



P.O. Box 029100, Miami, FL 33102-9100

VIA FEDERAL EXPRESS

August 29, 1992

Steve Tribble, Director  
Division of Records & Reporting  
Florida Public Service Commission  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0870

RECEIVED  
Florida Public Service Commission  
AUG 31 1992

ELECTRIC AND GAS

920880-EQ

E-7802

Dear Mr. Tribble:

Enclosed for filing are the original and fifteen copies of a "Petition of Florida Power & Light Company for Expeditious Approval of Lee County Resource Recovery Facility Electric Power Purchase Agreement for As-Available Energy." An additional copy is also enclosed, which I would appreciate having date-stamped as "filed" and returned to me in the accompanying postage paid envelope.

Thank you in advance for bringing this filing to the attention of the Commission.

Very truly yours,

*David L. Smith*  
David L. Smith  
Senior Attorney

DLS/ep

Enclosures

wd2b/Pet-Lee.Ltr

an FPL Group company

DOCUMENT NUMBER-DATE

09876 AUG 31 1992

FPSC-RECORDS/REPORTING

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

Petition of Florida Power & Light            )  
Company for Expeditious Approval of        )  
Lee County Resource Recovery Facility        )  
Electric Power Purchase Agreement for        )  
As-Available Energy                            )  
Docket No. \_\_\_\_\_  
Filed: August 31, 1992

**PETITION**

Pursuant to Rules 25-17.0825(6) and 25-22.036(4), F.A.C., Florida Power & Light Company ("FPL") hereby petitions the Florida Public Service Commission (the "Commission") for expeditious approval of the "Lee County Resource Recovery Facility Electric Power Purchase Agreement for As-Available Energy Between Florida Power & Light Company and Lee County, Florida" (the "Agreement") dated August 19, 1992, and attached hereto as Appendix A. Any pleading, motion, notice, order or other document required to be served upon the petitioner or filed by any other party to this proceeding should be forwarded to the following individuals:

W.G. Walker, III  
Vice President  
Regulatory Affairs Department  
Florida Power & Light Company  
P.O. Box 029100  
Miami, FL 33102-9100

David L. Smith, Esq.  
Law Department  
Florida Power & Light Company  
P.O. Box 029100  
Miami, FL 33102-9100

In support of this Petition, FPL states as follows:

DOCUMENT NUMBER-DATE

09876 AUG 31 1992

FPSC-RECORDS/REPORTING

### Background

1. Representatives of FPL and of Lee County, Florida (the "County"), have negotiated the Agreement for the County's sale of electric energy to FPL from a resource recovery facility (the "Facility") to be located on Buckingham Road east of Fort Myers in Lee County, Florida, and having an installed capacity of approximately 39.7 megawatts. The Facility is a "qualifying facility" pursuant to the regulations of the Federal Energy Regulatory Commission.

2. FPL and the County continue to negotiate an interconnection agreement for the Facility to accommodate (among other things) the County's sales of as-available energy as specified in the Agreement.

### Summary of Certain Material Provisions of the Agreement

3. The County is obligated to maintain the "qualifying" status of the Facility throughout the term of the Agreement. Failure to do so constitutes an event of default under Section 8.1(a).

4. To facilitate the County's financing of the Facility, (a) the term of the Agreement is twenty-three years, and (b) FPL has agreed to submit the Agreement to the Commission, and to seek its expeditious review and approval of the Agreement, so that the County may satisfy its November 1, 1992 deadline for giving its amended "notice to proceed" with the construction of the Facility to Ogden Martin Systems, the County's constructor and (to be) operator of the Facility.<sup>1</sup>

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<sup>1</sup> The imminency of this deadline necessitates the filing of this Petition prior to the parties' finalization and execution of their interconnection agreement for the Facility.

5. The Commission's approval of the Agreement is a condition precedent to enforceability of FPL's and the County's obligations (see Section 2.1). Such approval is to include findings that (a) the Agreement is reasonable, prudent and in the best interest of FPL's customers, (b) no cost in excess of FPL's avoided energy cost is likely to be incurred over the term of the Agreement, and (c) FPL may recover from its customers all payments for as-available energy.

