority construing any of the foregoing. "Law" shall be the singular reference to Laws.

"Lender Review Period" shall have the meaning set forth in Section 2(b).

"Month" shall mean a period starting at the beginning of the first Day of a calendar month and ending at 12:00 midnight EPT on the last Day of such calendar month. "Monthly" has a meaning correlative to that of Month.

"Monthly Capacity Factor" shall mean ninety-five percent (95%).

"Monthly Capacity Payment" shall mean the Monthly amount to be paid by TAMPA ELECTRIC to APP for TAMPA ELECTRIC's purchase of the Monthly Capacity, as set forth in Section 5(f) and adjusted in Section 5(e).

"Monthly Capacity Quantity" shall mean the following amounts of Capacity to be made available by APP from the APP Generating Unit during each Week Day Hour of each Month expressed in MW as follows :

<u>Year</u>	<u>Month</u>	<u>Capacity (MW)</u>
1999	July	12
1999	August	12
1999	September	12
1999	October	12
1999	November	10
1999	December	12
2000	January	15
2000	February	15
2000	March	12
2000	April	8
2000	May	6
2000	June	7
2000	July	12
2000	August	12
2000	September	12
2000	October	12
2000	November	10
2000	December	12

"Monthly Energy Payment" shall mean the Monthly amount to be paid by TAMPA ELECTRIC to APP for TAMPA ELECTRIC's purchase of Energy, as set forth in Section 3(b).

"Monthly Energy Quantity" shall mean the following amounts of Energy to be made available by APP from the APP Generating Unit during each Week Day Hour of each Month, expressed in MWh as follows:

<u>Year</u>	<u>Month</u>	<u>Energy (MWh)</u>
1999	July	12
1999	August	12
1999	September	12
1999	October	12
1999	November	10



1999	December	12
2000	January	15
2000	February	15
2000	March	12
2000	April	8
2000	May	6
2000	June	7
2000	July	12
2000	August	12
2000	September	12
2000	October	12
2000	November	10
2000	December	12

"Monthly Payments" shall mean the Monthly Capacity Payment and the Monthly Energy Payment.

"MW" shall mean megawatts.

"MWh" shall mean megawatt-hours.

"Non-Week Day Hours" shall mean all hours other than Week Day Hours.

"Operating Representative" shall mean the individual designated by a Party under this Contract to coordinate the day-to-day operation of such Party's facilities in order for such Party to carry out the terms of this Contract.

"Party" or "Parties" shall have the meaning set forth in the initial paragraph of this Contract.

"Practice" shall mean any practice, method and act.

"Prudent Utility Practice" shall mean any of the Practices engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the Practices that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost without discrimination in favor of or against APP or TAMPA ELECTRIC, consistent with good business Practices, reliability, safety, and expedition. Prudent Utility Practice is not intended to be limited to the optimum Practices to the exclusion of all others, but rather to be a spectrum of Practices acceptable to the electric utility industry.

"Qualifying Facility" shall have the meaning as set forth in Section 292.101(b)(1) of FERC's Regulations under the Public Utility Regulatory Policies Act of 1978.

"Specified Incremental Quantity" shall have the meaning set forth in Section 3(i).

"Statement Date" shall have the meaning set forth in Section 11(a).

"Subsequent Commitment" shall mean a sale by APP to any entity, including without limitation TAMPA ELECTRIC, of capacity and/or energy produced by the APP Generating Unit, pursuant to an agreement or transaction entered into after the Effective Date, and shall include, without limitation, a sale by APP to any utility (including without limitation TAMPA ELECTRIC) of as-available energy upon demand by APP as an owner of a Qualifying Facility.

"Summer Months" shall mean the period that starts at the beginning of the Day on April 1, and ends at the end of the Day on November 30.

"TAMPA ELECTRIC's Taxes" shall have the meaning set forth in Section 5(g).

"Taxes" shall mean any and all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments, other than taxes based on net income or net worth.

"Term" shall have the meaning set forth in Section 2(a).

"Transmission Service Agreement" shall mean that certain Transmission Service Agreement (including all appendices and attachments), dated as of July 13, 1992, as amended, between APP and TAMPA ELECTRIC.

"Unit Contingent" shall mean that the Capacity and Energy shall be supplied only from the APP Generating Unit.

"Week Day" shall mean the Days Monday through Friday, inclusive.

"Week Day Capacity" shall mean, for each Week Day Hour of a Month, the amount of Capacity, not to exceed the Monthly Capacity Quantity, that APP makes available to TAMPA ELECTRIC hereunder.

"Week Day Energy" shall mean, for each Week Day Hour of a Month, an amount of Energy, not to exceed the Monthly Energy Quantity, that is (a) actually delivered at the Delivery Point(s) for the account of TAMPA ELECTRIC, rounded to the nearest one-hundredth (0.01) of a MWh; or (b) scheduled and/or made available for scheduling and delivery at the Delivery Point(s), in whole MWs, if actual delivery cannot be made due to TAMPA ELECTRIC's inability or failure to receive the Energy (based upon, without limitation, an Event of Force Majeure declared by TAMPA ELECTRIC).

"Week Day Hours" shall mean the sixteen (16) hours per Week Day as follows: (i) in the Winter Months: the hours from hour ending 7 EPT through hour ending 22 EPT, inclusive (which means the hours from 6:00 a.m. EPT through 10:00 p.m. EPT), and (ii) in the Summer Months: the hours from hour ending 8 EPT through hour ending 23 EPT, inclusive (which means the hours from 7:00 a.m. EPT through 11:00 p.m. EPT).



"Wheeling Report" shall mean the report that TAMPA ELECTRIC provides to APP on each Business Day that shows, for the Days Friday through Sunday in the report on Monday, and for the preceding Day in the reports on Tuesday through Friday:

- (a) the amount of energy (including Energy) that was scheduled by APP for delivery at the Delivery Point(s) in each hour of the Day;
- (b) the allocation of the scheduled energy (including Energy) between or among sales to TAMPA ELECTRIC and redeliveries by TAMPA ELECTRIC to third parties, if any;
- (c) the actual meter readings for deliveries by APP in each hour of the Day;
- (d) the accounting for delivered energy that is treated as inadvertent energy, if any; and
- (e) the transmission loss factor applied to redeliveries by TAMPA ELECTRIC to third parties, if any.

"Winter Months" shall mean the period that starts at the beginning of the Day on December 1, and ends at the end of the Day on March 31.

## **SECTION 2. - Term; Survival of Provisions.**

- (a) The period during which this Contract shall be and remain in full force and effect ("Term") shall commence on the Effective Date and continue through December 31, 2000, unless extended by mutual written agreement of the Parties, or unless terminated pursuant to the provisions of Section 2(b), Section 10, Section 11, or Section 13.
- (b) Notwithstanding anything in this Contract to the contrary, APP, at its sole option, may terminate this Contract upon written notice to TAMPA ELECTRIC, within one hundred twenty (120) Days after the Effective Date, if APP does not obtain all necessary written approvals of this Contract from APP's Lenders, in their sole discretion. Such written approvals must be fully acceptable to APP, in APP's sole discretion. TAMPA ELECTRIC understands that such Lender approval, if obtained, may require the execution and delivery by TAMPA ELECTRIC of a consent and agreement, which shall not be unreasonably withheld, delayed or conditioned.

Notwithstanding anything in this Contract to the contrary, during the period from the Effective Date to (i) the date of termination pursuant to this Section 2(b) (if any), or (ii) the earlier of (A) the expiration of such 120-Day period without termination by APP, or (B) the date on which TAMPA ELECTRIC receives notice from APP that satisfactory approval of this Contract has been obtained from APP's Lenders (the period referred to in subsection (ii) A and B being collectively referred to as the "Lender Review Period"), APP shall hold in escrow the portion of any Monthly Capacity Payment(s) (the "Escrowed Portion") made by TAMPA ELECTRIC under this Contract that exceeds the amount that would have been paid had the applicable Capacity Rate been the rate specified in Section 5(c)(i) (including any proportionate reduction

thereof pursuant to Section 5(c)). Such Escrowed Portion shall be deemed to accrue interest Daily from the date APP receives payment at the Commercial Paper Rate calculated on the basis of a three hundred sixty-five (365) Day year. If the Contract is not terminated pursuant to this Section 2(b), then APP may retain the Escrowed Portion, including interest, upon the expiration of the Lender Review Period. If the Contract is terminated pursuant to this Section 2(b), and the termination is not due to a failure or refusal by TAMPA ELECTRIC to execute and deliver the consent and agreement proffered by APP's Lenders, then APP shall refund to TAMPA ELECTRIC the Escrowed Portion, including interest, and TAMPA ELECTRIC shall pay the Capacity Rate specified in Section 5(c)(i) for any Capacity that was provided by APP prior to termination and not yet paid for. If the Contract is terminated pursuant to this Section 2(b), and the termination is due to a failure or refusal by TAMPA ELECTRIC to execute and deliver the consent and agreement proffered by APP's Lenders (provided that such failure or refusal is consistent with TAMPA ELECTRIC's obligations not to unreasonably withhold, delay or condition the execution of any such consent and agreement), then APP shall retain seventy percent (70%) of the Escrowed Portion, including interest, and shall refund to TAMPA ELECTRIC thirty percent (30%) of the Escrowed Portion, including interest, and TAMPA ELECTRIC shall pay the Capacity Rate specified in Section 5(c)(i) for any Capacity that was provided by APP prior to termination and not yet paid for.

- (c) Termination in accordance with the provisions of Section 2(b), Section 10, or Section 11 shall not give rise to any claim for damages or other relief under any theory of liability whatsoever. The applicable provisions of this Contract will continue in effect and will survive the termination hereof only with respect to: (1) indemnification claims under Section 9 with respect to matters arising prior to the termination date; and (2) payment of any payment statement and payment statement adjustment or reimbursements of overpayment under Section 11 for Energy and Capacity made available prior to termination.

### **SECTION 3. - Sale of Capacity and Energy.**

- (a) **Capacity Commitment.** Commencing on the Commencement Date and pursuant to the terms, conditions and limitations set forth in this Contract, APP shall sell and make available on a Unit Contingent basis, and TAMPA ELECTRIC shall purchase, an amount of Capacity equal to the Monthly Capacity Quantity during the Week Day Hours of each Month, as made available by APP, exclusive of any Week Day Hours of such Month that Capacity cannot be made available or received due to an Annual Planned Maintenance Outage or an Event of Force Majeure.
- (b) **Energy Commitment.** Commencing on the Commencement Date and pursuant to the terms, conditions and limitations set forth in this Contract, APP shall sell and make available for delivery to TAMPA ELECTRIC at the Delivery Point(s), on a Unit Contingent basis, an amount of Energy equal to the Monthly Energy Quantity during the Week Day Hours of each Month, exclusive of any Week Day Hours that Energy cannot be made available for delivery due to an Annual Planned Maintenance Outage or an Event of Force Majeure declared by APP. TAMPA ELECTRIC shall receive and/or purchase the Week Day Energy, except for any Week

Day Energy that TAMPA ELECTRIC cannot receive due to an Event of Force Majeure declared by TAMPA ELECTRIC.

