

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Settlement
Agreement by and among Florida
Power Corporation, Miami-Dade
County, Florida, and Montenay-Dade,
Ltd.

Docket No. 900184-EQ

Submitted for filing:
February 14th, 2000

P E T I T I O N

Florida Power Corporation ("FPC"), a Florida Corporation, Miami-Dade County, Florida (formerly known as Metropolitan Dade County, Florida), a political subdivision of the State of Florida ("Dade County"), and Montenay-Dade, Ltd., a Florida limited partnership ("Montenay") (collectively "Petitioners"), pursuant to Rule 25-22.036(4), Florida Administrative Code, jointly petition the Florida Public Service Commission (the "Commission") (1) to approve the attached Settlement Agreement between FPC, Dade County, and Montenay, (2) to confirm that the underlying Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, dated March 15, 1991, between FPC and Dade County (the "Negotiated Contract" or "Contract"),¹ as modified by the Settlement Agreement, continues to qualify for cost recovery,² and (3) to confirm that the historic settlement payment prescribed in the

¹ The Negotiated Contract was originally approved by the Commission in Order No. 24634 issued July 1, 1991, in Docket No. 910401-EQ. Modifications to the Contract were approved in Order No. PSC-95-0540-FOF-EQ issued May 2, 1995 in Docket No. 940797-EQ.

² Order No. PSC-95-0540-FOF-EQ, issued on May 2, 1995 in Docket No. 940797-EQ, requires that FPC submit material changes to cogeneration agreements, including changes involving curtailment, to the Commission for review and cost recovery approval.

Settlement Agreement also qualifies for cost recovery. In support of this Petition, Petitioners state as follows:

Introduction

1. All pleadings, motions, notices, orders or other documents required to be served in this docket should be addressed to the undersigned at the addresses shown below.

2. FPC is a public utility subject to the jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes. FPC's general offices are located at Nationsbank Tower, One Progress Plaza, 200 Central Ave., St. Petersburg, Fla. 33701.

3. Dade County is a political subdivision of the State of Florida and owns the Dade County Resources Recovery Facility ("the Facility"), from which firm capacity and energy are delivered to FPC under the Negotiated Contract.

4. Montenay operates the Facility pursuant to a separate agreement between Dade County and Montenay. Dade County and Montenay have been involved in disputes with FPC over the level of energy payments to be made under the Contract, as described more fully below.

Summary of the Petition and the Requested Approval

5. Petitioners request approval of this Petition in order to terminate protracted litigation now pending among them in state and federal courts, to provide certainty regarding how they are to perform under the Negotiated Contract, as revised by the Settlement Agreement, and to obtain for FPC's ratepayers the significant benefits that those ratepayers will realize through the implementation of the Settlement Agreement.

6. The Settlement Agreement and the associated benefits to FPC and its ratepayers are conditioned upon approval of the Settlement Agreement in its entirety by the Commission.

Petitioners therefore respectfully request that the Commission address this Petition through its proposed agency action procedures as soon as practicable, and issue an order approving the Settlement Agreement.

Background

7. Under the Negotiated Contract, Dade County is obligated to provide firm capacity and energy from its solid waste facility in Miami, Florida at a Committed On-Peak Capacity Factor of 43 MW. Beginning in August, 1994, a dispute arose between FPC, Dade County and Montenay relating to the price to be paid for energy under the Negotiated Contract. As the dispute developed, two main issues emerged: (1) the correct methodology for determining when the firm energy price versus the as-available energy price is to be paid under section 9.1.2 of the Contract; and (2) the basis for computing the transportation component of the chargeout price of coal to Crystal River Units 1&2, which is the fuel cost component used in calculating the firm energy price under the Contract.

8. Since 1996, FPC, Dade County and Montenay have been involved in litigation in both state and federal courts regarding the 9.1.2 issue and the coal pricing issue, as well as the associated issue of whether FPC's actions constitute an antitrust violation. (Florida Progress Corporation ("Florida Progress") and Electric Fuels Corporation ("EFC") are additional parties in the federal litigation involving the antitrust issue.) At oral argument in FPSC Dkt. No. 980283-EQ, the Commission encouraged the parties to reach a resolution of their dispute and bring the matter before it on a petition for approval of the settlement. Petitioners are hereby doing so.

9. On December 17, 1999, after considering the contested issues, the ongoing expense of resolving these controversies through continued litigation, and the benefits that will

be realized by Petitioners and FPC's ratepayers from the Settlement Agreement, FPC, Dade County and Montenay executed the Settlement Agreement, a copy of which is attached hereto as Exhibit A. Subject to Commission approval, the Settlement Agreement will fully resolve all matters at issue and all claims and controversies among Petitioners and the other litigating parties relating to the Negotiated Contract.

10. This amicable resolution of the various disputes and controversies is in the best interests of FPC and its ratepayers. The Settlement Agreement will result in significant, measurable savings to FPC's ratepayers, and will terminate complex litigation that requires the expense of time, money and resources by the parties to their detriment and to the detriment of FPC's ratepayers. The settlement is also in the best interests of Dade County's taxpayers and Montenay's stockholders.

Terms of the Settlement Agreement

11. In substance, the Settlement Agreement consists of two main economic components: (1) a new, streamlined, easy-to-administer mechanism for addressing when firm or as-available energy payments are due, with no change in FPC's coal transportation and coal pricing practices; and (2) the curtailment by Dade County and Montenay of energy deliveries during certain off-peak periods, with the ability to sell such power elsewhere, or the provision of such energy to FPC free of charge. The Agreement also provides for resolution of the historic pricing dispute among Petitioners, all as more fully explained below.

12. Energy Pricing.

- (a) **Firm vs. As-Available.** The energy price will no longer be determined by the scheduling (on or off) of the avoided unit based on its contractually-defined characteristics, but will instead be determined solely on the basis

of whether energy is being delivered by Dade to FPC during a “firm” or a “non-firm” hour, as those terms are re-defined in the Settlement Agreement. Firm hours are the hours of 7:00 a.m. through 11:00 p.m., and non-firm hours are the hours of 11:00 p.m. through 7:00 a.m., except during twenty (20) weekends as designated by FPC, during which all hours are non-firm hours. For all energy up to the Committed Capacity, Dade County will receive the firm energy price during firm hours. For all energy up to the Committed Capacity, Dade County will receive the as-available energy price during non-firm hours. For all energy in excess of the Committed Capacity, Dade County will receive the as-available energy price irrespective of whether delivery occurs during a firm or non-firm hour.

- (b) **Firm Energy Cost and the Price of Coal.** The price of coal, the fuel component of the firm energy price, will remain unchanged from that specified in the Contract – namely the chargeout price of coal burned at Crystal River 1&2. FPC is under no obligation to make any changes to its coal transportation practices as between barge and rail, and may continue its coal pricing practices as they presently exist.
- (c) **Settlement Payment for Historical Dispute.** FPC will reimburse Dade County for disputed energy payments during the period from August 9, 1994 through the implementation date of the Settlement Agreement, which is January 1, 2000. FPC will pay Dade County the difference between what it has been paid for energy during that period and what it would have

been paid, had the new methodology reflected in the Settlement Agreement for determining when the firm or as-available energy price is due been in effect. FPC has already paid Dade County the sum of \$2,150,319.67, which represents the settlement payment calculated through November 30, 1999. The balance of the settlement payment, through December 31, 1999, is in the process of being calculated and will be paid shortly. During settlement negotiations, an issue was raised with respect to the Delivery Voltage Adjustment ("DVA") set forth in the Contract, and specifically with FPC's having discontinued paying Dade, beginning August 1, 1994, the DVA even though all other QFs with similar contracts had continued to receive the DVA. This issue was relatively minor in the overall context of the disputed issues and was resolved with Dade agreeing to forego the DVA payment from August 1, 1994 through December 31, 1997, as part of the overall settlement. For all energy delivered, the DVA will be paid to Dade on a going-forward basis, and for the period January 1, 1998 through December 31, 1999, as part of the settlement payment.

13. **Curtailments.**

- (a) **New Provision.** Going forward from the implementation date of January 1, 2000, Dade County and Montenay have agreed to curtail energy deliveries to no more than 5 megawatt-hours per hour up to 63 times per year (but not more than 10 times per month), for up to 6 hours on each occasion, between the hours of 12:00 midnight and 6:00 a.m., such times

to be designated by FPC; alternatively, Dade County may elect not to curtail during these periods and instead provide its energy to FPC free of any charge for such energy.

- (b) **Specific Provisions.** During these 63 periods, upon notice to FPC of its intent to curtail in the manner specified in the Settlement Agreement, Dade County is free to sell the power it produces to another purchaser, and consistent with its FERC tariffs, FPC will provide wheeling services should Dade County request such services. If Dade County elects not to sell to another purchaser, it shall not be required to curtail energy deliveries to FPC to less than 5 megawatt-hours per hour (although it may do so at its election); but if it does not curtail, all energy delivered to FPC shall be free of charge. In addition, should Dade County elect to sell to another purchaser and properly notify FPC of such intent, but then, for whatever reason, fail to do so and instead deliver energy to FPC in excess of the allowable 5 megawatt-hours per hour rather than curtailing its output to no more than that level, it shall be liable to pay FPC certain substantial penalties, as specified in the Settlement Agreement. These penalties are designed to discourage such a switch after notification to FPC, and to compensate FPC for the costs and disruption of finding itself in a situation regarding system dispatch it had not anticipated based on what Dade County had indicated it was planning to do.
- (c) **Replacement of Existing Provisions.** These new curtailment provisions replace any existing curtailment provisions between the parties as set forth

in their November 1993 Settlement Agreement, section II on off-peak output reductions, approved by the Commission in Order No. PSC-95-0540-FOF-EQ, which approved a number of modifications to various QF contracts.

Benefits of the Settlement Agreement

14. The Settlement Agreement constitutes a comprehensive and equitable resolution of long-standing disputes among Petitioners, as well as EFC and Florida Progress. The negotiations which culminated in the settlement spanned a period of approximately six months, and each party carefully analyzed the benefits of the settlement against the attendant cost, risk, and disruption of continued litigation.

15. The Settlement Agreement and the benefits derived therefrom are multi-faceted and span a number of years -- specifically the period from August 9, 1994 through the remainder of the Contract, November 30, 2013. Accordingly, the benefits should be evaluated cumulatively and in their entirety based on the economic ramifications of the Agreement taken as a whole. The Settlement Agreement will convey a benefit to FPC and its ratepayers by amicably resolving contentious issues and eliminating the uncertainty of litigation, as well as the associated time and expense.

16. The new curtailment provisions provide other valuable benefits to FPC and its ratepayers. During curtailment periods, FPC is often required to cycle off one of its steam units, such as Ancloste or Bartow, with attendant significant shut-down and start-up costs. However, as contemplated under the Settlement Agreement, in the event Dade curtails deliveries to FPC by reducing its output to under 5 megawatt-hours per hour or selling its output to another purchaser, these costs can be avoided. Moreover, in the event Dade elects to continue its

deliveries of power to FPC free of charge, this will serve to offset the associated cycling costs regarding the other steam units by providing FPC with energy it can sell on the open market at the applicable market-based energy cost.

17. Table 1 shows the overall economic value of the Settlement Agreement to FPC and its ratepayers in several ways:

- **Part A** shows how the payments under the settlement compare to the current method by which FPC is administering the Contract (which Dade County and Montenay contest). As the Commission will see, when the economic benefit of the Settlement to FPC is considered going forward (shown on page 3), and offset by FPC's payment for the historical dispute (shown on pages 1-2), the settlement captures 74 % of the disputed amount (on an NPV basis) for FPC's ratepayers (see page 4). Stated differently, instead of costing FPC's ratepayers an additional \$23.5 million in energy payments based on how Dade and Montenay would construe the Contract, the cost is only about \$6 million more than FPC is presently incurring under its disputed "four-parameter" method of dispatch. Of course, since the Settlement Agreement is structured so as to create benefit to each side that is not necessarily offset by detriment to the other side (a so-called "win-win" approach), a similar analysis undertaken from the Dade County/Montenay perspective would show them obtaining a greater percentage of the dispute than indicated in Part A. For example, under the Settlement Agreement, Dade County and Montenay obtain an economic benefit from having the ability to sell power on the open market during certain periods. But this valuable right has no

corresponding offset from FPC's perspective, and does not reduce the economic value of the settlement to FPC and its ratepayers. (In fact, as noted, there is an attendant economic benefit to FPC, which prefers not to receive Dade County's power during such times.) In the same vein, the value of the settlement to FPC increases as a result of the cost savings it realizes in not having to cycle off its steam units and thereby incur the associated costs of start up and shut down, but this benefit to FPC does not reduce the value of the settlement to Dade County and Montanay.