6. Pursuant to Section 4.1, FPL is to pay the County prices equal to ninety-eight percent (98%) of FPL's hour-by-hour as-available energy cost, calculated (except for the 2% discount) wholly in accordance with FPL's Rate Schedule COG-1 as approved by the Commission from time to time. Section 20.0 incorporates Rate Schedule COG-1 (as it may be amended from time to time) by reference into the Agreement.

7. FPL has, pursuant to Section 3.2, specifically agreed to notify the County in the event that a need for additional capacity arises on the FPL system during the term of the Agreement, and to consider and evaluate the output of the Facility in conjunction with other supply-side and demand-side options available to FPL in seeking to identify its most cost-effective alternative(s) for satisfying such capacity need. FPL has acknowledged that the operating history of the Facility will be a consideration (among many others) in FPL's evaluation process.

8. Section 19.0 of the Agreement provides that FPL and the County will, at FPL's option, renegotiate the Agreement in the event that the Commission (or any successor) denies FPL's full recovery from its customers of payments to be made to the County under the Agreement.

### Commission Approval

9. Rule 25-17.0825(6), F.A.C., provides in relevant part as follows:

Utility payments for as-available energy made to qualifying facilities pursuant to a separately negotiated contract shall be recoverable by the utility through the Commission's periodic review of fuel and purchased power costs if the payments are not reasonably projected to result in higher cost electric service to the utility's general body of ratepayers or adversely affect the adequacy or reliability of electric service to all customers.

10. The Agreement satisfies the requirements of Rule 25-17.0825(6) because:
- a. FPL will, for the term of the Agreement, be making payments to the County based upon 98% of FPL's as-available energy cost; and
  - b. Neither the adequacy nor reliability of electric service to all of FPL's customers will be adversely impacted by the Agreement or the County's operation of, and energy deliveries from, the Facility, since the operating conditions set forth in Section 7.0 of the Agreement will assure the proper operation of the Facility and the related interconnection facilities.<sup>2</sup>

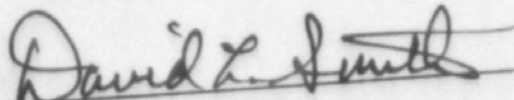
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<sup>2</sup> The parties' interconnection agreement, which is currently being negotiated (see paragraph 2 and footnote #1), will even better ensure the County's compliance with the Commission's Rule 25-17.087, Interconnection and Standards.

WHEREFORE, FPL respectfully requests the Commission to approve the Agreement for cost recovery purposes.

Dated this 29th day of August, 1992.

Respectfully submitted,

By 

David L. Smith  
Law Department  
Florida Power & Light Company  
9250 W. Flagler Street  
Miami, Florida 33174  
(305) 552-3924

Attorney for Florida Power &  
Light Company

LEE COUNTY RESOURCE RECOVERY FACILITY

ELECTRIC POWER PURCHASE AGREEMENT

FOR AS-AVAILABLE ENERGY

BETWEEN

FLORIDA POWER & LIGHT COMPANY AND LEE COUNTY, FLORIDA

Lee County 0920817

THIS ELECTRIC POWER PURCHASE AGREEMENT ("Agreement") is made and entered this 19th day of August, 1992, by and between LEE COUNTY, FLORIDA (the "County"), a political subdivision of the State of Florida, and FLORIDA POWER & LIGHT COMPANY ("FPL"), a private utility corporation organized and existing under the laws of the State of Florida, having its principal place of business in Miami, Florida, and authorized to do business in the State of Florida. The County and FPL may be individually identified as a "Party" and collectively identified herein as the "Parties".