- (c) **APP's Prior Firm Contractual Commitments.** TAMPA ELECTRIC acknowledges that APP has only one electric generating unit and, as such, APP's obligations under this Contract are Unit Contingent. Notwithstanding anything in this Contract to the contrary, APP may at any time and from time to time interrupt or curtail the sale and delivery of Capacity and/or Energy hereunder to supply FPC with any amounts of either or both capacity and energy pursuant to APP's Prior Firm Contractual Commitments. Such interruption or curtailment shall be subject to the scheduling and priority provisions of Section 6, and shall be reflected in (i) the quantification of Week Day Capacity and the Week Day Energy, and (ii) the calculation of the Monthly Energy Payment and Monthly Capacity Payment in accordance with Section 5. Notwithstanding anything in this Contract to the contrary, APP may, sell any amount of capacity and energy (including without limitation Energy and Capacity) produced by the APP Generating Unit to any third party and to TAMPA ELECTRIC during (a) Non-Week Day Hours, (b) an Event of Force Majeure declared by TAMPA ELECTRIC that does not preclude TAMPA ELECTRIC from receiving and/or delivering the energy for the third-party transaction, and (c) periods where TAMPA ELECTRIC does not perform its obligations to receive such Energy under this Contract.
- (d) **APP's Interruption and Curtailment Commitment.** Once Energy has been scheduled in accordance with the provisions of Section 6, APP shall not interrupt or curtail the sale and delivery of such Energy for economic reasons.
- (e) Intentionally omitted.
- (f) **Annual Planned Maintenance Outage.** APP shall notify TAMPA ELECTRIC of the anticipated commencement and ending dates of each Annual Planned Maintenance Outage no later than sixty (60) Days prior to the commencement of such outage. Unless the Parties mutually agree otherwise, in writing, a planned outage of the APP Generating Unit that otherwise fits the definition of Annual Planned Maintenance Outage, but for which such notice has not been given, shall not qualify as an Annual Planned Maintenance Outage under this Contract. In any event, APP shall notify TAMPA ELECTRIC of any scheduled or unscheduled outage of the APP Generating Unit as soon as reasonably practicable.
- (h) **Alternative Arrangements.**
  - (i) **Substitute Energy Transaction.** APP may in its sole discretion arrange a sale of energy by a third party to TAMPA ELECTRIC that shall substitute for the sale of Energy under this Contract; provided, that any such substitute energy transaction shall be subject to the assent of TAMPA ELECTRIC, which shall not be unreasonably withheld, delayed or conditioned. A substitute energy transaction arranged by APP pursuant to this Section shall also be subject, without limitation, to the following conditions:



- (A) There shall be no more than one substitute energy transaction within any period of three successive Months, starting with the Commencement Date;
  - (B) The duration of each substitute energy transaction shall not exceed ten (10) sequential Business Days;
  - (C) The energy provided by the third party must be available on a firm basis at the same time, and in the same amount, as the Monthly Energy Quantity;
  - (D) The energy provided by the third party must be delivered to delivery point(s) on the TAMPA ELECTRIC system that are acceptable to TAMPA ELECTRIC, and such delivery point(s) shall replace the Delivery Point(s) under this Contract for the duration of the substitute energy transaction;
  - (E) Any transmission and ancillary services that are necessary to effect delivery of the energy to TAMPA ELECTRIC must be firm services, and must be arranged and paid for by APP or by the third party;
  - (F) TAMPA ELECTRIC shall make direct payment to the third party for the energy, at a rate not to exceed the Energy Rate;
  - (G) TAMPA ELECTRIC shall continue to make the Monthly Capacity Payment to APP; provided, that the energy deliveries to TAMPA ELECTRIC by the third party shall be utilized to calculate the Actual Capacity Factor and the Capacity Payment Adjustment;
  - (H) To the extent that an Event of Force Majeure declared by APP or an Annual Planned Maintenance Outage overlaps with a substitute energy transaction, it shall not be a basis for a proportionate reduction of the Capacity Rate under Section 5(c), and the energy provided under the substitute energy transaction shall be deemed made available or delivered, as if it were Energy delivered or made available pursuant to the terms of this Contract, and shall be used for the purposes of calculating the Actual Capacity Factor under Section 5(d); and
  - (I) A purchase and sale agreement that is consistent with the above conditions must be executed by TAMPA ELECTRIC and the third party providing the energy and allowed to become effective, without change, by any Governmental Authority with jurisdiction over the agreement.
- (ii) **Restructuring of APP's Prior Firm Contractual Commitments.** APP may in its sole discretion assign its rights and responsibilities under this Contract to FPC, or arrange for the assumption by FPC of substantially equivalent rights and responsibilities under a superseding contract; provided, that any such transfer or assumption shall be subject to the assent of TAMPA ELECTRIC, which shall not be unreasonably withheld,

delayed or conditioned. A transfer or assumption of rights and responsibilities pursuant to this Section shall also be subject, without limitation, to the following conditions:

- (A) The transaction shall continue pursuant to the same rates, terms, and conditions as are set forth in this Contract, except for any changes that are necessary to reflect the identity of the selling Party, the source of the Capacity and Energy, the location of the Delivery Point(s), and the allocation of responsibility for transmission and ancillary services as provided in (B) below;
- (B) Any transmission and ancillary services that are necessary to effect delivery of Capacity and Energy to TAMPA ELECTRIC must be firm services, and must be arranged and paid for by either APP or FPC; and
- (C) Any transfer agreement, purchase and sale agreement, or other document that is necessary to effect the transfer or assumption of rights and responsibilities must be fully executed by the appropriate parties and, if necessary, allowed to become effective, without change, by any Governmental Authority with jurisdiction over the matter.

- (i) **Specified Incremental Quantity.** If at any time during the period beginning on the Effective Date and ending on May 1, 2000, APP determines in its sole discretion to sell a specified quantity of firm capacity and energy, for the Week Day Hours of the entire Month of June 2000 and/or the entire Month of September 2000 from the APP Generating Unit, which quantity is in excess of the aggregate amount committed under APP's Prior Firm Contractual Commitments, this Contract and any other then existing Subsequent Commitment (the "Specified Incremental Quantity"), APP shall deliver to TAMPA ELECTRIC a written notice stating such determination and specifying the Specified Incremental Quantity to be sold. For a period of ten (10) Business Days after TAMPA ELECTRIC's receipt of such notice, APP shall not execute an agreement to sell the Specified Incremental Quantity with any third party, and TAMPA ELECTRIC shall have the right to provide written notice to APP of a price (both a capacity rate and an energy rate) which TAMPA ELECTRIC would be willing to pay to purchase all, but not less than all, of the Specified Incremental Quantity for the entirety of the Month of June 2000 and/or September 2000, as designated in APP's written notice. APP may elect in its sole discretion whether to accept or reject the price that TAMPA ELECTRIC may offer to pay for the Specified Incremental Quantity. If APP elects to accept the price offered by TAMPA ELECTRIC to purchase the Specified Incremental Quantity, it shall deliver a written notice accepting TAMPA ELECTRIC's price offer, not later than ten (10) Business Days after receipt by APP of TAMPA ELECTRIC's price offer and the Specified Incremental Quantity shall be added to the Monthly Capacity Quantity and the Monthly Energy Quantity for the Month of June, 2000 and/or the Month of September 2000, as applicable. In the event that APP does not receive the price offer from TAMPA ELECTRIC within the ten (10) Business Days set forth above, or if APP elects in its sole discretion not to accept TAMPA ELECTRIC's price, then APP shall be entitled to sell such Specified Incremental Capacity to any third party and APP shall have no further obligation to TAMPA ELECTRIC as to the Specified Incremental Quantity.

#### SECTION 4. - Transmission Service and Ancillary Service(s).

- (a) Transmission and Ancillary Services. APP shall supply Energy to TAMPA ELECTRIC at the Delivery Point(s). TAMPA ELECTRIC shall arrange and be responsible for transmission and all ancillary services at and from the Delivery Point(s), including, without limitation, the receipt of Energy at the Delivery Point(s).
- (b) Associated Costs. APP shall be responsible for any costs or charges imposed on or associated with the delivery of the Energy to the Delivery Point(s). TAMPA ELECTRIC shall be responsible for any costs or charges imposed on or associated with receipt of the Energy at the Delivery Point(s) and further delivery of the Energy from and after, the Delivery Point(s).
- (c) Title and Risk of Loss. As between the Parties, APP shall be deemed to be in exclusive control of the Energy prior to the Delivery Point(s) (and responsible for any Claims caused thereby), and TAMPA ELECTRIC shall be deemed to be in exclusive control of the Energy at and from the Delivery Point(s) (and responsible for any Claims caused thereby). Title to and risk of loss related to the Energy shall transfer from APP to TAMPA ELECTRIC at the Delivery Point(s). APP and TAMPA ELECTRIC shall each indemnify, defend and hold harmless the other Party from any Claims arising from any act or incident occurring as to any Energy at the time that title to such Energy is vested in the indemnifying Party.
- (d) Measurement. The Parties acknowledge that the Energy will be measured by TAMPA ELECTRIC's measuring devices and meters located within TAMPA ELECTRIC's Recker Substation in accordance with the provisions of the Transmission Service Agreement. Pursuant to the terms of the existing energy pulse data agreement between TAMPA ELECTRIC and APP (as may be amended from time to time), TAMPA ELECTRIC shall provide to APP the data required to measure energy deliveries contemplated under this Contract, and such data shall provide the basis for (i) APP's reconciliation of Wheeling Reports and (ii) invoice statements prepared by APP hereunder. The data from such meters and devices shall be rounded to the nearest hundredth (.01) of a MWh and recorded on APP's distributed control system.

#### SECTION 5. - Monthly Payments.

- (a) Energy Rate. The Energy Rate shall be:
  - (i) [REDACTED] during all Months except July and August of 1999 and July and August of 2000;
  - (ii) [REDACTED] during the Months of July and August of 1999; and
  - (iii) [REDACTED] during the Months of July and August of 2000.



- (b) **Monthly Energy Payment.** The Monthly Energy Payment shall equal the product of (i) the Energy Rate, and (ii) the Week Day Energy (except for any Week Day Energy that TAMPA ELECTRIC cannot receive due to an Event of Force Majeure declared by TAMPA ELECTRIC), rounded to the nearest cent. Calculation of the Monthly Energy Payment is demonstrated in Exhibit C, which is attached hereto and incorporated herein by reference.
- (c) **Capacity Rate.** The Capacity Rate, subject to the conditions set forth in Section 2(b) and adjustment as described below, shall be:
- (i) [REDACTED] per Month during all Months except July and August of 1999 and July and August of 2000;
  - (ii) [REDACTED] per Month during the Months of July and August of 1999; and
  - (iii) [REDACTED] per Month during the Months of July and August of 2000.