- **Part B** shows how the settlement compares to the forecasted numbers submitted to the Commission in 1991, when the Negotiated Contract was approved for cost recovery. Those forecasts contemplated a higher coal forecast and higher as-available prices than what has actually transpired. Consequently, the settlement is considerably less costly to FPC and its ratepayers than those forecasts indicated would be the case. In fact, on an NPV basis, going forward, FPC and its ratepayers are 61 % better off compared to what was submitted to the Commission as the projected energy costs under the Negotiated Contract, based on the information then available. Stated differently, instead of the 1991 forecasted energy payments of \$133.6 million for the 2000 through 2013 period, the total forecasted energy payments under the Settlement are only \$52.6 million - substantially better for FPC's ratepayers.

18. The foregoing discussion and appended tables fairly summarize the key components of the Settlement Agreement. There are, of course, other, less-central provisions of

the Settlement Agreement, which, in the interests of brevity and conciseness, are not specifically discussed in this Petition. By and large, these provisions flow from the major components that have been summarized or are otherwise necessary and appropriate to finally concluding the disputes and litigation among the parties. The Settlement Agreement, along with all appendices, is being submitted herewith.

Relief Requested

19. Accordingly, in view of the substantial benefits to be realized for FPC's ratepayers, including the level of historic and prospective energy payments under the new payment methodology, reduced energy payments for the 20 weekends per year when FPC has the right to pay only the as-available rate for all energy delivered, still further reduced prospective energy payments (or free energy from Dade) for the 63 curtailment periods per year, enhanced curtailment rights, foregone historical DVA payments to Dade County, the elimination of litigation risk, and the avoidance of further litigation costs, the Commission should approve the Settlement Agreement to the full extent necessary and appropriate. In its order, the Commission should make clear that this approval applies to the Settlement Agreement in its entirety, including not only the prospective modifications but also to the historical settlement based on the retrospective application of the prospective terms of the Settlement Agreement.

WHEREFORE, Petitioners respectfully request that the Commission:

- (a) address the Petition pursuant to its proposed agency action procedures;
- (b) approve the Settlement Agreement to the full extent necessary and appropriate, and confirm that the Negotiated Contract, as modified by the Settlement Agreement, continues to qualify fully for cost recovery;
- (c) allow FPC cost recovery of the historic settlement payment made to Dade County pursuant to the Settlement Agreement.

Respectfully submitted,

FLORIDA POWER CORPORATION

By: Jeffery Froeschle (General Counsel)
James A. McGee
Jeffery Froeschle
Office of the General Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

and

By: Chris C. Coutroulis
Chris C. Coutroulis FBN 300705
Robert L. Ciotti FBN 333141
Carlton, Fields, Ward, Emmanuel
Smith & Cutler, P.A.
777 S. Harbour Island Boulevard
Tampa, Florida 33602
Phone: (813) 223-7000

MIAMI-DADE COUNTY

By: Gail P. Fels *Wright by JTL, for*
Gail P. Fels FBN 300705
Office of the County Attorney
Aviation Division
Post Office Box 592075
Miami, Florida 33159
Phone: (305) 876-7040
Facsimile: (305) 876-7294

and

By: Robert Scheffel Wright *by JTL*
Robert Scheffel Wright FBN 966721
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, Florida 32302
Telephone: (850) 681-0311
Facsimile: (850) 224-5595

MONTENAY-DADE, LTD.

By: Robert Scheffel Wright *by JTL*
Robert Scheffel Wright FBN 966721
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, Florida 32302
Telephone: (850) 681-0311
Facsimile: (850) 224-5595

Table 1 - Part A
Historic Settlement Payment Calculation

	Energy Payments		Difference due
	Energy Payments as Paid by FPC	under the Settlement	Dade County
Aug-94	\$438,235.95	\$453,651.62	\$15,415.67
Sep-94	\$386,373.21	\$412,793.18	\$26,419.97
Oct-94	\$471,396.38	\$486,933.37	\$15,536.99
Nov-94	\$481,938.60	\$499,922.52	\$17,983.92
Dec-94	\$560,133.34	\$593,308.12	\$33,174.78
Jan-95	\$496,870.52	\$515,598.81	\$18,728.29
Feb-95	\$495,302.42	\$515,741.40	\$20,438.98
Mar-95	\$548,692.77	\$556,744.18	\$8,051.41
Apr-95	\$441,987.24	\$460,081.78	\$18,094.54
May-95	\$524,232.47	\$528,126.98	\$3,894.51
Jun-95	\$399,932.67	\$407,707.86	\$7,775.19
Jul-95	\$569,626.12	\$586,586.29	\$16,960.17
Aug-95	\$398,078.00	\$419,651.52	\$21,573.52
Sep-95	\$432,272.02	\$459,725.97	\$27,453.95
Oct-95	\$405,171.22	\$435,080.75	\$29,909.53
Nov-95	\$506,506.18	\$527,250.53	\$20,744.35
Dec-95	\$545,697.94	\$574,609.03	\$28,911.09
Jan-96	\$614,458.91	\$669,206.94	\$54,748.03
Feb-96	\$541,076.65	\$599,809.00	\$58,732.35
Mar-96	\$639,437.31	\$657,536.12	\$18,098.81
Apr-96	\$615,671.16	\$615,645.84	-\$25.32
May-96	\$561,469.51	\$564,205.10	\$2,735.59
Jun-96	\$394,861.00	\$399,372.61	\$4,511.61
Jul-96	\$591,111.96	\$600,035.80	\$8,923.84
Aug-96	\$541,709.84	\$553,143.13	\$11,433.29
Sep-96	\$507,678.30	\$512,376.49	\$4,698.19
Oct-96	\$417,296.58	\$425,667.65	\$8,371.07
Nov-96	\$563,874.19	\$583,152.75	\$19,278.56
Dec-96	\$515,376.79	\$566,648.11	\$51,271.32
Jan-97	\$518,390.87	\$557,741.35	\$39,350.48
Feb-97	\$365,727.44	\$378,465.82	\$12,738.38
Mar-97	\$495,686.54	\$510,063.13	\$14,376.59
Apr-97	\$540,557.50	\$550,988.59	\$10,431.09
May-97	\$472,263.00	\$485,876.61	\$13,613.61
Jun-97	\$402,388.36	\$405,520.12	\$3,131.76
Jul-97	\$0.00	\$0.00	\$0.00
Aug-97	\$53,987.78	\$53,987.78	\$0.00
Sep-97	\$171,497.44	\$169,341.18	-\$2,156.26
Oct-97	\$339,833.61	\$345,177.84	\$5,344.23
Nov-97	\$373,107.17	\$419,513.25	\$46,406.08
Dec-97	\$373,835.94	\$411,151.95	\$37,316.01
Jan-98	\$470,430.59	\$558,171.96	\$87,741.37
Feb-98	\$390,654.74	\$471,401.26	\$80,746.52

Table 1 - Part A (Continued)
Historic Settlement Payment Calculation

	Energy Payments		
	Energy Payments as Paid by FPC	under the Settlement	Difference due Dade County
Mar-98	\$286,305.16	\$360,673.04	\$74,367.88
Apr-98	\$434,816.42	\$508,088.86	\$73,272.44
May-98	\$421,512.36	\$484,352.27	\$62,839.91
Jun-98	\$377,111.10	\$397,750.49	\$20,639.39
Jul-98	\$444,134.13	\$473,197.31	\$29,063.18
Aug-98	\$586,567.80	\$646,503.21	\$59,935.41
Sep-98	\$384,149.72	\$445,394.01	\$61,244.29
Oct-98	\$551,248.20	\$623,348.20	\$72,100.00
Nov-98	\$304,992.92	\$353,530.61	\$48,537.69
Dec-98	\$460,670.99	\$565,471.98	\$104,800.99
Jan-99	\$493,365.18	\$596,314.90	\$102,949.72
Feb-99	\$356,570.24	\$454,133.58	\$97,563.34
Mar-99	\$429,791.66	\$562,326.44	\$132,534.78
Apr-99	\$353,085.77	\$363,470.77	\$10,385.00
May-99	\$354,866.06	\$399,120.32	\$44,254.26
Jun-99	\$320,354.69	\$395,820.94	\$75,466.25
Jul-99	\$370,242.06	\$415,670.20	\$45,428.14
Aug-99	\$444,931.30	\$465,350.20	\$20,418.90
Sep-99	\$452,976.77	\$485,980.83	\$33,004.06
Oct-99	\$417,127.92	\$416,047.36	-\$1,080.56
Nov-99	\$364,064.38	\$423,774.92	\$59,710.54
	\$28,183,715.06	\$30,334,034.73	\$2,150,319.67

Table 1 - Part A (Continued)
Comparison of Energy Costs
under the Settlement to the
Parties' differing views of the Contract

	Settlement Energy Payment	Cycling Savings	Settlement Energy Payment less cycling savings	4-Parameter Dispatch Energy Payment	Full Firm Energy Payment
2000	\$6,015,487	\$133,000	\$5,882,487	\$5,640,201	\$7,252,017
2001	\$6,158,856	\$0	\$6,158,856	\$5,875,101	\$7,416,301
2002	\$6,263,623	\$59,500	\$6,204,123	\$5,878,753	\$7,640,041
2003	\$6,455,216	\$165,500	\$6,289,716	\$6,090,672	\$7,808,390
2004	\$6,548,406	\$82,500	\$6,465,906	\$6,137,290	\$7,913,840
2005	\$6,636,933	\$95,000	\$6,541,933	\$6,040,722	\$8,080,551
2006	\$6,928,561	\$124,500	\$6,804,061	\$6,164,134	\$8,389,424
2007	\$6,969,324	\$271,500	\$6,697,824	\$6,165,675	\$8,546,095
2008	\$7,173,015	\$142,000	\$7,031,015	\$6,303,126	\$8,817,254
2009	\$7,422,423	\$106,500	\$7,315,923	\$6,586,115	\$9,145,350
2010	\$7,478,089	\$174,833	\$7,303,256	\$6,549,442	\$9,209,912
2011	\$7,626,955	\$185,167	\$7,441,788	\$6,635,058	\$9,410,687
2012	\$7,775,820	\$195,500	\$7,580,320	\$6,720,674	\$9,611,256
2013	\$7,264,295	\$205,833	\$7,058,462	\$6,239,099	\$9,811,618
NPV @ 8.62%			\$52,572,383	\$48,737,413	\$65,552,650

Table 1 - Part A (Continued)
Summary

	4-Parameter Dispatch Energy Payment	Settlement	Full Firm Energy Payment including coal transportation adder
Historic difference from actual payments including interest through November 1999	\$0	\$2,150,320 68% (1)	\$6,640,379
Forecasted NPV Difference from FPC's anticipated payments	\$0	\$3,834,970 77% (1)	\$16,815,237
Total Difference	\$0	\$5,985,290 74% (1)	\$23,455,616

(1) This represents the percentage of the disputed amount going to FPC's ratepayers.

Table 1 - Part B
Comparison of Energy Payments
under the Settlement with Dade County to the forecast of
energy payments submitted when the contract was approved

	Settlement Energy Payment	Cycling Savings	Energy Payment w/cycling savings	Energy Payment forecasted in 1991 Approval Order	Yearly Difference
2000	\$6,015,487	\$133,000	\$5,882,487	\$12,789,000	\$6,906,513
2001	\$6,158,856	\$0	\$6,158,856	\$13,442,849	\$7,283,993
2002	\$6,263,623	\$59,500	\$6,204,123	\$14,127,288	\$7,923,165
2003	\$6,455,216	\$165,500	\$6,289,716	\$14,846,510	\$8,556,794
2004	\$6,548,406	\$82,500	\$6,465,906	\$15,605,020	\$9,139,114
2005	\$6,636,933	\$95,000	\$6,541,933	\$16,401,811	\$9,859,878
2006	\$6,928,561	\$124,500	\$6,804,061	\$17,238,155	\$10,434,094
2007	\$6,969,324	\$271,500	\$6,697,824	\$18,115,324	\$11,417,500
2008	\$7,173,015	\$142,000	\$7,031,015	\$19,039,099	\$12,008,084
2009	\$7,422,423	\$106,500	\$7,315,923	\$20,010,751	\$12,694,828
2010	\$7,478,089	\$174,833	\$7,303,256	\$21,032,190	\$13,728,934
2011	\$7,626,955	\$185,167	\$7,441,788	\$22,102,724	\$14,660,936
2012	\$7,775,820	\$195,500	\$7,580,320	\$23,230,733	\$15,650,413
2013	\$7,264,295	\$205,833	\$7,058,462	\$22,381,202	\$15,322,740
NPV @ 8.62%			\$52,572,383	\$133,603,474	

Percent reduction in energy payments to FPC's ratepayers
compared to the original forecast (NPV)

61%

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Settlement Agreement"), is made this 17th day of ~~November~~ December, 1999, by and between Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida ("FPC" or "the Company"), Miami-Dade County, Florida (formerly known as Metropolitan Dade County, Florida), a political subdivision of the State of Florida ("Dade County"), and Montenay-Dade, Ltd., a limited partnership organized under the laws of the State of Florida ("Montenay"). Each of the Company, Dade County, and Montenay are hereinafter designated as a "Party" and collectively as the "Parties".