WHEREAS, the County proposes to own and contract for the operation and maintenance of a Resource Recovery Facility (the "Facility") to be located on Buckingham Road east of Fort Myers in Lee County, Florida, and having an installed capacity of approximately 39.7 megawatts (39.7 MW) of electric power; and

WHEREAS, subject to the terms and conditions of this Agreement, the County desires to sell and deliver, and FPL desires to purchase and accept, net electric energy generated by the Facility for the term of this Agreement;

NOW, THEREFORE, for mutual consideration, the Parties agree as follows:

1.0 Facility's Qualifying Status

1.1 The County proposes to own and contract for the design, construction, acceptance testing and operation of an approximately 39.7 megawatt (39.7 MW) Facility. The County shall cause the reactive power flow to be adjusted in the interconnection so as

to maintain, except as may be reasonably requested by FPL, a normal power factor of 1.00 within a designated range of 0.85 leading to 0.85 lagging power factor.

- 1.2 The Facility is a "qualifying facility" pursuant to the regulations of the Federal Energy Regulatory Commission (the "FERC"). The County shall maintain the "qualifying" status of the Facility throughout the term of this Agreement.

## 2.0 Term of this Agreement

- 2.1 The term of this Agreement shall begin immediately upon its execution by the Parties and shall end at 12:01 a.m. on December 31, 2015; provided, however, as a condition precedent to the enforceability of the Parties' obligations under this Agreement, the Florida Public Service Commission ("FPSC") must approve this Agreement, without change or condition, including FPSC findings that (a) this Agreement is reasonable, prudent and in the best interest of FPL's ratepayers, (b) no cost in excess of FPL's full avoided energy cost is likely to be incurred by FPL over the term of this Agreement, and (c) FPL may recover from its ratepayers all payments for energy. FPL shall submit this Agreement to the FPSC with a request that it expeditiously review and approve the same, and the County shall, upon FPL's request, exercise all reasonable efforts to support FPL's request for such FPSC approval.
- 2.2 The County may, upon a minimum of one hundred and eighty (180) days' prior written notice to FPL, terminate this Agreement, without damage or liability except damage or liability arising, or attributable to events or causation arising, prior to such termination.

## 3.0 Terms of Purchase and Sale

- 3.1 The County shall sell and deliver to the Point of Delivery and FPL agrees to purchase, receive and accept, for the term of this Agreement, and at the price specified in FPL's Schedule COG-1, as modified by Section 4.1 hereof, all electric energy generated at



the Facility, net of in-Facility use. For purposes of this Agreement, the "Point of Delivery" shall mean the interconnection point as defined in the Parties' Interconnection Agreement.

- 3.2 In the event that a need for additional capacity arises on the FPL system during the term of this Agreement, FPL will so notify the County, and the Facility (as well as projects of other potential developers) will be evaluated in FPL's process of identifying its most cost-effective supply-side or demand-side option(s) available to FPL's customers. While critical inputs to FPL's evaluation of projects currently include (but are not limited to) financial viability, permitability and technical viability, in the case of the County, FPL specifically agrees to consider in its evaluation process the operating history of the Facility.

#### 4.0 Energy Purchase Price

- 4.1 For electric energy generated at the Facility and delivered by the County to FPL at the Point of Delivery each month, FPL shall pay the County an amount computed at ninety-eight percent (98%) of FPL's as-available energy cost, but otherwise wholly in accordance with FPL's Rate Schedule COG-1 as approved by the FPSC from time to time.
- 4.2 As-available energy costs shall include, but shall not be limited to, incremental fuel, identifiable operation and maintenance expenses, and an adjustment for line losses reflecting delivery voltage; however, such components may be altered in the event of future changes in the FPSC-approved methodologies. The calculation of FPL's as-available energy costs shall reflect the delivery of energy from the region of FPL's service territory in which the Facility is located [Western pricing region]. The calculation of payments to the County shall be based on the sum, over all hours of the billing period, of the product of each hour's as-available energy cost times the

purchases by FPL for that hour. All purchases shall be adjusted for losses from the point of metering to the Point of Delivery.

- 4.3 The purchase and sale of electricity pursuant to this Agreement shall be construed as a net billing arrangement.