The Capacity Rate shall be proportionally prorated downward to reflect the impact of those Week Day Hours, if any, in a particular Month, that: (A) precede the Commencement Date; (B) follow the termination date; or (C) are included in an Annual Planned Maintenance Outage or an Event of Force Majeure.

APP has informed TAMPA ELECTRIC that APP may install a selective catalytic reduction system ("SCR"). If APP determines to install the SCR, APP will be required to schedule a planned outage of the APP Generating Unit in excess of those Days identified in the definition of Annual Planned Maintenance Outage. Notwithstanding anything in the Contract to the contrary, if APP installs an SCR, and as a result, APP is out of service for twenty (20) Days in the Months of October <sup>and/or</sup> November 2000 instead of the seven (7) Days currently anticipated for calendar year 2000, the Capacity Rate for the Month in which such outage begins, if any, shall be reduced to zero (0). APP shall provide TAMPA ELECTRIC notice of this outage in accordance with Section 3(f).

- (d) **Actual Capacity Factor.** At the end of each Month, APP shall calculate APP's Actual Capacity Factor for such Month. The Actual Capacity Factor shall be calculated by dividing: (i) the sum of (A) the Week Day Energy for the Month plus (B) the product of the Monthly Capacity Quantity times the number of Week Day Hours in the Month that occur during an Annual Planned Maintenance Outage, if any, and/or an Event of Force Majeure declared by APP, if any (provided, that the Week Day Hours in any overlap of an Annual Planned Maintenance Outage and an Event of Force Majeure shall be counted only once); by (ii) the product of the Monthly Capacity Quantity times the number of Week Day Hours in the Month. Calculation of the Actual Capacity Factor is demonstrated in Exhibit C, which is attached hereto and incorporated herein by reference.

- (e) **Capacity Payment Adjustment Factor.** At the end of each Month, APP shall calculate the Capacity Payment Adjustment Factor based upon a comparison of the Actual Capacity Factor for such Month with the Monthly Capacity Factor of ninety-five percent (95% or 0.95). If the Actual Capacity Factor for such Month is equal to or greater than the Monthly Capacity Factor, then the Capacity Payment Adjustment Factor shall equal one (1.0). If the Actual Capacity Factor for such Month is less than the Monthly Capacity Factor but greater than or equal to eighty-five percent (85% or 0.85), then the Capacity Payment Adjustment Factor of one (1.0) shall be reduced by five hundredths of a percent (0.0005) for every 0.0001 by which the Actual Capacity Factor is less than the Monthly Capacity Factor. If the Actual Capacity Factor for such Month is less than eighty-five percent (85% or 0.85), then the Capacity Payment Adjustment Factor shall be zero (0.0). The Capacity Payment Adjustment Factor shall be recalculated at the end of each Month without reference to the prior Months' results. Exhibit C contains examples showing sample Capacity Payment Adjustment Factor calculations that correspond to incremental reductions in the Actual Capacity Factor.
- (f) **Monthly Capacity Payment.** The Monthly Capacity Payment shall equal the product of (i) the applicable Capacity Rate, described in Section 5(c), (ii) the applicable Monthly Capacity Quantity, described in Section 1, and (iii) the Capacity Payment Adjustment Factor, described in Section 5(e).
- (g) **Taxes.** The Monthly Payments paid hereunder shall not include payment for, and APP is liable for and shall pay or cause to be paid, or reimburse TAMPA ELECTRIC if TAMPA ELECTRIC shall have paid, all Taxes accruing as to the Capacity and Energy sold hereunder prior to the Delivery Point(s) ("APP's Taxes"). APP shall indemnify, defend and hold TAMPA ELECTRIC harmless from any Claims for APP's Taxes. The Monthly Payments paid hereunder shall not include payment for, and TAMPA ELECTRIC is liable for and shall pay or cause to be paid, or reimburse APP if APP shall have paid, all Taxes accruing as to the Capacity and Energy sold hereunder at and after the Delivery Point(s), including, without limitation, Taxes imposed by a taxing authority with jurisdiction over TAMPA ELECTRIC ("TAMPA ELECTRIC's Taxes"). TAMPA ELECTRIC shall indemnify, defend and hold APP harmless from any Claims for TAMPA ELECTRIC's Taxes. Both Parties shall use reasonable efforts to administer this Contract and implement the provisions hereof in accordance with their intent to minimize Taxes. Upon request, a Party shall provide a certificate of exemption or other evidence of exemption from any Tax, and each Party agrees to cooperate with the other in obtaining an exemption and minimizing Taxes payable.

#### **SECTION 6. - Scheduling Requirements.**

- (a) **Delivery Point(s).** In accordance with the provisions of this Contract: (i) APP shall deliver Energy to the Delivery Point(s); and (ii) TAMPA ELECTRIC shall accept delivery of Energy at the Delivery Point(s).

(b) **Scheduling of Energy.**

(i) **Wheeling Report Contingency.** TAMPA ELECTRIC shall deliver a Wheeling Report to APP no later than 12:00 noon EPT of each Business Day (except Good Friday) during the Term. If the Wheeling Report is not delivered by 12:00 noon EPT and APP has provided the corresponding schedule by 3:00 p.m. EPT the previous Week Day, APP may, in its sole discretion, decline to schedule Energy for delivery the following Week Day. If APP exercises its option not to schedule and deliver, then: (A) there shall be no consequent adjustment to the Capacity Rate for the Month; (B) for the purpose of calculating the Actual Capacity Factor for the Month, the Week Day Energy for the following Week Day shall be deemed to equal the Monthly Energy Quantity in all Week Day Hours of such Week Day; (C) the Week Day Energy described in (B) above shall be omitted from calculation of the Monthly Energy Payment for that Month; and (D) APP may, during the following Week Day, sell any amount of energy to any third party provided that necessary transmission arrangements for such sale have been made.

(ii) **Daily Scheduling.** Provided that the Wheeling Report is delivered by 12:00 noon EPT or APP otherwise elects to schedule Energy for delivery the following Week Day, then APP's Operating Representative shall notify TAMPA ELECTRIC's Operating Representative, by no later than 3:00 p.m. EPT of each Business Day (except Good Friday) during the Term, of the amount of Energy, up to the Monthly Energy Quantity, that APP expects to be able to deliver to TAMPA ELECTRIC during each Week Day Hour of the following Week Day. Unless TAMPA ELECTRIC has declared an Event of Force Majeure that precludes receipt of the Energy, the amounts of Energy so specified by APP shall be the amounts scheduled for the indicated Week Day Hours of the following Week Day. If TAMPA ELECTRIC (A) has declared an Event of Force Majeure that precludes receipt of the Energy, or (B) fails to take the quantity of Energy so scheduled, then the amounts of Energy so specified by APP shall comprise the Week Day Energy for the affected Week Day Hours of the following Week Day.

(c) **Administration of Multiple Transactions.** The Parties recognize that the Transmission Service Agreement contains provisions concerning "Regulation Service," as defined therein, and the balancing of inadvertent energy, in connection with the receipt, transmission, and delivery by TAMPA ELECTRIC of capacity and energy sold by APP to FPC pursuant to APP's Prior Firm Contractual Commitments. The Parties recognize further that energy may be scheduled for delivery at the Delivery Point(s) under the Transmission Service Agreement, and/or in connection with a Subsequent Commitment, during some or all of the same Week Day Hours that Energy is scheduled for delivery at the Delivery Point(s). In such event:

(i) At the time APP schedules energy, it shall clearly identify and distinguish the amount of energy that is being scheduled for each transaction (including any adjustment for inadvertent energy in connection with service of APP's Prior Firm Contractual Commitments) in each Week Day Hour of the following Day; and



- (ii) The scheduled transactions shall be prioritized and administered in accordance with the measures described in the following subsections, examples of which are set forth in Exhibit D, which is attached hereto and incorporated herein by reference:
- (A) If the total energy actually delivered at the Delivery Point(s) in a given Week Day Hour exceeds the aggregate of the scheduled amounts for the different transactions, then all scheduled transactions shall be served in full, the amount of delivered energy in excess of the aggregate scheduled amount shall be accounted for as inadvertent energy in accordance with the Transmission Service Agreement, and TAMPA ELECTRIC shall provide Regulation Service (as defined in the Transmission Service Agreement) for such excess up to the amount of ten (10) MW;
  - (B) If the total energy actually delivered at the Delivery Point(s) in a given Week Day Hour, as supplemented by any amount of energy provided by TAMPA ELECTRIC to balance an inadvertent energy account, equals the aggregate of the scheduled amounts for the different transactions, then all scheduled transactions shall be served in full, and there shall be no new accrual to inadvertent energy and no implementation of Regulation Service;
  - (C) If the total energy actually delivered at the Delivery Point(s) in a given Week Day Hour, as supplemented by any amount of energy provided by TAMPA ELECTRIC to balance an inadvertent energy account, is less than the aggregate of the scheduled amounts for the different transactions, but greater than or equal to the amount scheduled to serve APP's Prior Firm Contractual Commitments, then APP's Prior Firm Commitments shall be served in full, there shall be no Regulation Service and related new debit to inadvertent energy in connection with the shortfall below the aggregate scheduled amounts, and the other scheduled transactions shall be reduced (and the delivered energy shortfall below the aggregate of the initially scheduled amounts shall be assigned to those other schedule transactions) in the following order: (1) Subsequent Commitment(s), proceeding from the most recent to the oldest; and (2) the sale under this Contract, with a corresponding reduction of the Week Day Energy in the given hour.
  - (D) If the total energy actually delivered at the Delivery Point(s) in a given Week Day Hour, as supplemented by any amount of energy provided by TAMPA ELECTRIC to balance an inadvertent energy account, is less than the aggregate of the scheduled amounts for the different transactions, and also less than the amount scheduled to serve APP's Prior Firm Contractual Commitments, then all Subsequent Commitments and the sale under this Contract shall be reduced to zero (0), with a corresponding reduction of the Week Day Energy in the given Week Day Hour, the delivered energy shortfall below the amount scheduled to serve APP's Prior Firm Contractual Commitments shall be debited

to as inadvertent energy in accordance with the Transmission Service Agreement, and TAMPA ELECTRIC shall provide Regulation Service (as defined in the Transmission Service Agreement) for such shortfall up to the amount of ten (10) MW.

- (d) **Sudden Curtailment Or Interruption.** Each Party shall immediately contact the other Party's Operating Representative in the event of sudden or emergency interruption in the delivery or receipt of Energy hereunder. Each Party shall give the Operating Representative of the other Party as much advance notice as possible regarding any such impending curtailment or interruption.
- (e) **Whole MW Scheduling.** Notwithstanding any contrary provisions hereof, Energy shall be scheduled for each Week Day Hour only on a "whole MW" basis.
- (f) **Scheduling and Operating Procedures.** APP and TAMPA ELECTRIC shall mutually endeavor in good faith to develop written operating procedures within ten (10) Business Days after the Effective Date, or as soon as possible thereafter. The operating procedures shall be a mutual agreement based upon, among other things, the interrelation of the Transmission Service Agreement, APP's Firm Prior Commitments, the then current Subsequent Commitments, if any, and this Contract. Topics covered shall include, but not necessarily be limited to: method of day-to-day scheduling; communications; list of key personnel for both APP and TAMPA ELECTRIC; and TAMPA ELECTRIC's accurate and timely compilation and delivery of the Wheeling Report.