RECITALS

A. The Company and Dade County are parties to that certain contract entitled "Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Dade County and Florida Power Corporation" dated March 15, 1991 (the "Negotiated Contract").

B. In accordance with applicable law, the Florida Public Service Commission ("FPSC") approved the Negotiated Contract by FPSC Order No. 24734 dated July 1, 1991.

C. Dade County owns the Dade County Resources Recovery Facility ("the Facility"), which is located in Dade County, Florida, and which is a solid waste facility as defined in Section 377.709, Florida Statutes, and which is also a qualifying small power production facility pursuant to the applicable regulations of the United States Federal Energy Regulatory Commission.

D. Montenay operates the Facility for Dade County pursuant to the Third Amended and Restated Operations and Management Agreement between Montenay and Dade County, dated as of September 1, 1996, as amended ("the O&M Agreement").

E. On November 16, 1993, Dade County, Montenay, and the Company entered into that certain Settlement Agreement that reflected the terms of a negotiated settlement of matters relating to fluctuations in the electrical output of the Facility (hereinafter "the November 1993 Settlement Agreement").

F. In accordance with applicable law, the FPSC approved the provisions of the November 1993 Settlement Agreement by FPSC Order No. PSC-95-0540-FOF-EQ, dated May 2, 1995.

G. The Company, Dade County, and Montenay are currently engaged in disputes which involve, among other things, the Parties' differing interpretation of Section 9.1.2 of the Negotiated Contract concerning the issue of when a unit with certain characteristics would be operating and the resulting energy payments due to be made by FPC to Dade County pursuant to the Negotiated Contract, and also concerning FPC's transportation of coal to the Avoided Unit Fuel Reference Plant.

H. The Parties have been actively litigating these disputes since February 1996 in the following two cases:

- (1) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Plaintiffs/Counter-Defendants) vs. Florida Power Corporation, a Florida corporation (Defendant/Counter-Plaintiff), Fla. Cir. Ct., 11th Jud. Cir., Case No. 96-09598 (CA 22).
- (2) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Appellants/Plaintiffs/Counter-Defendants) vs. Florida Progress Corporation, a Florida corporation (Appellee/Defendant) Florida Power Corporation, a Florida corporation (Appellee/Defendant/Counter-Plaintiff), and Electric Fuels Corporation, a Florida corporation (Appellee/Defendant), U.S. 11th Cir., Case No. 98-5575; on appeal from U.S.D.C. S.D. Fla., Miami Div., Case No. 96-594-CIV-LENARD.

Further, the Parties have been actively litigating in the following proceedings:

- (3) Florida Power Corporation, Appellant vs. Florida Public Service Commission, Agency/Appellee; and Miami-Dade County and Montenay-Dade, Ltd.,

Intervenors/Appellees, Fla. S. Ct., Case No. 94,664 (but excluding Consolidated Case No. 94,665), also styled Florida Power Corporation, Appellant vs. Joe Garcia, etc., et al., Appellees, Fla. S. Ct., Case No. 94,664; on appeal from In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, by Florida Power Corporation, Florida Public Service Commission, Dkt. No. 980283-EQ.

- (4) Miami-Dade County, a political subdivision of the State of Florida, and Montenay-Dade, LTD., by and through its managing general partner, Montenay Power Corp. (Plaintiffs) vs. Florida Public Service Commission, an arm of the legislative branch of the State of Florida, and Florida Power Corporation, a Florida corporation (Defendants), U.S.D.C. N.D. Fla., Case No. 498 CV 339 RH.

All of these cases shall hereinafter collectively be referred to as "the Litigation").

I. These disputes either remain unresolved or are on appeal, and unless this Settlement Agreement is approved by the FPSC, these disputes are likely to result in continued litigation.

J. After considering the contested issues involved, the expense of resolving such controversies through litigation and the benefits to the Parties and the Company's customers to be received under this Settlement Agreement, the Parties have determined, among other things, to resolve these disputes (i) by making certain amendments to the Negotiated Contract and to the November 1993 Settlement Agreement (including, among other amendments, deleting any reference in the Negotiated Contract to the avoided unit's operating status as determinative of firm versus as-available energy payments), and (ii) in connection with determining the price of fuel to the Avoided Unit Fuel

Reference Plant, by confirming FPC's rights under the Negotiated Contract to transport coal to Crystal River Units Nos. 1&2 using whatever mix of rail and barge transportation FPC deems appropriate.

AGREEMENT

In consideration of the premises of this Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that the Negotiated Contract and the November 1993 Settlement Agreement are hereby amended, supplemented or otherwise modified as follows.

A. Defined Terms and Definitions

Unless otherwise defined herein, capitalized terms used herein, including such definitions as appear in the foregoing Recitals, shall have the meaning assigned to such terms in the Negotiated Contract or the November 1993 Settlement Agreement. The following terms shall have the following meanings when used herein.

"Acceptable Settlement Order" shall mean an order of the FPSC that grants the Joint Settlement Petition and confirms that the Negotiated Contract, as modified by this Settlement Agreement, continues to qualify for cost recovery.

"Designated Off-Peak Weekend Period" shall mean any period from 11:00 p.m. on a Friday night until 7:00 a.m. on the succeeding Monday morning, during which FPC has exercised its right to pay Dade County the As-Available Energy Cost for energy delivered to FPC from the Facility.

"Final and Non-Appealable" with respect to an FPSC order shall mean that all opportunities for requesting a hearing, requesting reconsideration, requesting clarification, or filing for judicial review, including all appeals from disposition of any such request or filing, have expired or are barred by law.

"Firm Energy Cost" shall mean the product of the average monthly inventory chargeout price of fuel burned at the

Avoided Unit Fuel Reference Plant, the Fuel Multiplier, and the Avoided Unit Heat Rate, plus the Avoided Unit Variable O&M.

"Firm Hours" shall mean the hours of 7:00 a.m. through 11:00 p.m., except during Designated Off-Peak Weekend Periods during which all hours shall be Non-Firm Hours.

"Implementation Date" shall mean the date fifteen (15) days following the execution of this Settlement Agreement by all Parties, including formal approval by the Miami-Dade County Board of County Commissioners.

"Joint Settlement Petition" shall mean the petition that the Parties shall jointly submit to the FPSC requesting FPSC approval of the Settlement Agreement and confirmation that the Negotiated Contract, as modified by the Settlement Agreement, continues to qualify for cost recovery.

"Non-Firm Hours" shall mean the hours of 11:00 p.m. through 7:00 a.m., including all hours during Designated Off-Peak Weekend Periods; provided, however, that Non-Firm Hours shall not include any hours during Special Curtailment Periods.

"Off-Peak Hours" shall mean all hours other than On-Peak Hours.

"On-Peak Hours" shall mean the eleven (11) hours per day as follows:

For all days in the calendar months of November through March, inclusive, 7:00 a.m. through 1:00 p.m. and 5:00 p.m. through 10:00 p.m., excluding such On-Peak Hours that fall within (i) Ramp Periods, (ii) Designated Off-Peak Weekend Periods, (iii) periods excluded from the On-Peak Capacity Factor calculation pursuant to Section 8.3 of the Negotiated Contract, and (iv) periods during planned and coordinated maintenance periods pursuant to the November 1993 Settlement Agreement;

For all days in the calendar months of April through October, inclusive, 11:00 a.m. through 10:00 p.m., excluding such On-Peak Hours that fall within (i) Ramp Periods, (ii) Designated Off-Peak Weekend Periods, (iii) periods excluded from the On-Peak Capacity Factor calculation pursuant to Section 8.3 of the

Negotiated Contract, and (iv) periods during planned and coordinated maintenance periods pursuant to the November 1993 Settlement Agreement.

This definition of "On-Peak Hours" shall supersede and replace the corresponding definition appearing in Section 1.35 and Appendix C of the Negotiated Contract.

"Ramp Period" shall be one (1) hour before and six (6) hours after each associated Special Curtailment Period or Designated Off-Peak Weekend Period. Each Ramp Period preceding a Special Curtailment Period or Designated Off-Peak Weekend Period shall be completed prior to the beginning of the related Special Curtailment Period or Designated Off-Peak Weekend Period, such that the Facility is operating at the reduced capacity at the beginning of such Special Curtailment Period or Designated Off-Peak Weekend Period. Each Ramp Period following a Special Curtailment Period or Designated Off-Peak Weekend Period shall be completed within six (6) hours following the end of such Special Curtailment Period or Designated Off-Peak Weekend Period, such that the Facility is operating at the full capacity at the end of such Ramp Period.

"Special Curtailment Period" shall mean any period during which deliveries of electric energy from the Facility are reduced pursuant to the Special Curtailment Provisions set forth in Section C.3 of this Settlement Agreement, or in which power is provided to the Company at no charge pursuant to the same section.

"Special Curtailment Provisions" shall have the meaning set forth in Section C.3 of this Settlement Agreement.

"Settlement Effective Date" shall mean the first day of the first billing month following the date on which an Acceptable Settlement Order becomes Final and Non-Appealable.

"Termination Date" shall have the meaning set forth in Section D.3.(a) hereof.

"Unacceptable Settlement Order" shall mean an order or proposed order of the Florida Public Service Commission that does not grant the Joint Settlement Petition and confirm that the Negotiated Contract, as modified by this Settlement Agreement, continues to qualify for cost recovery.

B. Settlement of Disputes

The Parties hereby agree that all matters at issue and all claims and controversies relating to the Negotiated Contract which were asserted, or could have been asserted, have been fully compromised and settled pursuant to the terms of this Settlement Agreement.

C. Modifications to the Negotiated Contract and November 1993 Settlement Agreement

1. On-Peak Capacity Factor Calculation.

- (a) Capacity. For purposes of computing each On-Peak Capacity Factor, all Delivered Energy during On-Peak Hours shall be included even though such amount may exceed the Committed Capacity of the Negotiated Contract.
- (b) Amendment to Section 8.3 of Negotiated Contract. Section 8.3 on page 17 of the Negotiated Contract is amended by deleting the phrase "defined in Appendix C" in the first sentence, line 5 of that Section, and replacing it with "as defined in the Settlement Agreement."

2. Energy Payments Under the Negotiated Contract. Section 9.1.2 of the Negotiated Contract is hereby amended by deleting said Section 9.1.2 in its entirety and replacing it with the following:

9.1.2 Except as otherwise provided in Section 9.1.1 hereof, beginning with the billing month that begins upon the Settlement Effective Date, and continuing throughout the remaining Term of the Negotiated Contract, Dade County shall receive electric energy payments calculated on an hour-by-hour basis as follows:

- (a) Energy Up to the Committed Capacity. For electric energy received by the Company up to and including the Committed Capacity in any hour, i.e., up to forty-three (43) megawatt-hours per

hour, electric energy payments shall be determined as follows:

- (i) Firm Hours. For energy received by the Company during all Firm Hours, electric energy payments to Dade County shall be the product of the Firm Energy Cost multiplied by the electric energy received by the Company, plus the Performance Adjustment, plus the Delivery Voltage Adjustment pursuant to Section 9.2 and Appendix C, Schedule 8 of the Negotiated Contract.
- (ii) Non-Firm Hours. For energy received by the Company during all Non-Firm Hours, electric energy payments to Dade County shall be the product of the electric energy received by the Company multiplied by the As-Available Energy Cost, plus the Performance Adjustment, plus the Delivery Voltage Adjustment pursuant to Section 9.2 and Appendix C, Schedule 8 of the Negotiated Contract.
- (b) Energy Greater Than The Committed Capacity. For electric energy received by the Company that is greater than the Committed Capacity in any hour, i.e., more than forty-three (43) megawatt-hours per hour, electric energy payments shall be the product of the As-Available Energy Cost multiplied by such electric energy received by the Company in excess of the Committed Capacity in any such hour, plus the Delivery Voltage Adjustment pursuant to Section 9.2 and Appendix C, Schedule 8 of the Negotiated Contract.

3. Special Curtailment Provisions. The provisions in Section II of the November 1993 Settlement Agreement relating to OFF-PEAK OUTPUT REDUCTIONS are hereby amended by deleting those provisions in their entirety and replacing them with the following.

- (a) Special Curtailment Periods. Dade County and Montenay hereby grant FPC the right to specify certain specific output reductions from the Facility during certain

periods in accordance with the terms set forth in this Settlement Agreement. Each such period shall be designated a "Special Curtailment Period."