5.0 **Measurements**

- 5.1 All electric energy delivered and made available to, or received from, FPL shall be capable of being measured hourly and compensated for losses to the Point of Delivery. All measurements shall be made and adjusted in accordance with the FPSC's applicable rules and regulations as the same may be amended from time to time. The metering package to measure and record electric energy delivered in both directions shall be provided by FPL and shall be calibrated as part of the interconnection operation and maintenance expense as provided in Rate Schedule COG-1. Either Party may require additional calibrations at the expense of the requesting Party. In the event an error in calibration of one percent (1%) or more is found, the error shall be assumed to have developed linearly with time since the last calibration, and such error shall result in a corresponding adjustment to the electric energy payments to be made by FPL pursuant to this Agreement.
- 5.2 FPL will periodically provide to the County, at the County's written request, copies of FPL's recurrent filings with the FPSC (e.g., updates to Rate Schedule COG-1), which address (among other things) FPL's methodology for computing the hourly as-available cost of electric energy received under the terms of this Agreement. Such provision of copies shall be priced not to exceed FPL's production and copying costs. It is the Parties' intent that FPL's providing of any such information shall preserve and safeguard FPL's agreements covering proprietary software used in preparing such

information and computing such as-available costs.

**6.0 Billing and Payments**

- 6.1** Commencing at the earlier of (i) the end of the first calendar month after the Facility's commercial operation date or (ii) at the date energy deliveries commence, FPL shall prepare a monthly billing statement and make monthly payments to the County in accordance with the following procedure:
- 6.1.1** Payment for electric energy deliveries measured in the manner specified in Section 5.1 shall be in accordance with Section 4.1.
- 6.1.2** The monthly billing statement shall contain the following information:
- 6.1.2.1** The number of hours in the monthly billing period;
- 6.1.2.2** The electric energy received by FPL during each hour in the monthly billing period; and
- 6.1.2.3** The rate paid by FPL for as-available electric energy during each hour in the monthly billing period.
- 6.2** FPL agrees to make such payments to the County as promptly as practicable, normally by the twentieth (20th) business day following the date the meter is read.
- 6.3** Within thirty (30) days of its receipt of a Monthly Billing Statement, the County shall review its contents and advise FPL in writing of any errors or misstatements contained therein. Failure of the County to discover any errors or misstatements within eighteen (18) months plus the then-current Monthly Billing Period shall extinguish the County's right to any billing adjustment(s).
- 6.4** Monthly payments which have not been made in full for more than forty-five (45) days following the end of the delivery month shall accrue interest at the thirty (30)

day highest grade commercial paper rate in effect on the first business day of the month in which the invoice is dated, but such interest shall not exceed two percent (2%) per month from date of invoice or exceed applicable State usury limitations. Such interest shall not be added to any unpaid amount due when the amount of the delivery is disputed, except that interest shall be paid on the amount finally determined to be due and payable.

**7.0 Operating Conditions**

- 7.1 During the term of this Agreement, the County shall operate the Facility in accordance with the Parties' Interconnection Agreement.
- 7.2 The County shall reduce, curtail or interrupt electrical generation or take other appropriate action which, in the judgment of the County, the Facility operator or FPL, may be necessary to address an emergency at the Facility; provided, however, such response shall continue only for so long as it is reasonably necessary.
- 7.3 The County shall cause the Facility to be operated with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL's system, except for normal testing and repair, in accordance with good engineering and operating practices as agreed by the Parties. The County shall cause the Facility to be provided with adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair as required by the Parties' Interconnection Agreement. The County shall cause the Facility to have qualified personnel test and calibrate all protective equipment at regular intervals in accordance with good engineering and operating practices. A unit functional trip test shall be performed after each overhaul of the Facility's turbine/generator, and the results thereof shall be provided verbally to FPL's System Control Center prior to returning the turbine/generator to service. Interlock

checks associated with the turbine/generator shall be performed after major boiler overhauls. The specifics of the unit functional trip tests and interlock checks will be consistent with good engineering and operating practices as agreed by the Parties.