#### **SECTION 7. - Liquidated Damages.**

- (a) **Liquidated Damages.** The Parties agree that the adjustments to the quantification of Week Day Capacity and Week Day Energy and to the calculation of Monthly Energy Payment and Monthly Capacity Payment described in Sections 3(c), 5(e) and 5(f) are considered to be liquidated damages and that such liquidated damages constitute a reasonable approximation of the harm or loss that TAMPA ELECTRIC is likely to suffer in connection with any failure by APP to make available any amount of Capacity or to make available and/or deliver any amount of Energy hereunder. It is further understood and agreed that the payment of liquidated damages is in lieu of actual damages for such occurrences. The Parties hereby waive any defense challenging the validity of any liquidated damages stated in this Contract on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.
- (b) **Right to Offset.** Each Party shall have the right to offset any undisputed amount due to it under either or both of Sections 5 and 11 against any amount owed by it to the other Party under this Contract, in accordance with the provisions of Section 11(e). Neither Party shall have any right to offset amounts due under any other agreements between the Parties, including without limitation, the Transmission Service Agreement.



- (c) **Sole and Exclusive Remedies.** The remedies described in Sections 3(c), 5(e) and 5(f) shall be the sole and exclusive remedies of TAMPA ELECTRIC for the failure of APP to make available any amount of Capacity or to make available and/or deliver any amount of Energy hereunder and all other damages and remedies for such occurrences are hereby waived by TAMPA ELECTRIC.

**SECTION 8. - Assignment and Benefit.** This Contract shall inure to the benefit of, and shall bind, the successors and any permitted assigns of the Parties. APP shall have the right, at any time and from time to time, to assign, transfer or convey this Contract, and APP's rights hereunder, to any or all of APP's Lenders as additional collateral for loans made by such lenders to APP. Except as provided in the preceding sentence, APP shall not assign, transfer or convey this Contract to any other entity without the prior written consent of TAMPA ELECTRIC. TAMPA ELECTRIC may arrange for the assignment of this Contract to an affiliate of TAMPA ELECTRIC (i.e., any company that, either directly or indirectly, controls, is controlled by, or is under common control with TAMPA ELECTRIC); provided, that any such assignment shall be subject to the assent of APP, which shall not be unreasonably withheld, delayed or conditioned. An assignment to a TAMPA ELECTRIC affiliate pursuant to this Section shall also be subject, without limitation, to the following conditions: (i) TAMPA ELECTRIC shall not make such an assignment, transfer or conveyance if doing so would affect adversely the status of the APP Generating Unit as a Qualifying Facility, (ii) the proposed assignee has a credit rating provided by Standard & Poors or Moodys which is at least equal to or better than that of TAMPA ELECTRIC, and (iii) TAMPA ELECTRIC shall have executed and delivered to APP a consent to such assignment, pursuant to which TAMPA ELECTRIC shall reaffirm its liabilities and obligations under the Contract. Except as provided in the preceding two sentences, TAMPA ELECTRIC shall not assign, transfer or convey this Contract to any other entity without the prior written consent of APP. No such assignment, transfer or conveyance described in this Section 8 by either APP or TAMPA ELECTRIC (the "Assigning Party") shall release the Assigning Party from any of its obligations under this Contract to the extent of commitments hereunder at the time that the assignment, transfer or conveyance takes place and such Assigning Party shall remain fully liable therefor.

**SECTION 9. - Limitation of Liability; Responsibility and Indemnification.**

- (a) **Damages.** The Parties confirm that the remedies and measures of damages provided in this Contract satisfy the essential purposes hereof. For breach of any provision for which a remedy or measure of damages is herein provided, such remedy or measure of damages shall be the sole and exclusive remedy hereunder. The obligor's liability shall be limited as set forth in such provision, and all other remedies or damages at Law or in equity are waived. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy hereunder, and all other remedies or damages at Law or in equity are waived. In any action arising out of performance or non-performance of this Contract, except as may be specifically set forth elsewhere in this Contract, neither Party shall be liable to the other Party, whether based in contract, in tort (including negligence and strict liability), under warranty, or

otherwise, for any special, indirect, incidental, punitive, exemplary, or consequential loss or damage whatsoever; loss of profits or revenues; increased costs of any kind, including, but not limited to capital cost and fuel cost; or claims of any of APP's or TAMPA ELECTRIC's customers. It is the intent of the Parties that the limitations herein imposed on remedies, and on the measure of damages, shall be without regard to the cause or causes thereof, including, without limitation, the negligence of any Party, whether such negligence is sole, joint, concurrent, active or passive. The Parties agree to use reasonable commercial efforts to mitigate their damages.

- (b) **Indemnity.** Each Party shall defend, indemnify, and save harmless the other Party and their respective servants, agents, directors, officers, employees and representatives from and against any and all Claims to any person, property or interest arising out of or in any way related to this Contract to the extent such loss, damage or injury occurs on its own side of the Delivery Point(s), unless such claim or demand shall arise out of or result from the negligence or willful misconduct of the other Party, its agents, servants, or employees.
- (c) **Claims.** Neither Party shall be liable to the other Party for Claims that result from (a) Claims made against such other Party by third parties due to the performance or non-performance of this Contract, whether such Claims arise in contract, tort or otherwise, or (b) the death of or bodily injury to such other Party's employees, contractors or agents or damage to such other Party's property due to the performance or non-performance of this Contract.
- (d) **Notification.** The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim, and the indemnifying Party shall have the right to assume the investigation and defense of such Claim, including employment of counsel, and shall be obligated to pay related attorney's fees; provided, the indemnified Party shall have the right to employ, at its expense, separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for the settlement of any Claim without its express written consent. To prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of such indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made with respect to a covered event and received by the indemnified Party.
- (e) **Resale of Energy.** TAMPA ELECTRIC covenants that it will pay and satisfy, or make provision for the payment and satisfaction of, any and all Claims of every nature whatsoever in, to or in respect to the resale of Energy received hereunder; and TAMPA ELECTRIC hereby agrees to defend at its cost and to indemnify and hold APP harmless against, all Claims arising out of or in any way connected with any claims relating to the resale of Energy.

#### **SECTION 10. - Force Majeure.**

- (a) **Event of Force Majeure.** Upon the occurrence of an Event of Force Majeure, the obligation of each Party to perform under this Contract shall be suspended, delayed, or excused (other than its obligation to make payments of money) and shall not be considered to be in default in

respect of any obligation hereunder, but only to the extent and for the period that such performance is prevented in whole or in part by the Event of Force Majeure. Neither Party shall be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from or arising out of such delay or prevention; provided, that the Party claiming an Event of Force Majeure shall give oral notice with full particulars of such Event of Force Majeure to the other Party within three (3) Business Days after the occurrence of the event relied upon, such notice to be confirmed in writing to the other Party as soon as practicable fully describing the particulars of the event, and shall use due and practicable diligence to prevent, avoid, mitigate, and remove the cause or causes thereof; and provided, further, that neither Party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such a settlement seems advisable. The claiming Party shall give the other Party written notice when it is able to resume performance of its obligations under this Contract. No Event of Force Majeure shall extend this Contract beyond its stated Term.

- (b) **Termination Rights.** In the event that an Event of Force Majeure prevents APP from delivering or TAMPA ELECTRIC from receiving Capacity and Energy under this Contract and such Event of Force Majeure continues for more than ninety (90) consecutive Days, then the Party that has not claimed suspension of its obligations because of such Event of Force Majeure may terminate this Contract without continuing liability by either Party to the other Party, except for obligations previously accrued hereunder, upon sixty (60) Days prior written notice to the Party that has claimed suspension of its obligations; provided, that such notice may be given prior to the end of such ninety (90) Day period and conditioned upon continuation of the Event of Force Majeure for ninety (90) consecutive Days.

## **SECTION 11. - Payment.**

- (a) **Monthly Charge.** TAMPA ELECTRIC shall pay APP the Monthly Payments as set forth in this Contract. A payment statement shall be prepared monthly by APP and delivered to TAMPA ELECTRIC, provided that TAMPA ELECTRIC shall have delivered to APP all Wheeling Reports necessary to permit APP to prepare such statement. TAMPA ELECTRIC's payment hereunder shall be made in immediately available funds through a wire transfer of funds or another mutually agreed upon method of payment. All payment statements shall be due and payable within fifteen (15) Days after the mailing date of the payment statement (as determined by postmark). A payment statement not paid within such fifteen (15) Day period shall be deemed delinquent and shall accrue interest daily at the Interest Rate. Interest hereunder shall be calculated on the basis of a three hundred sixty-five (365) Day year. Payment shall be deemed to have been made only upon the completion of the wire transfer of funds or actual receipt of such payment by APP, or other mutually agreed upon indication of receipt of payment.
- (b) **TAMPA ELECTRIC REVIEW.** TAMPA ELECTRIC shall promptly review each payment statement and shall promptly notify APP's Administrative Representative of any additional amount due to APP from TAMPA ELECTRIC or of any overpayment for which TAMPA



ELECTRIC is entitled to reimbursement; provided that (i) TAMPA ELECTRIC shall be obligated to give notice of an additional amount due to APP only if TAMPA ELECTRIC actually discovers such an amount due in the ordinary course of processing payment statements, and (ii) any claim by APP for an additional amount due, or by TAMPA ELECTRIC for reimbursement of an overpayment, shall be made within twenty-four (24) Months from the date of the statement or invoice. If TAMPA ELECTRIC asserts that an additional amount is due, not later than the fifth (5th) Business Day after such notice to APP, TAMPA ELECTRIC shall pay such additional amount to APP in immediately available funds. If TAMPA ELECTRIC asserts that it is entitled to reimbursement, and APP agrees with such assertion, APP shall make such reimbursement not later than the fifth (5th) Business Day after TAMPA ELECTRIC gives such notice to APP. If TAMPA ELECTRIC asserts that it is entitled to reimbursement, and APP disagrees with such assertion, APP shall so notify TAMPA ELECTRIC not later than the thirtieth (30th) Business Day after TAMPA ELECTRIC gives such notice to APP, and the matter shall be resolved in accordance with Section 11(d). Payments and reimbursements made by either Party under this Section 11(b) shall include interest from the date that the original payment was due until the date that such payment or reimbursement, together with interest, is made, which interest shall accrue and be calculated in accordance with the provisions of Section 11(a).