- (b) Each Special Curtailment Period shall be at FPC's sole option, provided that it may last no longer than six (6) hours and may occur only between the hours of 12:00 midnight and 6:00 a.m. on any day. There shall be no more than sixty-three (63) Special Curtailment Periods in any calendar year, nor more than ten (10) Special Curtailment Periods in any calendar month. If the Implementation Date does not coincide with the beginning of a Calendar Year, then for the balance of the Calendar Year in which the Implementation Date occurs, the allowable number of Special Curtailment Periods shall be pro-rated according to the number of months remaining in such Calendar Year at the rate of 5.25 Special Curtailment Periods per month, rounded up or down to the nearest whole number (with .50 rounded up).
- (c) During any Special Curtailment Period, Dade County and Montenay shall, at the sole option of Dade County and Montenay, and in accordance with paragraph 3 (d) below, either
 - (i) provide the entire net output of the Facility to FPC free of charge for all such energy delivered, or
 - (ii) reduce the Facility's net energy deliveries to FPC to a level as close to zero (0) megawatt-hours per hour as is practicable and consistent with good engineering practice with respect to the operation of the Facility, and in any event to no more than five (5) megawatt-hours per hour; provided, however, that Dade County and Montenay shall be free to reduce the Facility's net energy deliveries to FPC to zero (0) megawatt-hours per hour by selling the entire net output of the Facility to any other lawful purchaser. If Dade County and Montenay elect to reduce energy deliveries to FPC by selling the entire net output of the Facility to another lawful purchaser, FPC agrees to provide transmission service for such sales in accordance with its

approved tariffs applicable to such transmission service. In the event that the transmission service required by Dade County and Montenay to accommodate such sales becomes an untariffed service, the parties agree to negotiate in good faith toward a transmission service agreement in conformance with applicable FERC rules and regulations. If the service required becomes wholly unregulated, then the Parties agree to negotiate in good faith toward a transmission service agreement that is fair, just and reasonable in light of all market conditions existing at that time. In all events, Dade County and Montenay shall be free to select another transmission service provider if such a provider is available.

- (d) FPC shall provide notice of any request for curtailment in a Special Curtailment Period, and Dade County and Montenay shall provide their response regarding whether they will either curtail the Facility's output or provide the Facility's output to FPC free of charge for all such energy delivered, according to the following procedures:
 - (i) For the first year following the Implementation Date, FPC shall provide notice to Dade County and Montenay by 11:00 a.m. on the day preceding the day for which the curtailment is specified, and Dade County and Montenay shall provide their response by 3:30 p.m. on the day upon which notice is given. In such response, Dade County and Montenay shall notify FPC as to whether they will be providing the Facility's output to FPC free of charge for all such energy delivered, or whether they will be reducing the Facility's deliveries to FPC as specified in Section 3(c)(ii) above.
 - (ii) Beginning on the first anniversary of the Implementation Date, FPC shall provide notice to Dade County and Montenay by 12:00 noon on the day preceding the day for which the curtailment is requested, and Dade County and Montenay shall provide their response by 3:00 p.m. on the day upon which notice is given. In such response,

Dade County and Montenay shall notify FPC as to whether they will be providing the Facility's output to FPC free of charge for all such energy delivered, or whether they will be reducing the Facility's deliveries to FPC as specified in Section 3(c)(ii) above.

- (e) In the event Dade County and Montenay give notice to FPC that they will reduce energy deliveries to FPC in accordance with Section 3(c)(ii) above, but Dade County and Montenay fail to do so for whatever reason (including failure to complete any ramping of the Facility within the allotted Ramp Period), then, in addition to providing all electrical energy to FPC at no charge during the Special Curtailment Period, Dade County and Montenay agree to pay to FPC a penalty payment as follows:

- (i) If the amount of electrical energy delivered to FPC does not exceed five (5) megawatt-hours per hour in any hour during the Special Curtailment Period, no penalty shall be owed;
- (ii) If the amount of electrical energy delivered to FPC exceeds five (5) megawatt-hours per hour in any hour during the Special Curtailment Period, then Dade County and Montenay shall pay to FPC the sum of \$15,000 plus \$100 per megawatt-hour for each megawatt-hour by which the amount of energy delivered to FPC exceeds five (5) megawatt-hours per hour in such hour, provided, however, that no more than one \$15,000 penalty payment shall be due in or for any one Special Curtailment Period, and provided further, however, that any such penalty payments may be made in the form of an offset to the amounts due from FPC to Dade County for electrical energy delivered during the month in which the excess deliveries of electrical energy occurred. In the event such offset exceeds the amounts due from FPC for that month, then that part of the penalty payments not already offset in that month shall be offset from the amounts due from FPC to Dade County for electrical energy in the following month.

(f) No Waiver of Rights to Challenge Additional Curtailments. Nothing contained in this Settlement Agreement shall in any way preclude Dade County or Montenay from contesting or challenging any attempt by the Company to curtail its receipt of electric energy from the Facility in excess of the amounts contemplated by these Special Curtailment Provisions.

(g) No Effect on Capacity Payments or Performance Adjustment. Neither the Special Curtailment Periods, nor energy delivered to FPC free of charge during such Special Curtailment Periods, nor energy delivered to any other lawful purchaser during such Special Curtailment Periods, nor any excess energy deliveries (as described in Section 3(e)(ii) above) to FPC during any such Special Curtailment Periods, shall have any effect on either the capacity payments or the Performance Adjustment payable to Dade County by the Company under the Negotiated Contract.

4. Designated Off-Peak Weekend Periods. FPC shall have the right to designate up to twenty (20) weekends per year as Designated Off-Peak Weekend Periods. Each such Designated Off-Peak Weekend Period shall include the period from 11:00 p.m. on the Friday night of such weekend until 7:00 a.m. on the following Monday morning. During each such Designated Off-Peak Weekend Period, Dade shall provide electric energy from the Facility to FPC in accordance with the Negotiated Contract; provided, however, that FPC shall pay Dade County the As-Available Energy Cost times the energy delivered to FPC from the Facility, plus the Delivery Voltage Adjustment for all such energy delivered. FPC shall notify Dade County and Montenay of any such designation by 5:00 p.m. on the Wednesday immediately preceding the Friday upon which FPC desires the Designated Off-Peak Weekend Period to commence. Dade County and Montenay shall acknowledge FPC's notification and designation via facsimile transmission or other writing. Once Dade County and Montenay have acknowledged FPC's notification and designation, such notification and designation may not be revoked by FPC without the express written agreement of Dade County and Montenay.

5. Coal Costs and Pricing. There shall be no modification to the provisions of the Negotiated Contract pertaining to coal pricing, including to the use of the average monthly

inventory chargeout price of fuel burned at the Avoided--Unit Fuel Reference Plant. The following provisions shall apply with respect to FPC's methods of calculating the price of coal burned at FPC's Crystal River Units Nos. 1&2, for purposes of determining energy payments due under the Negotiated Contract:

- (a) There shall be no coal floor price or other constraint applied in calculating historical energy payments pursuant to this Settlement Agreement, and no adjustment of any kind in the historical energy payments made to Dade attributable to coal pricing.
- (b) FPC shall be free to continue determining coal prices in the future, as it has been, based upon the then-current actual charge-out price of coal to Crystal River 1&2. There will be no coal price floor and no other artificial constraint on FPC's ability to reflect actual changes in the delivered price of coal to Crystal River 1&2.
- (c) Dade County and Montenay shall be foreclosed from suing FPC, Florida Progress Corporation or Electric Fuels Corporation based either upon the historical actual mix of barge and rail transportation of coal to Crystal River Units Nos. 1&2, or upon any future mix of barge and rail transportation of coal to Crystal River Units Nos. 1&2.
- (d) This Settlement Agreement shall not foreclose either Dade County or Montenay, or both, from challenging any new and different practices relating to the calculation or determination of coal prices (but not relating to the actual cost of the mix of rail and barge transportation to Crystal River Units Nos. 1&2), as such practices may affect the price of coal used in calculating future energy payments under the Negotiated Contract, provided that Dade and/or Montenay believe there is an adequate legal and factual basis for doing so.

D. General Provisions

1. FPSC Matters.

- (a) Joint Settlement Petition. Within thirty (30) days following the date on which this Settlement Agreement is approved by the Miami-Dade County Board of County Commissioners, the Parties shall submit the Joint Settlement Petition to the FPSC. The Joint Settlement Petition shall attach this Settlement Agreement and request that the FPSC address the Settlement Agreement on an expedited basis pursuant to the FPSC's proposed agency action procedures.
- (b) Covenants to Support and Defend the Joint Settlement Petition and the Settlement Agreement. The Parties shall support and defend the Joint Settlement Petition, and shall communicate and coordinate with one another, prior to initiating any action or making any appearance regarding the Joint Settlement Petition. In any action involving this Settlement Agreement, including without limitation any action before the FPSC, the Parties shall defend all of the terms and conditions hereof.
- (c) Supporting Documents. The Parties shall provide to the FPSC on a timely basis all studies and analyses needed to support the Joint Settlement Petition, including a present worth revenue requirement analysis for the Negotiated Contract, as modified by this Settlement Agreement, compared to the calculations provided to the FPSC by FPC in Docket 910401-EQ, as well as documentation requested by FPSC staff. The Parties shall coordinate regarding the preparation of all such supporting documents, and share the documentation they plan to present to the FPSC before such submittal.
- (d) Effect of Acceptable Settlement Order. If the FPSC issues an Acceptable Settlement Order, and such order becomes Final and Non-Appealable, the Parties shall continue to implement the terms of this Settlement Agreement and the termination rights set forth in Section D.3 hereof will no longer be applicable. Within five (5) days of such Acceptable Settlement Order becoming Final and Non-Appealable, the Parties shall file dismissals with prejudice, in the forms set forth in Composite Exhibit 1 hereto, dismissing all claims, counterclaims and appeals in the Litigation, including all claims and appeals pending against

Florida Progress Corporation and Electric Fuels Corporation.

- (e) Effect of Unacceptable Settlement Order. If, in response to the Joint Settlement Petition, the FPSC issues an Unacceptable Settlement Order, each Party shall cooperate with the others and take such actions as are necessary and reasonable to attempt to persuade the FPSC to issue a Final and Non-Appealable order that grants the Joint Settlement Petition, including but not limited to, (i) seeking clarification of or protesting the Unacceptable Settlement Order, and (ii) negotiating in good faith to explore the possibility of amending the Settlement Agreement so that the provisions the FPSC determines are unacceptable may be modified and made acceptable. If such actions and further negotiations are unsuccessful, and an Unacceptable Settlement Order becomes Final and Non-Appealable, then termination rights shall attach to the Parties as provided in Section D.3 hereof.

2. Settlement Payments. On the Implementation Date, the Company shall pay to Dade County, by electronic transfer, the Settlement Payment as follows:

Calculation of the Settlement Payment. The Settlement Payment shall be equal to the aggregate difference between: (i) the amount actually paid by FPC for energy delivered from the Facility to FPC for each billing month from August 9, 1994 through the day immediately preceding the Implementation Date, and (ii) the amount that FPC would have been obligated to pay for such energy if Sections C.2(a), C.2(b) and C.4 of this Settlement Agreement had been in effect; provided, however, that the Settlement Payment shall only include the Delivery Voltage Adjustment for the period January 1, 1998 through the day immediately preceding the Implementation Date.

3. Termination Rights.

- (a) At the option of any Party, within thirty (30) days after an Unacceptable Settlement Order is issued by the FPSC, this Settlement Agreement may be terminated upon five (5) days written notice to the other Parties (which date shall become the "Termination Date"),

whereupon the Parties shall file with the FPSC a notice of voluntary dismissal of the Joint Settlement Petition.

(b) Effect of Termination. Upon termination of this Settlement Agreement pursuant to Section D.3.(a):

- (i) Within thirty (30) days of the Termination Date, Dade County and Montenay shall return the Settlement Payment to the Company with interest at the rate specified in the Negotiated Contract. In addition, within thirty (30) days of the Termination Date, Dade County and Montenay shall return to FPC the sum of the following: (1) the aggregate difference between (a) the amount paid by FPC for energy delivered from the Facility to FPC from the Implementation Date to the Termination Date, and (b) the amount that FPC would have paid for such energy in the absence of this Settlement Agreement; less (2) any penalties that FPC may have assessed pursuant to Section 3(e) of this Settlement Agreement; plus (3) interest at the rate specified in the Negotiated Contract. If Dade County and Montenay fail to comply with these obligations, Company shall withhold said amounts (together with interest) from future capacity and energy payments until such amounts are fully repaid. FPC shall also be free to assert such amounts as a set-off or recoupment; and
- (ii) Company shall have no obligation to pay for any energy Company did not receive from Dade County during the period between the Implementation Date and the Termination Date; and
- (iii) Each Party shall have the rights and obligations under the Negotiated Contract and the November 1993 Settlement Agreement as if this Settlement Agreement had never been executed;
- (iv) All disputes, claims, and controversies relating to the Negotiated Contract and the November 1993 Settlement Agreement that existed prior to the Settlement Effective Date shall be reinstated in

the same posture as if this Settlement Agreement had never been executed.