- 7.4 If the Facility is separated from the FPL system for any reason, under no circumstances shall the Facility reclose into FPL's system without first obtaining FPL's specific approval, which shall not be unreasonably withheld or delayed.
- 7.5 During the term of this Agreement, the County shall cause the operator of the Facility to employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPL. The County shall cause the Facility to have operating personnel on duty at all times, twenty-four hours a day, seven days a week. Additionally, during the term of this Agreement, the County shall cause the operator of the Facility to operate and maintain the Facility in such a manner as to ensure compliance with the County's obligations under this Agreement.
- 7.6 FPL shall not be obligated to purchase, and may require curtailed or reduced deliveries of, energy to the extent necessary to maintain the reliability and integrity of any part of FPL's system, or if FPL determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electrical service to FPL's customers. FPL shall give the County prior notice, if practicable, of its intent to refuse, curtail or reduce FPL's acceptance of energy pursuant to this Section, and will reasonably act to minimize the frequency and duration of such occurrences.
- 7.7 FPL shall not be required to accept or purchase energy during any period in which, due to operational circumstances, acceptance or purchase of such energy would result in FPL's incurring costs greater than those which it would incur by generating an equal additional amount of energy with its own resources or purchase under any interchange agreement. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load

units operating at their minimum continuous ratings, and the purchase of additional energy would require taking a base load unit off the line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give the County as much prior notice as practicable of its intent not to accept energy. FPL will invoke this Section no more than thirty (30) times a year with an average hourly duration of no more than six (6) hours [i.e., a maximum duration of one hundred and eighty (180) hours per year].

## **8.0 Default and Termination**

### **8.1 Default**

Each of the following shall constitute an Event of Default:

- (a) The County fails to obtain and maintain the "qualifying" status of the Facility pursuant to FERC Regulations;
- (b) The County or any successor declares bankruptcy;
- (c) The County materially fails to perform as specified under this Agreement; however, such failure shall not constitute an Event of Default if the County, within thirty (30) days after the County received notice from FPL of such failure, with such notice describing in reasonable detail the nature of such failure, has remedied such failure, or has commenced and continued to pursue with due diligence a remedy for such failure, or has commenced an appropriate proceeding to dispute the existence of such failure.

### **8.2 Default Remedy**

If the County shall be in default under Section 8.1, FPL shall have no energy payment obligation during such period of default nor shall any energy payment obligation accrue during such period. The County may give notice that the default is remedied

and resume energy deliveries within thirty (30) days after the County is declared to be in default under this Agreement. Thereafter, FPL shall be obligated to make energy payments to the County in accordance with this Agreement.

**8.3 Agreement Survival after Default**

Except as provided in Section 8.2 with respect to FPL's obligation to make energy payments, default shall not relieve either Party from performing its other obligations under this Agreement. Prices paid by FPL, if any, for as-available energy after a default is remedied shall not be greater than those prices applicable pursuant to the terms of this Agreement prior to default, except as maybe provided under FPL's Rate Schedule COG-1.

**9.0 Governing Law**

The interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Florida.

**10.0 Communications**

Any notice, request, consent, payment or other communication required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered or mailed, postage prepaid, to the representative of said other Party designated in this Section 10.0. Any such notice, request, consent, payment, or other communication so delivered or mailed shall be deemed to be given when so delivered or mailed. Routine communications during Facility operations, including the results of tests and checks envisioned by Section 7.3, shall be exempt from this Section 10.0.

Notices and other communications by FPL to the County shall be addressed to:

Director of Lee County Utilities  
2178 McDregior  
Ft. Myers, FL 33901

Phone 813-335-2276  
Fax 813-335-2827

Notices and other communications by the County to FPL shall be addressed to:

Director of Bulk Power Markets  
Florida Power & Light Company  
700 Universe Blvd.  
Juno Beach, Florida 33408

Phone 407-694-4602  
Fax 407-694-3994

Either Party may change its representative by written notice to the other Party. The Parties' representatives designated above shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. However, they shall not have the authority to amend, modify or waive any provision of this Agreement.