- (c) **Escrow Account.** If APP notifies TAMPA ELECTRIC's Administrative Representative that any additional amount is due from TAMPA ELECTRIC, and TAMPA ELECTRIC disagrees with such assertion, TAMPA ELECTRIC shall, within five (5) Business Days after such notice from APP, deposit the disputed amount in an interest-bearing account with an escrow agent selected by APP and approved by TAMPA ELECTRIC (such approval not to be unreasonably withheld, delayed or conditioned) (such amount after it is deposited with the escrow Agent, the "Disputed Amount"), and the Disputed Amount so deposited shall remain in escrow until resolution of the dispute in accordance with this Section 11.
- (d) **Dispute Resolution.** If TAMPA ELECTRIC disputes APP's assertion that any additional amount is due as provided in Section 11(c), or if APP disputes TAMPA ELECTRIC's assertion that there has been an overpayment as provided in Section 11(b), then APP and TAMPA ELECTRIC agree to cooperate to achieve a mutually acceptable resolution of such dispute. In the event that either APP or TAMPA ELECTRIC believes that any such effort by APP or TAMPA ELECTRIC, as the case may be, has been or will be unsuccessful, and if the Parties fail to resolve such dispute, then either TAMPA ELECTRIC or APP may avail itself of any remedy that may be available, at Law or in equity.
- (e) **Overdue Payment.** Notwithstanding the foregoing provisions of this Section 11, if there is any overdue payment of an additional amount (excluding any Disputed Amount) by TAMPA ELECTRIC, or overdue reimbursement by APP (excluding any reimbursement to which APP has objected), the other Party may withhold and apply against the undisputed amount of the cost of such overdue payment or reimbursement the amount of any payment to which the delinquent Party might otherwise be entitled under this Contract.

- (f) **Information and Documentation.** Each Party will provide the other Party with such information and documentation as is reasonably requested or required by the requesting Party in order to account for payments made and received pursuant to this Section 11 on the requesting Party's books.
- (g) **Payment with Interest.** Notwithstanding anything in this Contract to the contrary, if a good faith dispute arises between the Parties concerning any statement, that portion of the statement not in dispute shall be due and payable on the otherwise applicable due date and, when such dispute is resolved, the remaining portion of the payment due, if any, shall be paid promptly with interest accruing at the Interest Rate from the date that the amount should have been paid had there been no dispute until the date of payment of the resolved amount. Moreover, if the resolution of any good faith dispute determines that one Party has overpaid the other Party, then such overpaid amount shall be refunded promptly with interest accruing at the Interest Rate from the date that the overpaid amount was paid until the date of refund of the resolved amount.
- (h) **APP Termination.** In the event of a failure to make timely payment by TAMPA ELECTRIC, except for any Disputed Amount, APP shall have the right, at its option, to terminate this Contract, such option to be exercised within sixty (60) days following the Statement Date in question; provided however, that no such termination shall relieve TAMPA ELECTRIC of its obligation to make payment for any applicable Monthly Payments or other charges under this Contract with respect to service rendered prior to such termination. APP shall provide TAMPA ELECTRIC thirty (30) Days prior written notice of its intent to so terminate. TAMPA ELECTRIC shall be entitled to cure such default at any time prior to the effective date of such termination by payment of all charges then outstanding, together with interest at the Interest Rate, but APP thereafter shall be entitled to require TAMPA ELECTRIC to keep on deposit with APP for a reasonable period (in any event for the lesser of twelve (12) months or the remaining Term) an amount, in cash, equal to one (1) Month's estimated Monthly Payments.
- (i) **TAMPA ELECTRIC Termination.** In the event of failure by APP to make timely reimbursement of an overpayment to which APP has not objected pursuant to Section 11(b), TAMPA ELECTRIC shall have the right, at its option, to terminate this Contract sixty (60) Days subsequent to the date of TAMPA ELECTRIC's notice to APP of such overpayment; provided however, that no such termination shall relieve APP of its obligation to reimburse TAMPA ELECTRIC for any overpayment occurring in connection with Energy and Capacity provided prior to such termination. APP shall be entitled to avoid such termination by reimbursing all overpayments then outstanding, together with applicable interest, at any time prior to such termination date.

**SECTION 12. - Notices.** Except as otherwise specified in this Contract, all notices and other communications authorized or required to be served, given or delivered upon either Party pursuant to this Contract shall be in writing, shall be addressed as provided below, and shall be either delivered by hand, sent by receipted facsimile, sent by registered mail, return receipt requested, or sent by a national overnight receipted delivery service (e.g., Federal Express, UPS, Emery, Purolator, DHL, Airborne or other similar courier delivery service). Such notices shall be deemed served, given and delivered on



the earlier of the following: (a) the date of actual receipt; or (b) the date of receipt indicated on the return receipt for notice deposited in a sealed envelope in the United States mail registered or certified, postage prepaid, or notice deposited with a receipted overnight delivery service; or (c) the first attempted delivery date of any notice hereunder (regardless of whether the recipient of such notice accepted same). Notices sent by facsimile shall be deemed to have actually been received on the date sent, provided that receipt is confirmed in writing (generated manually or by machine).

All notices shall be addressed as set forth below, or to such other address as APP or TAMPA ELECTRIC shall hereafter give to the other by notice in accordance with the provisions hereof:

If to TAMPA ELECTRIC  
for notices and  
correspondence:

W. Lynn Brown, Director  
Wholesale Marketing and Sales  
Tampa Electric Company  
1400 Channelside Drive  
Tampa, Florida 33605  
Facsimile: (813) 275-3810  
or  
P. O. Box 111  
Tampa, Florida 33601-0111  
Telephone: (813) 225-5078  
Facsimile: (813) 275-3810

with a copy to:

Robert H. Arnold, Director  
Energy Delivery Systems  
Tampa Electric Company  
8030 Palm River Road  
Tampa, Florida 33619  
Facsimile: (813) 228-1038  
or  
P. O. Box 111  
Tampa, Florida 33601-0111  
Telephone: (813) 630-6330  
Facsimile: (813) 630-6299

If to TAMPA ELECTRIC  
for administrative inquiries:

Mary M. Livingston  
Bulk Power Analyst  
Wholesale Marketing and Sales  
Tampa Electric Company  
702 North Franklin Street  
Tampa, Florida 33602  
Telephone: (813) 275-3811  
Facsimile: (813) 275-3810

or

P. O. Box 111  
Tampa, Florida 33601-0111  
Telephone: (813) 275-3811  
Facsimile: (813) 275-3810

If to TAMPA ELECTRIC  
for operating inquiries:

Barbara B. Johnson  
Administrator, Energy Accounting/Billing  
Energy Delivery Systems  
Tampa Electric Company  
8030 Palm River Road  
Tampa, Florida 33619  
Facsimile: (813) 228-1038

or

P. O. Box 111  
Tampa, Florida 33601-0111  
Telephone: (813) 630-6264  
Facsimile: (813) 630-6299

If to APP for notices and  
correspondence:

Bruce L. Franco  
Executive Director  
Auburndale Power Partners, Limited Partnership  
12500 Fair Lakes Circle, Suite 200  
Fairfax, VA 22033-3808  
Facsimile: (703) 222-0516

with a copy to:

James Miller  
Plant Manager  
Auburndale Power Partners, Limited Partnership  
1501 Derby Avenue  
APP, Florida 33823  
Facsimile: (941) 965-1924

If to APP  
for wire transfer payment:

"Auburndale Power Partners, Limited Partnership  
- Receipt Account"  
Account Number 12330-21072  
Bank of America National Trust and Savings Association,  
Corporate Service Center,  
1850 Gateway Boulevard  
Concord, California 94517  
Attention: Cynthia Weinthal  
Telecopy No.: (925) 603-7241

**SECTION 13. - Events of Default.** Either Party may terminate this Contract, effective upon written notice of termination to the other Party, upon an occurrence of an Event of Default (as hereafter defined) as to the other Party. An "Event of Default" as to either Party shall mean:

- (a) **Unexcused Failure.** Failure by such Party to perform fully any material provision of this Contract (provided that the remedy for such failure is not otherwise addressed herein), if such default continues for a period of thirty (30) Days after written notice of such default from the other Party, or if such default is not capable of being cured within such thirty (30) Day period, if the non-performing Party either (i) does not commence and proceed with due diligence to cure the default within a reasonable time after notice thereof or (ii) the default is not cured within ninety (90) Days after the notice of default, despite the defaulting Party's diligence in seeking to cure same; or
- (b) **Receiver Appointment.** By order of a court of competent jurisdiction, a receiver or liquidator or trustee of such Party (or of any substantial part of the property of such Party) shall be appointed, and such receiver or liquidator or trustee shall not have been discharged within a period of ninety (90) Days; or if by decree of such a court, such Party shall be adjudicated bankrupt or insolvent or any substantial part of the property of such Party shall have been sequestered or such decree shall have continued undischarged and unstayed for a period of ninety (90) Days after the entry thereof; or if a petition to declare bankruptcy or to reorganize such Party pursuant to any of the provisions of the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended or pursuant to any other similar state statute applicable to such Party, as now or hereafter in effect, shall be filed against such Party and shall not be dismissed within ninety (90) Days after such filing; or
- (c) **Bankruptcy.** Such Party shall file a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar Law; or, without limitation of the generality of the foregoing, if such Party shall file a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended or pursuant to any other similar state statute applicable to such Party, as shall now or hereafter be in effect or an answer admitting the material allegations of a petition filed against it in such a proceeding; or if such Party shall make a general assignment for the benefit of its creditors, or if such Party shall admit in writing its inability to pay its debts generally as they become due; or if such Party shall consent to the appointment of a receiver(s) or trustee(s) or liquidator(s) of it or of all or part of its property.
- (d) **Termination Liability.** Notwithstanding anything in this Contract to the contrary, this Contract may be terminated pursuant to this Section 13 by the non-defaulting Party without obligation to or recourse by the defaulting Party, and the non-defaulting Party shall be entitled to pursue all other rights or remedies available to it under this Contract, at Law or in equity; provided that, whether or not the non-defaulting Party elects to terminate this Contract, in no event (a) shall either Party be liable for any damages expressly excluded by, or for any damages in excess of the limitations imposed by, Section 9(a), (b) shall APP have any liability or

obligation to TAMPA ELECTRIC for damages under this Contract other than the liquidated damages described in Section 7 and the obligation to reimburse TAMPA ELECTRIC for overpayments, if any, pursuant to Section 11, or (c) shall TAMPA ELECTRIC have any liability or obligation to APP for damages under this Contract other than its obligations to pay APP for Capacity and Energy, and any interest thereon, as provided in this Contract.