- (vi) Neither this Settlement Agreement, nor any of its terms, nor the underlying settlement or negotiations leading up to the settlement, shall be used for any purpose in any of the proceedings described in (iv) above or in any other proceedings, except in connection with any alleged breach of this Settlement Agreement.

The provisions of this Section D.3.(b) shall survive Termination of this Settlement Agreement pursuant to D.3.(a).

4. Representations and Warranties. Each of the Parties represents and warrants that (i) it has full authority and has obtained all necessary approvals to execute this Settlement Agreement and the referenced Releases; and (ii) the individual signing on its behalf is authorized to do so.
5. Approvals, Executions and Implementation. In accordance with applicable law, this Settlement Agreement shall be presented to the Miami-Dade County Board of County Commissioners for its approval only after it has been executed by FPC and Montenay. This Settlement Agreement also requires approval of the Parties' Joint Settlement Petition by the FPSC. This Settlement Agreement shall become final and binding on the Settlement Effective Date. Notwithstanding that the Joint Settlement Petition has not yet resulted in an Acceptable Settlement Order by the FPSC, the terms of this Settlement Agreement shall be fully implemented on the Implementation Date; provided, however, that such implementation shall be subject to the Termination Right set forth in Section D.3 of this Settlement Agreement.
6. Releases. No later than the Implementation Date, the Parties, as well as Florida Progress Corporation and Electric Fuels Corporation, shall each execute Releases in the forms attached hereto as Composite Exhibit 2, with respect to all matters at issue in the Litigation and all claims or controversies relating to the Negotiated Contract that were asserted, or could have been asserted in the Litigation. Said Releases shall be contingent upon the

issuance of an Acceptable Settlement Order and upon such Acceptable Settlement Order becoming Final and Non-Appealable. Said Releases shall be delivered to all other Releasees within five (5) days of an Acceptable Settlement Order becoming Final and Non-Appealable.

7. Effect on Pending Litigation. Upon execution of this Settlement Agreement, the Parties shall jointly seek stays of the cases listed as Items 1 and 2 of the Litigation. If Lake Cogen, Ltd. and the FPSC, together the Appellees in Florida Power Corp. v. Joe Garcia, etc., et al., Case No. 94,665, now pending before the Florida Supreme Court, agree to a stay of that appeal, then the Parties shall jointly move for a stay of the appeal in Florida Power Corp. v. Joe Garcia, etc., et al., Case No. 94,664 (item 3 of the Litigation), also pending before the Florida Supreme Court and consolidated with Case No. 94,665; provided, however, that in such motion papers, Dade and Montenay may condition their agreement to and request for a stay on the Florida Supreme Court's granting a stay in Case No. 94,665. If Lake Cogen, Ltd. or the FPSC, or both, do not agree to a stay of Case No. 94,665, or the FPSC does not agree to a stay of Case No. 94,664, then FPC shall be free, though not required, to seek a stay of Case No. 94,664, and Dade County and Montenay shall be free, at their election, to oppose any such stay unless neither the FPSC nor Lake Cogen, Ltd has opposed the stay in Case No. 94,665.
8. Costs. All Parties are to bear their own costs associated with the Litigation, including, without limitation, those costs encompassed in FPC's motion for costs, as amended, in the U.S. District Court for the Southern District of Florida.
9. Miscellaneous.
 - (a) No Admission of Fault. The Parties acknowledge that this Settlement Agreement is being entered into for the purposes of settlement only and to avoid the expense and length of legal proceedings, taking into account the uncertainty and risk inherent in any litigation. Neither this Settlement Agreement, nor the execution and delivery of this Settlement Agreement, nor any action taken to reach, effectuate or further this Settlement Agreement may be (i) construed or used as an admission by or against any

Party of any fault, wrongdoing or liability whatsoever, or as an admission concerning any specific issue raised in the potential litigation, or as a concession of non-liability of any other fact or matter; or (ii) introduced in evidence in any proceeding other than one either to enforce this Settlement Agreement or the Negotiated Contract as modified by this Settlement Agreement, or which requires an explication or explanation of the terms and conditions contained in this Settlement Agreement for a purpose other than as set forth in (a) (i) of this Section.

- (b) Audit. Dade County and Montenay shall have the right, upon reasonable notice, to audit the Company's books, accounts, charts and records to the extent necessary to verify FPC's calculation of the payments and other information shown on the statements rendered under the Negotiated Contract as modified by this Settlement Agreement. Any such audit shall be conducted during normal business hours at the offices where such books, accounts and records are maintained. Audits shall be conducted by Dade County's or Montenay's designated personnel or by an accounting firm recognized as experienced in electric utility accounting practices. Audits shall be conducted at Dade County's and Montenay's expense. The Company shall be entitled to review the audit report and any supporting materials. In the event the Parties agree that an error has occurred in any payment or other information shown on any statement, such error shall be adjusted within twenty (20) days following receipt of notice of the error. In the event the Parties cannot agree that an error has occurred, the Parties agree to settle the dispute by binding arbitration at the behest of any Party in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("the Rules"). Within thirty (30) days after submission of the dispute to arbitration, the Parties may agree upon a person with experience in, and knowledge of, the electric industry to act as sole arbitrator, but if the Parties are unable to agree upon such a person within that thirty (30) day period, an arbitrator having such expertise and knowledge shall be selected in accordance with the Rules. The arbitrator shall not have the power to award punitive or exemplary

damages. Any arbitrable dispute must be submitted to arbitration within one (1) year after Dade and Montenay have given written notice to FPC, or FPC has given written notice to Dade and Montenay, that the Parties cannot agree that an error has occurred and an impasse has therefore been reached. A failure to institute arbitration proceedings within that one (1) year period shall constitute a bar to the institution of any proceedings, in arbitration or in any court or regulatory agency, and a waiver of all such claims. The rights of audit and arbitration provided herein shall not apply with respect to the proper interpretation of the Negotiated Contract as modified by this Settlement Agreement.

- (c) Confidential Material. All documents produced by any Party in the Litigation and designated as "Confidential" or "Specially Restricted," and all copies thereof, including all copies from each retained consultant or expert, shall be returned to the producing party or destroyed within 15 days of an Acceptable Settlement Order becoming Final and Non-Appealable. In the event the documents are destroyed, rather than returned, counsel for that Party shall certify in writing to the producing party that all copies of the documents have been gathered, and that destruction has in fact occurred, said notification to be provided within 10 days of document destruction. Neither the Parties nor counsel for the Parties shall be permitted to utilize Confidential or Specially Restricted information in any fashion; provided, however, that notwithstanding the terms of this provision or any Confidentiality Agreements in the Litigation, outside counsel for the respective Parties may retain copies of pleadings which contain Confidential or Specially Restricted information, deposition transcripts and copies of marked deposition exhibits in accordance with their respective firm's procedures for retention of litigation files, and subject to all obligations under any Confidentiality Agreements in the Litigation
- (d) Governing Law. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida without giving effect to any choice of law rules that may

require the application of laws of another jurisdiction.

- (e) Entire Agreement. This Settlement Agreement, together with the Negotiated Contract and the November 1993 Settlement Agreement, contains the entire agreement and understanding between the Parties hereto, their agents, and their employees as to the subject matter of this Settlement Agreement and supersedes in its entirety any and all previous communications between the Parties (including but not limited to any term sheet outlining this Settlement Agreement or other settlement proposals) as to the subject matter hereof. All Parties have participated in the drafting of this Settlement Agreement, and all Parties waive any claim or contention that its terms should be construed against any other. No drafts authored by any Party, or by any such Party's counsel, preceding this Settlement Agreement, nor any conversations or correspondence between counsel shall be used in any proceeding seeking to interpret this Settlement Agreement, and all such drafts, conversations, and correspondence are agreed to be irrelevant and inadmissible for any purpose. No representations, warranties, or collateral promises or inducements have been made by any Party to this Settlement Agreement to any other except as expressly set forth herein, and all Parties acknowledge that they have not relied upon any verbal statements or acts of any other Party in executing or delivering this Settlement Agreement, other than as expressly set forth herein. These acknowledgements are contractual and not mere recitals.
- (f) Amendments and Termination. This Settlement Agreement shall be modified or terminated only by an instrument in writing executed by the Parties.
- (g) Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.
- (h) Successors and Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

- (i) Interpretation. If any provision of this Settlement Agreement conflicts with any provision of either the Negotiated Contract or the November 1993 Settlement Agreement, the provisions of this Settlement Agreement shall control and govern the matter or matters affected.
- (j) Remedies upon Breach of Settlement Agreement. A breach of any of the terms of this Settlement Agreement shall be actionable under applicable law. Upon the Settlement Effective Date, the terms of this Settlement Agreement shall become merged into and amend the Negotiated Contract, the material terms of this Settlement Agreement shall become material terms of the Negotiated Contract, and all rights and remedies set forth in the Negotiated Contract shall thereupon apply.
- (k) No Waiver. The failure to enforce any term of this Settlement Agreement on one or more occasions shall not constitute a waiver of any Party's right to enforce such term, or any other term contained herein, on any other occasion. No course of dealing or performance by any Party, and no failure, omission, delay or forbearance by any Party in exercising any right, power or benefit under this Settlement Agreement shall constitute a waiver of such right, power or benefit.
- (l) No Modification Except as Set Forth. Except as expressly set forth in this Settlement Agreement, the Negotiated Contract and the November 1993 Settlement Agreement shall remain in full force and effect.
- (m) Section Headings for Convenience. Article or section headings appearing in this Settlement Agreement are inserted for convenience only and shall not be construed as interpretations of text.

IN WITNESS WHEREOF, Miami-Dade County, Florida, Montenay-Dade, Ltd., and Florida Power Corporation have caused this Settlement Agreement to be executed by their duly authorized representatives on the day and year first above written.

ATTEST:



HARVEY RUVIN

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By:

Harvey Ruvins
DEPUTY CLERK

BY:

Merrett Steirheim
MERRETT STEIRHEIM
COUNTY MANAGER

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

BY:

Michael Gouvenec

DATE:

Nov 13, 1999

TITLE:

CHAIRMAN

FOR FLORIDA POWER CORPORATION

BY:

DATE:

11-30-99

TITLE:

Sr V.P. Energy Supply



Approved as to form
and legal sufficiency

Paul D. Lee
Assistant County Attorney

RELEASE AND COVENANT NOT TO SUE

THIS RELEASE AND COVENANT NOT TO SUE is executed, made and given this ____ day of _____, by and on behalf of Florida Power Corporation, as well as each of their officers, directors, shareholders, agents, attorneys, employees, successors, assigns, divisions, departments, and affiliates, including subsidiaries whether wholly or partially owned (hereinafter collectively "Releasors").

By and through this RELEASE AND COVENANT NOT TO SUE and for the consideration, terms, and conditions recited in the Settlement Agreement dated _____ by and between Miami-Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership and Releasors (the "Settlement Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

Releasors do hereby:

1. Acquit, discharge and forever release Miami-Dade County, a political subdivision of the State of Florida, Montenay-Dade, Ltd., a Florida limited partnership, and Montenay Power Corp., a Florida corporation, and the General Partner of Montenay-Dade, Ltd., and their successors, assigns, subsidiaries, divisions, departments, and affiliates, as well as each of their officers, directors, shareholders, agents, attorneys and employees (hereinafter collectively "Releasees"), from any and all actions, causes of action, damages, debts, escrows, promises, liabilities, obligations, representations, rights, set-offs, trespasses, torts, wrongs, claims and counterclaims of any and all kind whatsoever (hereinafter collectively "Claims") actually asserted or which could have been asserted, based in whole or in part on the acts, allegations, transactions or occurrences that formed the basis of any or all of the Claims actually asserted, in the following actions ("the Litigation"):

a) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Plaintiffs/Counter-Defendants) vs. Florida Power Corporation, a Florida

corporation (Defendant/Counter-Plaintiff), Fla. Cir. Ct. 11th Jud. Cir., Case No. 96-09598 (CA 22).

b) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Appellants/Plaintiffs/Counter-Defendants) vs. Florida Progress Corporation, a Florida corporation (Appellee/Defendant) Florida Power Corporation, a Florida corporation (Appellee/Defendant/Counter-Plaintiff), and Electric Fuels Corporation, a Florida corporation (Appellee/Defendant), U.S. 11th Cir., Case No. 98-5575; on appeal from U.S.D.C. S.D. Fla., Miami Div., Case No. 96-594-CIV-LENARD.

c) Florida Power Corporation, Appellant vs. Florida Public Service Commission, Agency/Appellee; and Miami-Dade County and Montenay-Dade, Ltd., Intervenors/Appellees, Fla. S. Ct., Case No. 94,664 (but excluding Consolidated Case No. 94,665), also styled Florida Power Corporation, Appellant vs. Joe Garcia, etc., et al., Appellees, Fla. S. Ct., Case No. 94,664; on appeal from In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, by Florida Power Corporation, Florida Public Service Commission, Dkt. No. 980283-EQ.

d) Miami-Dade County, a political subdivision of the State of Florida, and Montenay-Dade, LTD., by and through its managing general partner, Montenay Power Corp. (Plaintiffs) vs. Florida Public Service Commission, an arm of the legislative branch of the State of Florida, and Florida Power Corporation, a Florida corporation (Defendants), U.S.D.C. N.D. Fla., Case No. 498 CV 339 RH.