**11.0 Disclaimer**

In executing this Agreement, FPL does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to, or having other transactions with, the County or any assignee of this Agreement, nor does this Agreement create any third party beneficiary rights.

**12.0 Successors and Assigns**

This Agreement shall inure to the benefit of, and be binding upon, the County and FPL and their respective successors by operation of law, but shall not be assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably



withheld; provided, however, the County may, without FPL's consent, assign its interest in the Facility, this Agreement, or both, as the case may be, to the trustee under the trust indenture pursuant to which bonds are issued to finance the Facility.

**13.0 Severability**

If any part of this Agreement, for any reason, is declared invalid or unenforceable by a public authority or court of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Agreement, which remainder shall remain in force and effect as if this Agreement had been executed without the invalid or unenforceable portion.

**14.0 Complete Agreement and Amendments**

The terms and provisions contained in this Agreement and Appendices attached hereto constitute the entire agreement between the County and FPL and shall supersede all previous communications, representations or agreements, either verbal or written, between the County and FPL with respect to the Facility and this Agreement. No amendment or modification to this Agreement, not otherwise contemplated by Sections 4.2, 10.0 and 22.0, shall be binding unless it shall be set forth in writing and duly executed by the Parties with the same formality as this Agreement.

**15.0 Responsibility and Indemnification**

FPL and the County shall each be responsible for its own facilities. FPL and the County [to the extent permitted by Section 768.28, Florida Statutes (1991)] shall each indemnify and save the other, the other's parent, subsidiaries and each of their respective officers, directors, employees, agents and contractors (hereinafter called, respectively, "FPL Entities" and "County Entities") harmless from any and all claims, demands, costs or expenses for loss, damage or injury to persons or property of the other caused by, arising out of, or resulting from:

- 15.1 Any act or omission by a Party or that Party's contractors, agents, servants and employees in connection with the installation or operation of that Party's generation, transmission and distribution systems or the operation thereof in connection with the other Party's system;
- 15.2 Any defect in, failure of, or fault related to, a Party's generation system and associated facilities;
- 15.3 The negligence of a Party or negligence of that Party's Entities; or
- 15.4 Any other event or act that is the result of, or proximately caused by, that Party's Entities.

Notwithstanding the above, each Party agrees to release, and waive all rights against, the other Party from any liability which it may incur for payment of benefits to its own employees under any statutory obligation.

#### 16.0 Insurance

- 16.1 The County shall procure or cause to be procured a policy or policies of liability insurance issued by an insurer satisfactory to FPL on a standard "Insurance Services Office" commercial general liability form. Said policy(ies) shall cover liabilities which might arise under, or in the performance or nonperformance of, this Agreement and the Parties' Interconnection Agreement. An FPL certificate of insurance shall be delivered to FPL at least fifteen calendar days prior to the start of any interconnection work. At a minimum, said policy(ies) shall contain (i) an endorsement providing coverage, including, but not limited to, products liability/completed operations coverage for the term of this Agreement, and (ii) a broad form contractual liability endorsement covering liabilities which might arise under, or in the performance or nonperformance of, this Agreement and the Parties' Interconnection Agreement. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility

with FPL's system, the policy(ies) shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards.

16.2 The policy(ies) identified in Section 16.1 shall have a minimum limit of ten million dollars (\$10,000,000), per occurrence, combined single limit, for bodily injury (including death) or property damage; provided, however, in the event that such insurance becomes totally unavailable or procurement becomes commercially impracticable, such unavailability or impracticability shall not constitute an Event of Default under this Agreement, but FPL and the County shall enter into negotiations to develop substitute protection for FPL Entities which FPL, in its reasonable judgment, deems adequate. Any premium assessment or deductible shall be for the account of the County and not FPL Entities.