#### **SECTION 14. - Representations and Warranties.**

- (a) **TAMPA ELECTRIC's Representations.** As of the Effective Date and continuing throughout the Term, TAMPA ELECTRIC represents and warrants that:
- (1) It is a corporation duly organized, validly existing and in good standing under the Laws of the State of Florida. It has all requisite corporate power and authority to enter into and perform this Contract;
  - (2) This Contract and the other documents and instruments to be delivered by TAMPA ELECTRIC pursuant hereto, and the transactions contemplated hereby and thereby, have been duly authorized by TAMPA ELECTRIC. This Contract has been, and each such other document or instrument will be, duly executed and delivered by TAMPA ELECTRIC and constitutes, or upon such execution and delivery will constitute, legal, valid and binding obligations of TAMPA ELECTRIC, enforceable against TAMPA ELECTRIC in accordance with its respective terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar Laws affecting creditors rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at Law); and
  - (3) The execution, delivery, and performance by TAMPA ELECTRIC of this Contract and the other documents and instruments to be delivered by TAMPA ELECTRIC pursuant hereto, and the transactions contemplated hereby and thereby, do not and will not:
    - (A) violate or conflict with any provision of TAMPA ELECTRIC's certificate of incorporation or bylaws;
    - (B) violate or constitute a default under any agreement or instrument to which TAMPA ELECTRIC is a party or by which TAMPA ELECTRIC is bound, which violation will have a material and adverse effect on TAMPA ELECTRIC's ability to perform its obligations hereunder; or
    - (C) violate any existing Law or any judgment, decree, order, regulation or rule of any court, commission or governmental authority applicable to TAMPA ELECTRIC, which violation will have a material and adverse effect on TAMPA ELECTRIC's ability to perform its obligations hereunder.



- (4) There is no pending, or to the knowledge of TAMPA ELECTRIC, threatened action or proceeding affecting TAMPA ELECTRIC before any Governmental Authority that purports to affect the legality, validity or enforceability of this Contract as in effect on the date hereof.
  - (5) TAMPA ELECTRIC holds all authorizations from every jurisdictional Governmental Authority necessary for TAMPA ELECTRIC to purchase and receive Capacity and Energy from APP under and pursuant to this Contract.
- (b) **APP's Representations.** As of the Effective Date and continuing throughout the Term, APP represents and warrants that:
- (1) APP is a limited partnership duly organized, validly existing and in good standing under the Laws of the State of Delaware. APP is duly qualified and in good standing in the State of Florida. APP has all requisite partnership power and authority to enter into and perform this Contract;
  - (2) This Contract and the other documents and instruments to be delivered by APP pursuant hereto and the transactions contemplated hereby have been duly authorized by APP. This Contract has been, and each such other document or instrument will be, duly executed and delivered by APP and constitutes, or upon such execution and delivery will constitute, legal, valid and binding obligations of APP enforceable against APP in accordance with its terms, subject, however, to applicable insolvency, reorganization, moratorium, or similar Laws affecting creditors' rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at Law);
  - (3) The execution, delivery, and performance by APP of this Contract and the transactions contemplated hereby, do not and will not:
    - (A) violate or conflict with any provision of APP's limited partnership agreement;
    - (B) violate or constitute a default under any agreement or instrument to which APP is a party or by which it is bound, which violation will have a material and adverse effect on its ability to perform its obligations hereunder; or
    - (C) violate any existing statute or Law or any judgment, decree, order, regulation or rule of any court, commission or Governmental Authority, which violation will have a material and adverse effect on its ability to perform its obligations hereunder.
  - (4) There is no pending, or to the knowledge of APP, threatened action or proceeding affecting APP before any Governmental Authority that purports to affect the legality, validity or enforceability of this Contract as in effect on the date hereof.

- (5) APP holds all authorizations from every Governmental Authority necessary for APP to sell and make available Capacity and Energy to TAMPA ELECTRIC under and pursuant to this Contract.

#### **SECTION 15. - Miscellaneous.**

- (a) **Waivers.** At its option, either Party may waive any or all of the obligations of the other Party contained in this Contract, but waiver of any obligation or of any breach of this Contract by either Party shall in no event constitute a waiver as to any other obligation or breach or any future breach, whether similar or dissimilar in nature, and no such waiver shall be binding unless in writing and signed by the waiving Party.
- (b) **Entire Contract.** This Contract contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no restrictions, promises, warranties, covenants, prior understandings or undertakings other than those expressly set forth herein.
- (c) **Counterparts.** This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (d) **Governing Law.** This Contract shall be governed by, construed under and interpreted and enforced in accordance with the Laws of the State of Florida, including the applicable federal Laws of the United States.
- (e) **No Third-Party Beneficiaries.** Nothing in this Contract is intended or shall be deemed to confer any rights or benefits upon any entity or person other than the Parties or to make or render any such other entity or person a third-party beneficiary of this Contract.
- (f) **Amendment.** This Contract may be modified or amended only by written agreement executed by both Parties with the same formality and in the same manner as this Contract.
- (g) **Inspection of Records.** Each Party and its representatives will have the right, at reasonable hours and upon reasonable notice, to examine, inspect, review and audit the books, records and charts of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, payment, withholding, measurement, calculation, or determination made pursuant to the provisions of this Contract. If any such examination reveals, or if either Party discovers, any error or inaccuracy in its own or the other Party's invoice, payment, withholding, calculation, measurement or determination, then proper adjustment and correction thereof will be made as promptly as practicable thereafter; provided, however, that no adjustments or corrections will be made with respect to any error or inaccuracy unless reasonably specific written notice of such error or inaccuracy is given to the other Party within twenty-four Months (24) of receipt of such erroneous or inaccurate invoice, payment, withholding, calculation, measurement or determination.

- (h) **Confidential Treatment.** The Parties recognize that the terms and conditions of this Contract are confidential in nature. Accordingly, during the Term of this Contract and for one (1) year after the termination of this Contract, TAMPA ELECTRIC and APP agree to protect this Contract and its terms and conditions from disclosure to third parties (other than the Party's affiliates, agents, employees, partners, lenders, counsel, insurance representatives, or accountants who have agreed to keep such terms confidential) except in order to comply with any applicable Law, order, regulation or exchange rule or directive of any Governmental Authority; provided, that each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit such disclosure. Moreover, nothing in this Contract shall preclude either Party from reporting to any Governmental Authority having jurisdiction over such Party, including, without limitation, TAMPA ELECTRIC's rates and charges, including the amounts of Capacity and Energy purchased and the amounts paid to APP, to the extent that such regulatory authority requires TAMPA ELECTRIC to report such information in order to justify TAMPA ELECTRIC's recovery from its customers of amounts paid to APP pursuant to this Contract.
- (i) **Acknowledgment.** APP does not dedicate any part of the APP Generating Unit or service rendered hereunder to the public. TAMPA ELECTRIC agrees that its rights to purchase Capacity and Energy from APP, as provided in this Contract, are solely as described herein and are solely on the terms set forth herein.
- (j) **Headings.** The headings contained in this Contract are used solely for convenience and do not constitute a part of the Contract between the Parties, nor should they be used to aid in any manner in the construction of this Contract.
- (k) **Agency.** This Contract shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise to bind, the other Party.
- (l) **Severability.** If any term or provision of this Contract, or the application thereof to any person, entity, or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- (m) **Non-Recourse.** No recourse for the payment of any sums or the performance of any obligations hereunder, or for any Claim based thereon or otherwise in respect thereof or relating thereto, shall be had against any of APP's employees, agents, partners, officers or directors, whether past, present or future.
- (n) **Other Events.** In the event a federal, state or local regulatory body or authority shall disallow all or any portion of any costs incurred or yet to be incurred by TAMPA ELECTRIC under any

provision of this Contract, such action shall not operate to excuse TAMPA ELECTRIC from performance of any obligation nor shall such action give rise to any right of TAMPA ELECTRIC to any refund or retroactive adjustment of the Monthly Payments.

- (o) **Qualifying Facility.** Notwithstanding anything in this Contract to the contrary, the Parties shall not construe this Contract as a forfeiture or waiver of any statutory rights of APP as owner of a Qualifying Facility to sell electric energy to TAMPA ELECTRIC.
- (p) **Transmission Service Agreement.** The Parties shall not construe the execution, expiration or termination of this Contract, for any reason, as affecting in any manner the Transmission Service Agreement, or any other agreement between the Parties.
- (q) **Interpretation.** In construing this Contract (including without limitation, the exhibits), unless the context otherwise requires: (i) words generally importing the singular shall include the plural, and vice versa, (ii) references to "entity" include, without limitation, corporations, partnerships, limited liability companies, associations and any Governmental Authority, (iii) all exhibits attached are incorporated by reference herein, (iv) examples shall not be construed to limit, expressly or by implication, the matters they illustrate, (v) the word "includes" and its derivatives mean "includes, but is not limited to" and corresponding derivative expressions, and (vi) unless indicated to the contrary, all references to Sections shall refer to Sections of this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective authorized officials.

WITNESS:

TAMPA ELECTRIC COMPANY

By: <u><i>Harry W. Long Jr.</i></u>	By: <u><i>Hugh W. Smith</i></u>
Name _____	Hugh W. Smith
Title <u><i>Chief Counsel - Regulatory</i></u>	Vice President
	Energy Services and Marketing

WITNESS:

AUBURNDALE POWER PARTNERS,  
LIMITED PARTNERSHIP

By: <u><i>Christie Sunday</i></u>	By: <u><i>Bruce L. Franco</i></u>
Name <u><i>Christie Sunday</i></u>	Bruce L. Franco
Title <u><i>Paralegal</i></u>	Executive Director



## **EXHIBIT A**

### **Delivery Point(s)**

The Delivery Point(s) for Energy shall be at the two (2) connection points between APP's disconnect switches nos. 1379 and 1380 and TAMPA ELECTRIC's two (2) transmission lines Nos. 230610 and 230611, respectively. Two TAMPA ELECTRIC 230 kV transmission lines connect the APP CT and the APP HRSG to TAMPA ELECTRIC's Recker Substation (i.e., transmission lines Nos. 230610 and 230611, respectively). The APP and TAMPA ELECTRIC transmission facilities are interconnected as follows:

- (a) the APP CT is connected through APP circuit breaker No. 1378 and APP disconnect switch No. 1379 (located in the APP switch yard) to TAMPA ELECTRIC 230 kV transmission line No. 230610 and TAMPA ELECTRIC meter No. 616568, inside the Recker Substation; and
- (b) the APP HRSG is connected through APP disconnect switch No. 1380 (located in the APP switch yard) to TAMPA ELECTRIC 230 kV transmission line No. 230611 and TAMPA ELECTRIC meter No. 616511, inside the Recker Substation.

TAMPA ELECTRIC's Recker Substation is located in Section 15, Township 28 South, Range 25 East of Polk County, Florida and is interconnected with two other TAMPA ELECTRIC substations and one TAMPA ELECTRIC switching station.

TAMPA ELECTRIC owns transmission line Nos. 230610 and 230611 between TAMPA ELECTRIC's metering points at the Recker Substation and APP's disconnect switch Nos. 1379 and 1380, respectively. TAMPA ELECTRIC owns transmission line Nos. 230603, 230609, and 230612 from the Recker Substation to TAMPA ELECTRIC's: (a) Pebbledale Substation; (b) Ariana Substation; and (c) Lake Agnes Switching Station, respectively.