2. Covenant not to sue Releasees on any and all Claims that could be asserted against Releasees in the future in any lawsuit or proceeding in any court or administrative tribunal of

competent jurisdiction, whether state or federal, arising under the laws of this state or any other state and/or under any federal laws, whether statutory or common law, which Claims would be based, in whole or in part, on any acts or omissions which formed the basis of any of the Claims actually asserted or which could have been asserted by Releasors against Releasees in the Litigation; including without limitation on any and all Claims as to which Releasors are foreclosed from suing Releasees pursuant to Section C.5 (a) through (d) of the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall not extend to (a) Releasees' obligations under any Confidentiality Agreements or Orders governing the production of confidential material in the Litigation; (b) Releasees' obligations remaining at the time of the execution of this RELEASE AND COVENANT NOT TO SUE under the Settlement Agreement (as defined herein); and (c) Except as expressly provided in this RELEASE AND COVENANT NOT TO SUE, Releasees' obligations under the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Dade County and Florida Power Corporation dated March 15, 1991, as amended by the Settlement Agreement made and dated November 16, 1993, as further amended by the Settlement Agreement (as defined herein).

This RELEASE AND COVENANT NOT TO SUE shall become effective only upon the occurrence of both of the following events: (1) execution of the Settlement Agreement by Miami-Dade County; (2) issuance by the Florida Public Service Commission of a final and non-appealable order approving the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall be delivered to and held by Chris S. Coutroulis in escrow on behalf of the Releasors for delivery to the Releasees upon its becoming effective, in accordance with the preceding paragraph.

IN WITNESS WHEREOF, Releasors have executed this RELEASE AND COVENANT NOT TO SUE with the approval of their

attorneys, and have executed this RELEASE AND COVENANT NOT TO
SUE by their duly authorized representative.

Releasors:

Florida Power Corporation

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day
of _____, 1999, by _____, who is
personally known to me and who has produced
_____ as identification and who did take an
oath.

My Commission Expires:

NOTARY PUBLIC

State of Florida at Large

Printed Name of Notary

RELEASE AND COVENANT NOT TO SUE

THIS RELEASE AND COVENANT NOT TO SUE is executed, made and given this ____ day of _____, by and on behalf of Florida Progress Corporation, as well as each of their officers, directors, shareholders, agents, attorneys, employees, successors, assigns, divisions, departments, and affiliates, including subsidiaries whether wholly or partially owned (hereinafter collectively "Releasors").

By and through this RELEASE AND COVENANT NOT TO SUE and for the consideration, terms, and conditions recited in the Settlement Agreement dated _____ by and between Miami-Dade County, a political subdivision of the State of Florida, Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership, and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida (the "Settlement Agreement"), including without limitation the release being given by Miami-Dade County and Montenay Power Corp. to Releasors, the obligation of Miami-Dade County and Montenay Power Corp. to dismiss all claims against Releasors with prejudice in the case referenced in paragraph 1 (b) below, the obligation to return or destroy confidential documents and materials produced by Releasors, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

Releasors do hereby:

1. Acquit, discharge and forever release Miami-Dade County, a political subdivision of the State of Florida, Montenay-Dade, Ltd., a Florida limited partnership, and Montenay Power Corp., a Florida corporation, and the General Partner of Montenay-Dade, Ltd., and their successors, assigns, subsidiaries, divisions, departments, and affiliates, as well as each of their officers, directors, shareholders, agents, attorneys and employees (hereinafter collectively "Releasees"), from any and all actions, causes of action, damages, debts, escrows, promises, liabilities, obligations, representations, rights, set-offs, trespasses, torts, wrongs, claims and counterclaims of any and all kind whatsoever (hereinafter collectively "Claims") actually asserted or which could have been asserted, based in whole or in part on the acts, allegations, transactions or occurrences that formed the basis

of any or all of the Claims actually asserted, in the following actions ("the Litigation"):

a) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Plaintiffs/Counter-Defendants) vs. Florida Power Corporation, a Florida corporation (Defendant/Counter-Plaintiff), Fla. Cir. Ct., 11th Jud. Cir., Case No. 96-09598 (CA 22).

b) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Appellants/Plaintiffs/Counter-Defendants) vs. Florida Progress Corporation, a Florida corporation (Appellee/Defendant) Florida Power Corporation, a Florida corporation (Appellee/Defendant/Counter-Plaintiff), and Electric Fuels Corporation, a Florida corporation (Appellee/Defendant), U.S. 11th Cir., Case No. 98-5575; on appeal from U.S.D.C. S.D. Fla., Miami Div., Case No. 96-594-CIV-LENARD.

c) Florida Power Corporation, Appellant vs. Florida Public Service Commission, Agency/Appellee; and Miami-Dade County and Montenay-Dade, Ltd., Intervenor/Appellees, Fla. S. Ct., Case No. 94,664 (but excluding Consolidated Case No. 94,665), also styled Florida Power Corporation, Appellant vs. Joe Garcia, etc., et al., Appellees, Fla. S. Ct., Case No. 94,664; on appeal from In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734. Together with Order Nos. PSC-97-1437-FOF-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, by Florida Power Corporation, Florida Public Service Commission, Dkt. No. 980283-EQ.

d) Miami-Dade County, a political subdivision of the State of Florida, and Montenay-Dade, LTD., by and through its managing general partner, Montenay Power Corp.

(Plaintiffs) vs. Florida Public Service Commission, an arm of the legislative branch of the State of Florida, and Florida Power Corporation, a Florida corporation (Defendants), U.S.D.C., N.D. Fla., Case No. 498 CV 339 RH.

2. Covenant not to sue Releasees on any and all Claims that could be asserted against Releasees in the future in any lawsuit or proceeding in any court or administrative tribunal of competent jurisdiction, whether state or federal, arising under the laws of this state or any other state and/or under any federal laws, whether statutory or common law, which Claims would be based, in whole or in part, on any acts or omissions which formed the basis of any of the Claims actually asserted or which could have been asserted by Releasors against Releasees in the Litigation; including without limitation on any and all Claims as to which Releasors are foreclosed from suing Releasees pursuant to Section C.5 (a) through (d) of the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall not extend to (a) Releasees' obligations under any Confidentiality Agreements or Orders governing the production of confidential material in the Litigation; (b) Releasees' obligations remaining at the time of the execution of this RELEASE AND COVENANT NOT TO SUE under the Settlement Agreement (as defined herein); and (c) Except as expressly provided in this RELEASE AND COVENANT NOT TO SUE, Releasees' obligations under the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Dade County and Florida Power Corporation dated March 15, 1991, as amended by the Settlement Agreement made and dated November 16, 1993, as further amended by the Settlement Agreement (as defined herein).

This RELEASE AND COVENANT NOT TO SUE shall become effective only upon the occurrence of both of the following events: (1) execution of the Settlement Agreement by Miami-Dade County; (2) issuance by the Florida Public Service Commission of a final and non-appealable order approving the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall be delivered to and held by Chris S. Coutroulis in escrow on behalf of the Releasors for delivery to the Releasees upon its becoming effective, in accordance with the preceding paragraph.

IN WITNESS WHEREOF, Releasors have executed this RELEASE AND COVENANT NOT TO SUE with the approval of their attorneys,

and have executed this RELEASE AND COVENANT NOT TO SUE by their
duly authorized representative.

Releasers:

Florida Progress Corporation

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day
of _____, 1999, by _____, who is
personally known to me and who has produced
_____ as identification and who did take an
oath.

My Commission Expires:

NOTARY PUBLIC
State of Florida at Large

Printed Name of Notary

RELEASE AND COVENANT NOT TO SUE

THIS RELEASE AND COVENANT NOT TO SUE is executed, made and given this ____ day of _____, by and on behalf of Electric Fuels Corporation, as well as each of its officers, directors, shareholders, agents, attorneys, employees, successors, assigns, divisions, departments, and affiliates, including subsidiaries whether wholly or partially owned (hereinafter collectively "Releasors").

By and through this RELEASE AND COVENANT NOT TO SUE and for the consideration, terms, and conditions recited in the Settlement Agreement dated _____ by and between Miami-Dade County, a political subdivision of the State of Florida, Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership, and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida (the "Settlement Agreement"), including without limitation the release being given by Miami-Dade County and Montenay Power Corp. to Releasors, the obligation of Miami-Dade County and Montenay Power Corp. to dismiss all claims against Releasors with prejudice in the case referenced in paragraph 1 (b) below, the obligation to return or destroy confidential documents and materials produced by Releasors, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

Releasors do hereby:

1. Acquit, discharge and forever release Miami-Dade County, a political subdivision of the State of Florida, Montenay-Dade, Ltd., a Florida limited partnership, and Montenay Power Corp., a Florida corporation, and the General Partner of Montenay-Dade, Ltd., and their successors, assigns, subsidiaries, divisions, departments, and affiliates, as well as each of their officers, directors, shareholders, agents, attorneys and employees (hereinafter collectively "Releasees"), from any and all actions, causes of action, damages, debts, escrows, promises, liabilities, obligations, representations, rights, set-offs, trespasses, torts, wrongs, claims and counterclaims of any and all kind whatsoever (hereinafter collectively "Claims") actually asserted or which could have been asserted, based in whole or in part on the acts, allegations, transactions or occurrences that formed the basis

of any or all of the Claims actually asserted, in the following actions ("the Litigation"):

a) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Plaintiffs/Counter-Defendants) vs. Florida Power Corporation, a Florida corporation (Defendant/Counter-Plaintiff), Fla. Cir. Ct., 11th Jud. Cir., Case No. 96-09598 (CA 22).

b) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Appellants/Plaintiffs/Counter-Defendants) vs. Florida Progress Corporation, a Florida corporation (Appellee/Defendant) Florida Power Corporation, a Florida corporation (Appellee/Defendant/Counter-Plaintiff), and Electric Fuels Corporation, a Florida corporation (Appellee/Defendant), U.S. 11th Cir., Case No. 98-5575; on appeal from U.S.D.C. S.D. Fla., Miami Div., Case No. 96-594-CIV-LENARD.

c) Florida Power Corporation, Appellant vs. Florida Public Service Commission, Agency/Appellee; and Miami-Dade County and Montenay-Dade, Ltd., Intervenor/Appellees, Fla. S. Ct., Case No. 94,664 (but excluding Consolidated Case No. 94,665), also styled Florida Power Corporation, Appellant vs. Joe Garcia, etc., et al., Appellees, Fla. S. Ct., Case No. 94,664; on appeal from In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EO, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, by Florida Power Corporation, Florida Public Service Commission, Dkt. No. 980283-EQ.

d) Miami-Dade County, a political subdivision of the State of Florida, and Montenay-Dade, LTD., by and through its managing general partner, Montenay Power Corp.,

(Plaintiffs) vs. Florida Public Service Commission, an arm of the legislative branch of the State of Florida, and Florida Power Corporation, a Florida corporation (Defendants), U.S.D.C. N.D. Fla., Case No. 498 CV 339 RH.

2. Covenant not to sue Releasees on any and all Claims that could be asserted against Releasees in the future in any lawsuit or proceeding in any court or administrative tribunal of competent jurisdiction, whether state or federal, arising under the laws of this state or any other state and/or under any federal laws, whether statutory or common law, which Claims would be based, in whole or in part, on any acts or omissions which formed the basis of any of the Claims actually asserted or which could have been asserted by Releasors against Releasees in the Litigation; including without limitation on any and all Claims as to which Releasors are foreclosed from suing Releasees pursuant to Section C.5 (a) through (d) of the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall not extend to (a) Releasees' obligations under any Confidentiality Agreements or Orders governing the production of confidential material in the Litigation; (b) Releasees' obligations remaining at the time of the execution of this RELEASE AND COVENANT NOT TO SUE under the Settlement Agreement (as defined herein); and (c) Except as expressly provided in this RELEASE AND COVENANT NOT TO SUE, Releasees' obligations under the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Dade County and Florida Power Corporation dated March 15, 1991, as amended by the Settlement Agreement made and dated November 16, 1993, as further amended by the Settlement Agreement (as defined herein).