16.3 In the event that the policy(ies) is (are) on a "claims made" basis, the retroactive date of the policy(ies) shall be the effective date of this Agreement or such other date as to protect the interests of FPL Entities and County Entities. Furthermore, if the policy(ies) is (are) on a "claims made" basis, the County's duty to provide such coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort; if coverage is on an "occurrence" basis, such insurance shall be maintained by the County during the entire period of interconnection and performance by the Parties under this Agreement and the Interconnection Agreement. The policy(ies) shall not be cancelled or materially altered without at least thirty calendar days' written notice to FPL. Coverage must be reasonably acceptable to FPL.

16.4 The County shall provide to FPL evidence of such liability insurance coverage on FPL Form 1364-23, without modification. Such form is attached hereto as Appendix A, INSURANCE. A copy of the policy(ies) shall be made available for inspection by FPL at the County's offices upon reasonable advance notification.

16.5 FPL Entities shall be designated as an additional named insured for all policy(ies), and the policy(ies) shall be endorsed to be primary (i) to any insurance which may be maintained by, or on behalf of, FPL Entities, and (ii) to any indemnity-related obligation(s) of either Party pursuant to Section 15.0.

17.0 **Exclusion of Incidental and Consequential Damages**

Neither Party shall be liable to the other for incidental, consequential or indirect damages, whether arising in contract, tort or otherwise.

18.0 **Permits**

The County hereby agrees to seek to obtain any and all governmental permits, certificates or similar authority which the County is required to obtain as a prerequisite to engaging in the activities covered by this Agreement.

19.0 **Renegotiations Due to Regulatory Change**

Notwithstanding anything in this Agreement to the contrary, should FPL at any time during the term of this Agreement fail to obtain or be denied the FPSC's authorization, or the authorization of any other regulatory body which now has or in the future may have jurisdiction over FPL's rates and charges, to fully recover from its customers all the payments required to be made to the County under the terms of this Agreement or any subsequent amendment to this Agreement, the Parties agree that, at FPL's option, they shall renegotiate this Agreement or any applicable amendment. If FPL exercises such option to renegotiate, FPL shall not thereafter be required to make energy payments to the extent that FPL's authorization to recover them from its customers is not obtained or is denied. It is the intent of the Parties that FPL's energy payment obligations under this Agreement or any amendment hereio are

conditioned upon FPL's being fully reimbursed for such payments through the Fuel Cost and Purchased Power Recovery Clause or other similar type of reimbursement mechanism or authorized rates or charges which provide full and timely recovery of FPL's payment obligations created by this Agreement. Any amounts initially recovered by FPL from its customers but for which recovery is subsequently disallowed by the FPSC and charged back to FPL may be offset or credited against subsequent payments made by FPL for purchases from the County or, alternatively, shall be repaid by the County.

**20.0 Incorporation of Rate Schedule**

The Parties agree that this Agreement shall be subject to all of the provisions contained in FPL's published Rate Schedule COG-1 as in effect as of the date of the Parties' execution of this Agreement, and as the same may be amended from time to time. FPL's Rate Schedule COG-1 is incorporated herein by reference.

**21.0 Survival of Agreement**

This Agreement, as may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.

**22.0 Waivers**

The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, but the same shall continue and remain in full force and effect, except with respect to the particular instance or instances.

23.0 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

ATTEST:

\_\_\_\_\_

ATTEST:  
CHARLIE GREEN, CLERK  
By: Lisa L. Rouse  
Deputy Clerk

FPL:

*Michael W. Yackira*

Name: Michael W. Yackira

Title: Sr. Vice President

Date: 8/21/92

LEE COUNTY:

*Douglas St. Cerny*

Name: Douglas St. Cerny

Title: Chairman

Date: 8/19/92

APPROVED AS TO FORM

*[Signature]*

OFFICE OF COUNTY ATTORNEY

APPENDIX A  
CERTIFICATE OF INSURANCE  
FORM 1364-23