## **EXHIBIT B**

### **APP's Prior Firm Contractual Commitments**

All of APP's Prior Firm Contractual Commitments involving the APP Generating Unit are under: (i) the "Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility" between El Dorado Energy Company and Florida Power Corporation (as assigned to APP), dated as of March 18, 1991, (ii) the "Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility" between Sun Bank of Tampa Bay and FPC (as assigned to APP), dated as of April 5, 1989, and (iii) the "Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility" between Sun Bank of Tampa Bay and FPC (as assigned to APP), dated as of April 5, 1989, all as may be amended or modified from time to time.

# EXHIBIT C

## Calculation of Actual Capacity Factor and Capacity Payment Adjustment Factor

Section 5(b) of the Contract provides for calculation of the Monthly Energy Payment. Section 5(f) of the Contract provides for calculation of the Monthly Capacity Payment. This exhibit demonstrates the calculations for those payments.

### I. MONTHLY ENERGY PAYMENT

Under Section 5(b), the Monthly Energy Payment is calculated as the product of the Energy Rate times the Week Day Energy (except for any Week Day Energy that TAMPA ELECTRIC cannot receive due to an Event of Force Majeure declared by TAMPA ELECTRIC), rounded to the nearest cent.

### II. MONTHLY CAPACITY PAYMENT

Under Section 5(f), the Monthly Capacity Payment is calculated as the product of the Capacity Rate times the Monthly Capacity Quantity times the Capacity Payment Adjustment Factor. The Capacity Payment Adjustment Factor is determined in accordance with Section 5(e), and is dependent upon calculation of the Actual Capacity Factor in accordance with Section 5(d). The Actual Capacity Factor is calculated as follows:

$$\text{Actual Capacity Factor} = \frac{(\text{Week Day Energy for the Month}) + (\text{Monthly Capacity Quantity})(\text{Hours of Excused Outage})}{(\text{Monthly Capacity Quantity})(\text{Week Day Hours})}$$

The Capacity Payment Adjustment Factor is calculated as follows:

Monthly Capacity Factor = 95% (or 0.95)

If Actual Capacity Factor  $\Rightarrow$  0.95 (i.e. ACF  $\Rightarrow$  Monthly Capacity Factor),  
then the Capacity Payment Adjustment Factor shall equal 1.0.

If  $0.95 > \text{Actual Capacity Factor} \Rightarrow 0.85$ ,  
then the Capacity Payment Adjustment Factor shall be reduced from 1.0 by 0.05 for each 0.01 that the Actual Capacity Factor is less than 0.95. The Capacity Payment Adjustment Factor shall be rounded to four (4) decimal places.

If Actual Capacity Factor  $< 0.85$ ,  
then the Capacity Payment Adjustment Factor shall equal 0.0.

### III. SAMPLE MONTHLY PAYMENT CALCULATIONS

For purposes of these examples, the Energy Rate, Capacity Rate, Monthly Capacity Quantity, Monthly Energy Quantity and Week Day Hours for October 1999 will be used. The Energy Rate for October 1999 is \$23.34 per MWh. The Capacity Rate for October 1999 is \$3,000 per MW, unless adjusted proportionally downward under Section 5(c). The Monthly Capacity Quantity for October 1999 is 12 MW. The Monthly Energy Quantity for October 1999 is 12 MWh. In October 1999, there are 21 Week Days. Accordingly, there are 336 Week Day Hours (21 Week Days x 16 hours per Week Day) in October 1999.

#### Example 1

Assume a Week Day Energy for October 1999 of 3951.07 MWh and no excused outages.

1. The Monthly Energy Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Energy Payment} &= (\text{Energy Rate})(\text{Week Day Energy for Oct 1999 less Force Majeure declared by TAMPA ELECTRIC}) \\ &= \text{[REDACTED]} (3951.07 \text{ MWh}) \\ &= \text{[REDACTED]}\end{aligned}$$

2. The Actual Capacity Factor for October 1999 is calculated as follows:

$$\begin{aligned}\text{Actual Capacity Factor} &= \frac{(\text{Week Day Energy for Oct 1999}) + (\text{Monthly Capacity Quantity for Oct 1999})(\text{Hours of Excused Outage})}{(\text{Monthly Capacity Quantity for Oct 1999})(\text{Week Day Hours for Oct 1999})} \\ &= \frac{3951.07 \text{ MWh} + (12 \text{ MW})(0 \text{ hours})}{(12 \text{ MW})(336 \text{ hours})} \\ &= \frac{3951.07 \text{ MWh}}{4032 \text{ MWh}} \\ &= 0.9799.\end{aligned}$$

3. Since the Actual Capacity Factor of 0.9799 is greater than or equal to 0.95, then the Capacity Payment Adjustment for October 1999 shall equal 1.0.

4. The Monthly Capacity Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Capacity Payment} &= (\text{Capacity Rate})(\text{Monthly Capacity Quantity for October 1999})(\text{Capacity Payment Adjustment Factor}) \\ &= \text{[REDACTED]} (12 \text{ MW})(1.0) \\ &= \text{[REDACTED]}\end{aligned}$$



## Example 2

Assume a Week Day Energy for October 1999 of 3701.00 MWh and no excused outages.

1. The Monthly Energy Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Energy Payment} &= (\text{Energy Rate})(\text{Week Day Energy for Oct 1999 less Force Majeure declared by TAMPA ELECTRIC}) \\ &= \text{[REDACTED]} (3701.00 \text{ MWh}) \\ &= \text{[REDACTED]}\end{aligned}$$

2. The Actual Capacity Factor for October 1999 is calculated as follows:

$$\begin{aligned}\text{Actual Capacity Factor} &= \frac{(\text{Week Day Energy for Oct 1999}) + (\text{Monthly Capacity Quantity for Oct 1999})(\text{Hours of Excused Outage})}{(\text{Monthly Capacity Quantity for Oct 1999})(\text{Week Day Hours for Oct 1999})} \\ &= \frac{3701.00 \text{ MWh} + (12 \text{ MW})(0 \text{ hours})}{(12 \text{ MW})(336)} \\ &= \frac{3701.00 \text{ MWh}}{4032 \text{ MWh}} \\ &= 0.9179.\end{aligned}$$

3. Since the Actual Capacity Factor of 0.9179 is less than 0.95 but greater than or equal to 0.85, then the Capacity Payment Adjustment Factor for October 1999 shall be reduced from 1.0 by 0.05 for each 0.01 that the Actual Capacity Factor is less than 0.95. As the Actual Capacity Factor is 0.0321 ( $= 3.21 \times 0.01$ ) less than 0.95, the Capacity Payment Adjustment Factor shall be reduced from 1.0 by 0.1605 ( $= 3.21 \times 0.05$ ). Accordingly, in this example, the Capacity Payment Adjustment Factor for October 1999 shall equal 0.8395.

4. The Monthly Capacity Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Capacity Payment} &= (\text{Capacity Rate})(\text{Monthly Capacity Quantity for October 1999})(\text{Capacity Payment Adjustment Factor}) \\ &= \text{[REDACTED]} (12 \text{ MW})(0.8395) \\ &= \text{[REDACTED]}\end{aligned}$$

### Example 3

Assume a Week Day Energy for October 1999 of 3347.04 MWh and no excused outages.

1. The Monthly Energy Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Energy Payment} &= (\text{Energy Rate})(\text{Week Day Energy for Oct 1999 less Force Majeure declared by TAMPA ELECTRIC}) \\ &= \text{[REDACTED]} \text{ MWh} (3347.04 \text{ MWh}) \\ &= \text{[REDACTED]}\end{aligned}$$

2. The Actual Capacity Factor for October 1999 is calculated as follows:

$$\begin{aligned}\text{Actual Capacity Factor} &= \frac{(\text{Week Day Energy for Oct 1999}) + (\text{Monthly Capacity Quantity for Oct 1999})(\text{Hours of Excused Outage})}{(\text{Monthly Capacity Quantity for Oct 1999})(\text{Week Day Hours for Oct 1999})} \\ &= \frac{3347.04 \text{ MWh} + (12 \text{ MW})(0 \text{ hours})}{(12 \text{ MW})(336 \text{ Hours})} \\ &= \frac{3347.04 \text{ MWh}}{4032 \text{ MWh}} \\ &= 0.8301.\end{aligned}$$

3. Since the Actual Capacity Factor of 0.8301 is less than 0.85, then the Capacity Payment Adjustment Factor for October 1999 shall equal 0.0.

4. The Monthly Capacity Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Capacity Payment} &= (\text{Capacity Rate})(\text{Monthly Capacity Quantity for October 1999})(\text{Capacity Payment Adjustment Factor}) \\ &= \text{[REDACTED]} (12 \text{ MW})(0) \\ &= \text{[REDACTED]}\end{aligned}$$

### Example 5

Assume that there is a 10 Week Day Hour outage in October 1999 due to an Event of Force Majeure declared by TAMPA ELECTRIC. In such case, APP shall be deemed to have delivered the full quantity of Energy scheduled and/or made available for each of the 10 Week Day Hours during the outage, or 120 MWh in total (12 MWh x 10 Week Day Hours). However, the Capacity Rate must be adjusted proportionally downward per Section 5(c). As the Facility is down for 10 of 336 possible Week Day Hours, the Capacity Rate must be adjusted proportionally downward from \$3,000/MW to \$2,910.71/MW. Let us further assume a Week Day Energy for October 1999 of 3974.88 MWh (including the 120 MWh that APP was deemed to have delivered).

1. The Monthly Energy Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Energy Payment} &= (\text{Energy Rate})(\text{Week Day Energy for Oct 1999 less Force Majeure declared by TAMPA ELECTRIC}) \\ &= \text{[REDACTED]} (3854.88 \text{ MWh}) \\ &= \text{[REDACTED]}\end{aligned}$$

2. The Actual Capacity Factor for October 1999 is calculated as follows:

$$\begin{aligned}\text{Actual Capacity Factor} &= \frac{(\text{Week Day Energy for Oct 1999}) + (\text{Monthly Capacity Quantity for Oct 1999})(\text{Hours of Excused Outage})}{(\text{Monthly Capacity Quantity for Oct 1999})(\text{Week Day Hours for Oct 1999})} \\ &= \frac{3974.88 \text{ MWh} + (12 \text{ MW})(0 \text{ hours})}{(12 \text{ MW})(336 \text{ hours})} \\ &= \frac{3974.88 \text{ MWh}}{4032 \text{ MWh}} \\ &= 0.9858.\end{aligned}$$

3. Since the Actual Capacity Factor of 0.9858 is greater than or equal to 0.95, then the Capacity Payment Adjustment Factor for October 1999 shall equal 1.0.