This RELEASE AND COVENANT NOT TO SUE shall become effective only upon the occurrence of both of the following events: (1) execution of the Settlement Agreement by Miami-Dade County; (2) issuance by the Florida Public Service Commission of a final and non-appealable order approving the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall be delivered to and held by Chris S. Coutroulis in escrow on behalf of the Releasors for delivery to the Releasees upon its becoming effective, in accordance with the preceding paragraph.

IN WITNESS WHEREOF, the Releasors have executed this RELEASE AND COVENANT NOT TO SUE with the approval of their

attorneys, and have executed this RELEASE AND COVENANT NOT TO SUE by their duly authorized representative.

Releasors:

Electric Fuels Corporation

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 1999, by _____, who is personally known to me and who has produced _____ as identification and who did take an oath.

My Commission Expires:

NOTARY PUBLIC
State of Florida at Large

Printed Name of Notary

RELEASE AND COVENANT NOT TO SUE

THIS RELEASE AND COVENANT NOT TO SUE is executed, made and given this ____ day of _____, by and on behalf of Montenay Power Corp., a Florida corporation, on behalf of itself, and as General Partner of and on behalf of Montenay-Dade, Ltd., a Florida limited partnership, as well as each of their officers, directors, shareholders, agents, attorneys, employees, successors, assigns, divisions, departments, and affiliates, including subsidiaries whether wholly or partially owned (hereinafter collectively "Releasors").

By and through this RELEASE AND COVENANT NOT TO SUE and for the consideration, terms, and conditions recited in the Settlement Agreement dated _____ by and between Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida ("FPC") and Releasors (the "Settlement Agreement"), including without limitation the releases being given by Electric Fuels Corporation and Florida Progress Corporation to Releasors, the obligation of Electric Fuels Corporation and Florida Progress Corporation to return or destroy confidential documents and materials produced by Releasors, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

Releasors do hereby:

1. Acquit, discharge and forever release Florida Power Corporation, Florida Progress Corporation and Electric Fuels Corporation, and their successors, assigns, subsidiaries, divisions, departments, and affiliates, as well as each of their officers, directors, shareholders, agents, attorneys and employees (hereinafter collectively "Releasees"), from any and all actions, causes of action, damages, debts, escrows, promises, liabilities, obligations, representations, rights, set-offs, trespasses, torts, wrongs, claims and counterclaims of any and all kind whatsoever (hereinafter collectively "Claims") actually asserted or which could have been asserted, based in whole or in part on the acts, allegations, transactions or occurrences that formed the basis of any or all of the Claims actually asserted, in the following actions ("the Litigation"):

a) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Plaintiffs/Counter-Defendants) vs. Florida Power Corporation, a Florida corporation (Defendant/Counter-Plaintiff), Fla. Cir. Ct., 11th Jud. Cir., Case No. 96-09598 (CA 22).

b) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Appellants/Plaintiffs/Counter-Defendants) vs. Florida Progress Corporation, a Florida corporation (Appellee/Defendant) Florida Power Corporation, a Florida corporation (Appellee/Defendant/Counter-Plaintiff), and Electric Fuels Corporation, a Florida corporation (Appellee/Defendant), U.S. 11th Cir., Case No. 98-5575; on appeal from U.S.D.C. S.D. Fla., Miami Div., Case No. 96-594-CIV-LENARD.

c) Florida Power Corporation, Appellant vs. Florida Public Service Commission, Agency/Appellee; and Miami-Dade County and Montenay-Dade, Ltd., Intervenor/Appellees, Fla. S. Ct., Case No. 94,664 (but excluding Consolidated Case No. 94,665), also styled Florida Power Corporation, Appellant vs. Joe Garcia, etc., et al., Appellees, Fla. S. Ct., Case No. 94,664; on appeal from In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EO, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, by Florida Power Corporation, Florida Public Service Commission, Dkt. No. 980283-EQ.

d) Miami-Dade County, a political subdivision of the State of Florida, and Montenay-Dade, LTD., by and through its managing general partner, Montenay Power Corp. (Plaintiffs) vs. Florida Public Service Commission, an arm of the legislative branch of the State of Florida, and

Florida Power Corporation, a Florida corporation
(Defendants), U.S.D.C. N.D. Fla., Case No. 498 CV 339 RH.

2. Covenant not to sue Releasees on any and all Claims that could be asserted against Releasees in the future in any lawsuit or proceeding in any court or administrative tribunal of competent jurisdiction, whether state or federal, arising under the laws of this state or any other state and/or under any federal laws, whether statutory or common law, which Claims would be based, in whole or in part, on any acts or omissions which formed the basis of any of the Claims actually asserted or which could have been asserted by Releasors against Releasees in the Litigation; including without limitation on any and all Claims as to which Releasors are foreclosed from suing Releasees pursuant to Section C.5 (a) through (d) of the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall not extend to (a) Releasees' obligations under any Confidentiality Agreements or Orders governing the production of confidential material in the Litigation; (b) Releasees' obligations remaining at the time of the execution of this RELEASE AND COVENANT NOT TO SUE under the Settlement Agreement (as defined herein); and (c) Except as expressly provided in this RELEASE AND COVENANT NOT TO SUE, Releasees' obligations under the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Dade County and Florida Power Corporation dated March 15, 1991, as amended by the Settlement Agreement made and dated November 16, 1993, as further amended by the Settlement Agreement (as defined herein).

This RELEASE AND COVENANT NOT TO SUE shall become effective only upon the occurrence of both of the following events: (1) execution of the Settlement Agreement by Miami-Dade County; (2) issuance by the Florida Public Service Commission of a final and non-appealable order approving the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall be delivered to and held by James D. Wing in escrow on behalf of the Releasors for delivery to the Releasees upon its becoming effective, in accordance with the preceding paragraph.

IN WITNESS WHEREOF, Releasors have executed this RELEASE AND COVENANT NOT TO SUE with the approval of their attorneys, and have executed this RELEASE AND COVENANT NOT TO SUE by their duly authorized representative.

Releasors:

Montenay Power Corp. on behalf of
itself and as General Partner
of and on behalf of Montenay-Dade,
Ltd.

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day
of _____, 1999, by _____, who is
personally known to me and who has produced
_____ as identification and who did take an
oath.

My Commission Expires:

NOTARY PUBLIC
State of Florida at Large

Printed Name of Notary

RELEASE AND COVENANT NOT TO SUE

THIS RELEASE AND COVENANT NOT TO SUE is executed, made and given this ____ day of _____, by and on behalf of Miami-Dade County, formerly known as Metropolitan Dade County, a political subdivision of the State of Florida, as well as its Board of County Commissioners, and each of its officers, employees, attorneys and successors (hereinafter collectively "Releasors").

By and through this RELEASE AND COVENANT NOT TO SUE and for the consideration, terms, and conditions recited in the Settlement Agreement dated _____ by and between Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida ("FPC") and Releasors (the "Settlement Agreement"), including without limitation the releases being given by Electric Fuels Corporation and Florida Progress Corporation to Releasors, the obligation of Electric Fuels Corporation and Florida Progress Corporation to return or destroy confidential documents and materials produced by Releasors, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

Releasors do hereby:

1. Acquit, discharge and forever release Florida Power Corporation, Florida Progress Corporation and Electric Fuels Corporation, and their successors, assigns, subsidiaries, divisions, departments, and affiliates, as well as each of their officers, directors, shareholders, agents, attorneys and employees (hereinafter collectively "Releasees"), from any and all actions, causes of action, damages, debts, escrows, promises, liabilities, obligations, representations, rights, set-offs, trespasses, torts, wrongs, claims and counterclaims of any and all kind whatsoever (hereinafter collectively "Claims") actually asserted or which could have been asserted, based in whole or in part on the acts, allegations, transactions or occurrences that formed the basis of any or all of the Claims actually asserted, in the following actions ("the Litigation"):

a) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Plaintiffs/Counter-

Defendants) vs. Florida Power Corporation, a Florida corporation (Defendant/Counter-Plaintiff), Fla. Cir. Ct., 11th Jud. Cir., Case No. 96-09598 (CA 22).

b) Metropolitan Dade County, a political subdivision of the State of Florida, and Montenay Power Corp., a Florida corporation, as General Partner of Montenay-Dade, Ltd., a Florida limited partnership (Appellants/Plaintiffs/Counter-Defendants) vs. Florida Progress Corporation, a Florida corporation (Appellee/Defendant) Florida Power Corporation, a Florida corporation (Appellee/Defendant/Counter-Plaintiff), and Electric Fuels Corporation, a Florida corporation (Appellee/Defendant), U.S. 11th Cir., Case No. 98-5575; on appeal from U.S.D.C. S.D. Fla., Miami Div., Case No. 96-594-CIV-LENARD.

c) Florida Power Corporation, Appellant vs. Florida Public Service Commission, Agency/Appellee; and Miami-Dade County and Montenay-Dade, Ltd., Intervenor/Appellees, Fla. S. Ct., Case No. 94,664 (but excluding Consolidated Case No. 94,665), also styled Florida Power Corporation, Appellant vs. Joe Garcia, etc., et al., Appellees, Fla. S. Ct., Case No. 94,664; on appeal from In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EO, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, by Florida Power Corporation, Florida Public Service Commission, Dkt. No. 980283-EQ.

d) Miami-Dade County, a political subdivision of the State of Florida, and Montenay-Dade, LTD., by and through its managing general partner, Montenay Power Corp. (Plaintiffs) vs. Florida Public Service Commission, an arm of the legislative branch of the State of Florida, and Florida Power Corporation, a Florida corporation (Defendants), U.S.D.C. N.D. Fla., Case No. 498 CV 339 RH.

2. Covenant not to sue Releasees on any and all Claims that could be asserted against Releasees in the future in any lawsuit or proceeding in any court or administrative tribunal of competent jurisdiction, whether state or federal, arising under the laws of this state or any other state and/or under any federal laws, whether statutory or common law, which Claims would be based, in whole or in part, on any acts or omissions which formed the basis of any of the Claims actually asserted or which could have been asserted by Releasors against Releasees in the Litigation; including without limitation on any and all Claims as to which Releasors are foreclosed from suing Releasees pursuant to Section C.5 (a) through (d) of the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall not extend to (a) Releasees' obligations under any Confidentiality Agreements or Orders governing the production of confidential material in the Litigation; (b) Releasees' obligations remaining at the time of the execution of this RELEASE AND COVENANT NOT TO SUE under the Settlement Agreement (as defined herein); and (c) Except as expressly provided in this RELEASE AND COVENANT NOT TO SUE, Releasees' obligations under the Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Dade County and Florida Power Corporation dated March 15, 1991, as amended by the Settlement Agreement made and dated November 16, 1993, as further amended by the Settlement Agreement (as defined herein).

This RELEASE AND COVENANT NOT TO SUE shall become effective only upon the occurrence of both of the following events: (1) execution of the Settlement Agreement by Miami-Dade County; (2) issuance by the Florida Public Service Commission of a final and non-appealable order approving the Settlement Agreement.

This RELEASE AND COVENANT NOT TO SUE shall be delivered to and held by James D. Wing in escrow on behalf of the Releasors for delivery to the Releasees upon its becoming effective, in accordance with the preceding paragraph.

IN WITNESS WHEREOF, Releasors hereto have executed this RELEASE AND COVENANT NOT TO SUE with the approval of their

attorneys, and have executed this RELEASE AND COVENANT NOT TO SUE by their duly authorized representative.

Releasors:

Miami-Dade County

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 1999, by _____, who is personally known to me and who has produced _____ as identification and who did take an oath.

My Commission Expires:

NOTARY PUBLIC
State of Florida at Large

Printed Name of Notary

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY,
FLORIDA

Case No. 96-09598 (CA22)

METROPOLITAN DADE COUNTY,
a political subdivision of the State of
Florida, and MONTENAY POWER CORP.,
a Florida corporation, as General Partner
Of MONTENAY-DADE, LTD., a Florida
Limited partnership,

Plaintiffs,

vs.

FLORIDA POWER CORPORATION,
a Florida corporation,

Defendant.

JOINT MOTION OF ALL PARTIES FOR DISMISSAL WITH PREJUDICE

In accordance with the Parties' Settlement Agreement and the executed Releases thereto, the Parties have reached a full and final settlement of the matters raised in this case. All of the conditions necessary for that Settlement Agreement to become final and binding have occurred, and there is no need for further proceedings in this case.