4. The Monthly Capacity Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Capacity Payment} &= (\text{Capacity Rate})(\text{Monthly Capacity Quantity for October 1999})(\text{Capacity Payment Adjustment Factor}) \\ &= \text{[REDACTED]} (12 \text{ MW})(1.0) \\ &= \text{[REDACTED]}\end{aligned}$$

### Example 6

Assume that there is a 10 Week Day Hour outage in October 1999 due to TAMPA ELECTRIC's failure to perform its obligations under the Agreement. In such case, APP shall be deemed to have delivered the full quantity of Energy scheduled and/or made available for each of the 10 Week Day Hours during the outage, or 120 MWh in total (12 MWh x 10 Week Day Hours). Let us further assume a Week Day Energy for October 1999 of 3974.88 MWh (including the 120 MWh that APP was deemed to have delivered).

1. The Monthly Energy Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Energy Payment} &= (\text{Energy Rate})(\text{Week Day Energy for Oct 1999 less Force Majeure declared by TAMPA ELECTRIC}) \\ &= \text{[REDACTED]} (3974.88 \text{ MWh}) \\ &= \text{[REDACTED]}\end{aligned}$$

2. The Actual Capacity Factor for October 1999 is calculated as follows:

$$\begin{aligned}\text{Actual Capacity Factor} &= \frac{(\text{Week Day Energy for Oct 1999}) + (\text{Monthly Capacity Quantity for Oct 1999})(\text{Hours of Excused Outage})}{(\text{Monthly Capacity Quantity for Oct 1999})(\text{Week Day Hours for Oct 1999})} \\ &= \frac{3974.88 \text{ MWh} + (12 \text{ MW})(0 \text{ hours})}{(12 \text{ MW})(336 \text{ hours})} \\ &= \frac{3974.88 \text{ MWh}}{4032 \text{ MWh}} \\ &= 0.9858.\end{aligned}$$

3. Since the Actual Capacity Factor of 0.9858 is greater than or equal to 0.95, then the Capacity Payment Adjustment Factor for October 1999 shall equal 1.0.

4. The Monthly Capacity Payment is calculated as follows:

$$\begin{aligned}\text{Monthly Capacity Payment} &= (\text{Capacity Rate})(\text{Monthly Capacity Quantity for October 1999})(\text{Capacity Payment Adjustment Factor}) \\ &= \text{[REDACTED]} (12 \text{ MW})(1.0) \\ &= \text{[REDACTED]}\end{aligned}$$



**TABLE D-1**

Example #	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
1	133	10	5	148	161	133	10	5	10	0	10	3	133
2	133	10	5	148	156	133	10	5	8	0	8	0	133
3	133	10	5	148	148	133	10	5	0	0	0	0	133
4	133	10	5	148	145	133	10	2	0	0	0	0	133
5	133	10	5	148	141	133	8 †	0	0	0	0	0	133
6	133	10	5	148	133	133	0 †	0	0	0	0	0	133
7	133	10	5	148	126	133	0 †	0	0	7	7	0	126
8	133	10	5	148	121	131	0 †	0	0	10	10	0	121

†/ In Example Nos. 5, 6, 7 and 8, Week Day Energy for the given hour would be 8 MWh, 0 MWh, 0 MWh, and 0 MWh, respectively.

The Parties shall confer in good faith and, within ten (10) Business Days of the Effective Date, or as soon as possible thereafter, shall agree upon a Table D-2, which will depict hourly delivery scenarios covering a period of up to three consecutive Week Days (in a format similar to Table D-1) using fractions (.01). Table D-2 shall thereafter be incorporated into this Contract as an amendment to Exhibit D.

**Power Purchase Agreement  
Between  
Okeelanta Corporation  
and  
Tampa Electric Company**

**Buyer:** Tampa Electric Company

**Seller:** Okeelanta Corporation

**Term:** The term of this Agreement shall comprise the following periods:

1. Period 1: September 1 through September 20, 1999 ("Scheduled Maintenance Outage Commencement Date");
2. Period 2: September 25, 1999 ("Scheduled Maintenance Outage Completion Date") through December 15, 1999;
3. Period 3: December 16, 1999 through December 31, 1999;
4. Period 4: January 1, 2000 through February 29, 2000; and
5. Period 5: March 1, 2000 through March 31, 2000, unless extended by mutual written agreement of the Seller and the Buyer.

The Seller and the Buyer understand that, as of the date of this Agreement, the Scheduled Maintenance Outage Commencement Date and the Scheduled Maintenance Outage Completion Date are "forecasted" dates subject to change, at the Seller's discretion. The Seller shall promptly advise the Buyer of any change to the Scheduled Maintenance Outage Commencement Date and/or the Scheduled Maintenance Outage Completion Date. The Seller understands that the commencement date(s) of Period 1 and Period 2, respectively, may require modification pursuant to Condition No. 2 below. The Buyer shall promptly advise the Seller of any such modification(s).

**Quantity:** 50 MW per hour

**Delivery**

**Point:** Into the Florida Power & Light Company ("FPL") transmission system at the Seller's Okeelanta 138 kV substation.

- Conditions:**
1. The Okeelanta Plant shall be committed as a base load resource for the term of this Agreement; however, capacity and energy shall be delivered on a unit-contingent basis;
  2. The commencement date(s) of Period 1 and Period 2, respectively, are contingent on the availability of firm point-to-point transmission service and associated ancillary services through the transmission system of FPL and the ability of the Buyer to purchase that type of transmission service and

associated ancillary services from the Delivery Point to the Buyer's interconnection(s) with FPL;

3. For each day that service is not available under this Agreement due to the Scheduled Maintenance outage or a delay in the commencement date of Periods 1 or 2 due to Condition No. 2 described above, the Reservation Fee, described below, shall be reduced by [REDACTED] for the month of September, 1999 and, if necessary, by [REDACTED] for the month of October, 1999 and the amount of energy to be scheduled by the Buyer shall be reduced by 400 MWh per day.

#### Scheduling:

##### Week Day Scheduling During All Periods:

Subject to Condition No. 3 above, the Buyer shall schedule and the Seller shall deliver 50 MW per hour for 8 hours, for a total of 400 MWh of energy, every week day, including holidays (i.e., 5 x 8 Schedule).

The expected hours of the 5 x 8 Schedule are as follows:

##### During

##### Period 1 and

##### Period 2:

From HE 13:00 through HE 20:00, Eastern Prevailing Time (i.e., the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Time Eastern Standard Time ("EPT")); and

##### During

##### Period 3,

##### Period 4 and

##### Period 5:

From HE 07:00 through HE 10:00 EPT and from HE 18:00 through HE 21:00 EPT.

The Buyer will have the right to modify the delivery hours of the 5 x 8 Schedule, provided, the schedule remains 5 x 8; 50 MW per hour; and 400 MWh per week day. The Buyer shall notify the Seller by 12:00 Noon of the previous day of a proposed 5 x 8 Schedule change.

During Periods 1, 2, 3, 4 and 5, the Buyer will have the right of first refusal for capacity and energy beyond the 5 x 8 Schedule and the 2 x 6 Schedule (as applicable to Period 4 and described on the following page). The Buyer and Seller will negotiate pricing terms on an individual case basis, based on prevailing market conditions. The Buyer shall notify the Seller by 12:00 Noon of the previous day of any interest to schedule power in excess of the 5 x 8 Schedule. If the Buyer does not notify the Seller by 12:00 Noon of the previous day, or the parties cannot agree on the terms of the sale then the Seller shall have no further obligations regarding the right of first refusal.

The Seller shall promptly advise the Buyer of any potential, or actual, scheduled maintenance outages, forced outages, and/or derations of the Okeelanta Plant that impact the 5 x 8 Schedule.

Weekend Day Scheduling During Period 4:

During Period 4, the Buyer shall schedule and the Seller shall deliver 50 MW per hour for 6 hours, for a total of 300 MWh of energy, every weekend day, including holidays (i.e., 2 x 6 Schedule). The expected hours of the 2 x 6 Schedule are from HE 08:00 through HE 10:00 EPT and from HE 18:00 through HE 20:00 EPT.

The Buyer will have the right to modify the delivery hours of the 2 x 6 Schedule, provided, the schedule remains 2 x 6; 50 MW per hour; and 300 MWh per weekend day. The Buyer shall notify the Seller by 12:00 Noon of the previous day of a proposed 2 x 6 Schedule change.

The Seller shall promptly advise the Buyer of any potential, or actual, scheduled maintenance outages, forced outages, and/or derations of the Okeelanta Plant that impact the 2 x 6 Schedule.

**Plant**

**Availability:** The Seller shall exercise reasonable efforts to maintain at least a ninety percent (90.00%) plant availability rate for the schedule contemplated in this Agreement. The Actual Plant Availability Rate (%) for each month, or a portion of a month (i.e., as in September, 1999 and October, 1999), shall be determined according to the following formula:

$$\begin{array}{l} \text{Actual Plant} \\ \text{Availability} \\ \text{Rate} = ((\text{Energy Delivered}) / (\text{Energy Scheduled})) \times 100\% \end{array}$$

In each month that the Actual Plant Availability Rate is less than 90.00% but greater than or equal to 78.00%, an Adjusted Reservation Fee shall be determined according to the following formula:

$$\begin{array}{l} \text{Adjusted} \\ \text{Reservation} \\ \text{Fee} = (A + B) \times \text{Reservation Fee (described below)} \\ \text{where:} \end{array}$$

$$A = 100.00\%$$

$$B = (\text{Actual Plant Availability Rate (expressed in percent to two significant decimal places)} - 90.00\%)$$



In each month that the Actual Plant Availability Rate is less than 78.00%, there shall be no Reservation Fee.

**Pricing:** The Buyer shall pay the Seller the fees and rates set forth below:

**For Period 1, Period 2 and Period 3:**

1. A Reservation Fee of:
  - A. [REDACTED] for an Actual Plant Availability Rate greater than or equal to 90.00%; or
  - B. An Adjusted Reservation Fee, as applicable.
2. An Energy Rate of \$ [REDACTED]

**For Period 4 and Period 5:**

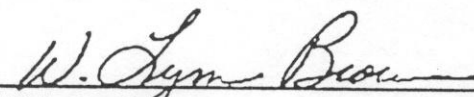
1. A Reservation Fee of:
  - A. [REDACTED] for an Actual Plant Availability Rate greater than or equal to 90.00%; or
  - B. An Adjusted Reservation Fee, as applicable.
2. An Energy Rate of \$ [REDACTED]

**Confirming**

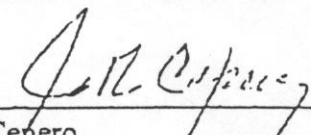
**Transactions:** The Buyer shall provide the Seller with monthly confirmation of the quantity of energy delivered to the Delivery Point during the prior month. Such confirmation shall be provided during the first business week of the calendar month following delivery of energy by the Seller.

**Settlement:** The Seller shall submit a statement promptly after the end of each month and the Buyer shall pay amounts due within twenty (20) days.

**Tampa Electric Company**

  
W. Lynn Brown  
Director  
Wholesale Marketing and Sales

**Okeelanta Corporation**

  
Gus Cepero  
Vice President

Date: 7/28/99

Date: 7/22/99