Accordingly, plaintiffs/counterclaim defendants Metropolitan Dade County, and Montenay Power Corp., as General Partner of Montenay-Dade, Ltd., and defendant/counterclaim plaintiff Florida Power Corporation hereby jointly move the Court for an order dismissing with

prejudice the above-referenced action, including all claims and counterclaims raised therein.

CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER, P.A.

Chris S. Coutroulis
Florida Bar No. 300705
One Harbour Place
Post Office Box 3239
Tampa, Florida 33601
(813) 223-7000 phone
(813) 229-4133 fax
Attorneys for Florida Power Corporation

By: _____
Chris S. Coutroulis
Florida Bar No. 300705

LANDERS & PARSONS
Robert Scheffel Wright
Florida Bar No. 0966721
310 West College Avenue (32301)
P.O. Box 271
Tallahassee, Florida 32302

HOLLAND & KNIGHT LLP
James D. Wing
Florida Bar No. 195537
701 Brickell Avenue
P.O. Box 015441
Miami, Florida 33101
(305) 374-8500
Attorneys for Montenay Power Corp.
and Montenay-Dade Ltd.

By: _____
James D. Wing
Florida Bar No. 195537

ROBERT A. GINSBERG
COUNTY ATTORNEY
Gail P. Fels
Florida Bar No. 092669
Assistant County Attorney
Dade County Attorney's Office
Aviation Division
Post Office Box 592075 AMF
Miami, Florida 33159
(305) 876-7040
Counsel for Metropolitan Dade County

By: _____
Gail P. Fels
Florida Bar No. 092669

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY,
FLORIDA

Case No. 96-09598 (CA22)

METROPOLITAN DADE COUNTY,
a political subdivision of the State of
Florida, and MONTENAY POWER CORP.,
a Florida corporation, as General partner
Of MONTENAY-DADE, LTD., a Florida
Limited partnership,

Plaintiffs,

vs.

FLORIDA POWER CORPORATION,
a Florida corporation,

Defendant.

ORDER

This matter is before the Court on the parties' Joint Motion for Dismissal with Prejudice.

The Court having been duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that this action, including all claims and counterclaims, is
hereby dismissed with prejudice.

CIRCUIT COURT JUDGE

Conformed copies to:
Robert Scheffel Wright, Esquire
James D. Wing, Esquire
Gail P. Fels, Esquire
Chris S. Coutroulis, Esquire

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA**

**MIAMI-DADE COUNTY, a political
Subdivision of the State of Florida,
and MONTENAY-DADE, LTD., by
and through its managing general partner,
MONTENAY POWER CORP.,**

CASE NO. 498 CV 339 RH

Plaintiffs,

v.

**FLORIDA PUBLIC SERVICE COMMISSION,
an arm of the legislative branch of the State of
Florida and FLORIDA POWER CORPORATION,
a Florida corporation,**

Defendants.

JOINT MOTION OF ALL PARTIES FOR DISMISSAL WITH PREJUDICE

In accordance with the Parties' Settlement Agreement and the executed Releases thereto, the Parties have reached a full and final settlement of the matters raised in this case. All of the conditions necessary for that Settlement Agreement to become final and binding have occurred, and there is no need for further proceedings in this case.

Accordingly, plaintiffs Miami-Dade County and Montenay-Dade, Ltd., by and through its managing general partner, Montenay Power Corp., and defendants Florida Public Service Commission and Florida Power Corporation, hereby jointly move the Court for an order

dismissing with prejudice the above-referenced action, all parties to bear their own costs. ---

CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER, P.A.

Chris S. Coutroulis
Florida Bar No. 300705
One Harbour Place
Post Office Box 3239
Tampa, Florida 33601
(813) 223-7000 phone
(813) 229-4133 fax
Attorneys for Florida Power Corporation

By: _____
Chris S. Coutroulis
Florida Bar No. 300705

HOLLAND & KNIGHT LLP
James D. Wing
Florida Bar No. 195537
701 Brickell Avenue
P.O. Box 015441
Miami, Florida 33101
(305) 374-8500

HOLLAND & KNIGHT LLP
Jerome W. Hoffman
Florida Bar No. 0258830
Post Office Drawer 810
Tallahassee, Florida 32302
(850) 224-7000
Attorneys for Plaintiffs

By: _____
Jerome W. Hoffman
Florida Bar No. 0258830

FLORIDA PUBLIC SERVICE COMMISSION
David E. Smith, Esquire
Florida Bar No. 344052
Director of Appeals
2540 Shumard Oak Boulevard
Third Floor-Gunter Building
Tallahassee, Florida 32399-0850
Attorney for Florida Public Service Commission

By: _____
David E. Smith, Esquire
Florida Bar No. 344052

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

MIAMI-DADE COUNTY,
a political subdivision of the State of
Florida, and MONTENAY POWER CORP.,
a Florida corporation, as General Partner of
MONTENAY-DADE, LTD., a Florida limited
partnership,

CASE NO. 98-5575

Plaintiffs,

vs.

FLORIDA PROGRESS CORPORATION,
a Florida corporation, FLORIDA POWER
CORPORATION, a Florida corporation,
and ELECTRIC FUELS CORPORATION,
a Florida corporation,

Defendants.

JOINT MOTION OF ALL PARTIES FOR DISMISSAL WITH PREJUDICE

In accordance with the Parties' Settlement Agreement and the executed Releases thereto, the Parties have reached a full and final settlement of the matters raised in this case. All of the conditions necessary for that Settlement Agreement to become final and binding have occurred, and there is no need for further proceedings in this case.

Accordingly, appellants/plaintiffs/counterclaim defendants Miami-Dade County and Montenay Power Corp., as General Partner of Montenay-Dade, Ltd., and appellees/defendants Florida Progress Corporation and Electric Fuels Corporation, and appellee/defendant/counterclaim plaintiff Florida Power Corporation hereby jointly move the Court for an order dismissing with prejudice the appeal in this action, all parties to bear their own costs.

CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER, P.A.

Chris S. Coutroulis

Florida Bar No. 300705

One Harbour Place

Post Office Box 3239

Tampa, Florida 33601

(813) 223-7000 phone

(813) 229-4133 fax

Attorneys for Florida Power Corporation and
Florida Progress Corporation

By: _____

Chris S. Coutroulis

Florida Bar No. 300705

JACKSON & KELLY

William A. Hoskins, III.

175 East Main Street

P.O. Box 2150

Lexington, Kentucky 40595-2150

Attorney for Electric Fuels Corporation

By: _____

William A. Hoskins, III.

LANDERS & PARSONS

Robert Scheffel Wright

Florida Bar No. 0966721

310 West College Avenue (32301)

P.O. Box 271

Tallahassee, Florida 32302

HOLLAND & KNIGHT LLP

James D. Wing

Florida Bar No. 195537

701 Brickell Avenue

P.O. Box 015441

Miami, Florida 33101

(305) 374-8500

Attorneys for Montenay Power Corp.,

Montenay-Dade Ltd. And Miami-Dade County

By: _____

James D. Wing

Florida Bar No. 195537

ROBERT A. GINSBERG

COUNTY ATTORNEY

Gail P. Fels

Florida Bar No. 092669

Assistant County Attorney

Dade County Attorney's Office

Aviation Division

Post Office Box 592075 AMF

Miami, Florida 33159

(305) 876-7040

Counsel for Miami-Dade County

By: _____

Gail P. Fels

Florida Bar No. 092669

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

MIAMI-DADE COUNTY,
a political subdivision of the State of
Florida, and MONTENAY POWER CORP.,
a Florida corporation, as General Partner of
MONTENAY-DADE, LTD., a Florida limited
partnership,

CASE NO. 98-5575

Plaintiffs,

vs.

FLORIDA PROGRESS CORPORATION,
a Florida corporation, FLORIDA POWER
CORPORATION, a Florida corporation,
and ELECTRIC FUELS CORPORATION,
a Florida corporation,

Defendants.

ORDER

This matter is before the Court on the parties' Joint Motion for Dismissal of this appeal with Prejudice. The Court having been duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that this appeal is hereby dismissed with prejudice, all parties to bear their own costs

CIRCUIT JUDGE

Conformed copies to:
Robert Scheffel Wright, Esquire
James D. Wing, Esquire
Gail P. Fels, Esquire
William A. Hoskins, Esquire
Chris S. Coutroulis, Esquire

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FLORIDA POWER CORPORATION,

Appellant,

CASE NO. 94,664

vs.

JOE GARCIA, etc., et al.,

Appellees.

JOINT MOTION OF ALL PARTIES FOR DISMISSAL WITH PREJUDICE

In accordance with the Parties' Settlement Agreement and the executed Releases thereto, the Parties have reached a full and final settlement of the matters raised in this case. All of the conditions necessary for that Settlement Agreement to become final and binding have occurred, and there is no need for further proceedings in this case.

Accordingly, Appellant, Florida Power Corporation, and Appellees, Joe Garcia, etc. (Florida Public Service Commission); Miami-Dade County; and Montenay Power Corp., as general partner of Montenay-Dade, Ltd., hereby jointly move the Court for an order dismissing with prejudice the appeal in this action, all parties to bear their own costs.

CARLTON, FIELDS, WARD, EMMANUEL,
SMITH & CUTLER, P.A.

Chris S. Coutroulis
Florida Bar No. 300705
One Harbour Place
Post Office Box 3239
Tampa, Florida 33601
(813) 223-7000 phone
(813) 229-4133 fax
Attorneys for Florida Power Corporation

By: _____
Chris S. Coutroulis
Florida Bar No. 300705

HOLLAND & KNIGHT LLP
James D. Wing
Florida Bar No. 195537
701 Brickell Avenue
P.O. Box 015441
Miami, Florida 33101
(305) 374-8500

LANDERS & PARSONS
Robert Scheffel Wright
Florida Bar No. 0966721
310 West College Avenue (32301)
P.O. Box 271
Tallahassee, Florida 32302
Attorneys for Montenay Power Corp.,
Montenay-Dade Ltd., and Miami-Dade County

By: _____
Robert Scheffel Wright
Florida Bar No. 0966721

ROBERT A. GINSBERG
COUNTY ATTORNEY
Gail P. Fels
Florida Bar No. 092669
Assistant County Attorney
Dade County Attorney's Office
Aviation Division
Post Office Box 592075 AMF

Miami, Florida 33159
(305) 876-7040
Attorneys for Miami-Dade County

By: _____
Gail P. Fels
Florida Bar No. 092669

FLORIDA PUBLIC SERVICE COMMISSION
David E. Smith, Esquire
Director of Appeals
Richard C. Bellak, Esquire
Florida Bar No. 341851
2540 Shumard Oak Boulevard
Third Floor-Gunter Building
Tallahassee, Florida 32399-0850
Attorneys for Florida Public Service Commission

By: _____
Richard C. Bellak
Florida Bar No. 341851

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, was furnished by
U.S. Mail on the _____ day of _____, 1999 to John Beranek, Esquire, Ausley & McMullen,
P.O. Box 391, Tallahassee, Florida 32302, and to Jodi L. Corrigan and Marilyn E. Culp, Annis,
Mitchell, Cockey, Edwards & Roehn, P.A., P.O. Box 3433, Tampa, Florida 33601.

Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

MIAMI-DADE COUNTY, a political
Subdivision of the State of Florida,
and MONTENAY-DADE, LTD., by
and through its managing general partner,
MONTENAY POWER CORP.,

CASE NO. 498 CV 339 RH

Plaintiffs,

v.

FLORIDA PUBLIC SERVICE COMMISSION,
an arm of the legislative branch of the State of
Florida and FLORIDA POWER CORPORATION,
a Florida corporation,

Defendants.

ORDER

This matter is before the Court on the parties' Joint Motion for Dismissal with Prejudice.

The Court having been duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that this action is hereby dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

Conformed copies to:
Jerome W. Hoffman, Esquire
James D. Wing, Esquire
David E. Smith, Esquire
Chris S. Coutroulis, Esquire

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FLORIDA POWER CORPORATION,

Appellant,

CASE NO. 94,664

Vs.

JOE GARCIA, etc., et al.,

Appellees.

ORDER

This matter is before the Court on the parties' Joint Motion for Dismissal of this appeal with Prejudice. The Court having been duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that this appeal is hereby dismissed with prejudice, all parties to bear their own costs.

JUSTICE

Conformed copies to:
Robert Scheffel Wright, Esquire
James D. Wing, Esquire
Gail P. Fels, Esquire
Chris S. Coutroulis, Esquire
Director, Division of Records and Reporting
Richard C. Bellak, Esquire
David E. Smith, Esquire
John Beranek, Esquire
Jodi L. Corrigan, Esquire
Marilyn E. Culp, Esquire