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November 25, 2003

**VIA HAND DELIVERY**

Ms. Blanca S. Bayó, Director  
 Division of the Commission Clerk and  
 Administrative Services  
 Florida Public Service Commission  
 Betty Easley Conference Center, Room 110  
 2540 Shumard Oak Boulevard  
 Tallahassee, Florida 32399-0850

031074-E1

**Re: Florida Power & Light Company's Petition for Approval of  
 Changes to Its Existing Performance Guaranty Agreement and  
 for Approval of a Second Performance Guaranty Agreement**

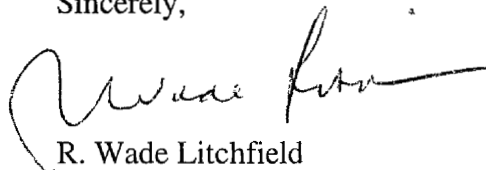
Dear Ms. Bayó:

I enclose and hand you herewith for filing in the above-referenced matter, the original and fifteen (15) copies of Florida Power & Light Company's ("FPL") Petition for Approval of Changes to Its Existing Performance Guaranty Agreement and for Approval of a Second Performance Guaranty Agreement.

Please acknowledge receipt of this filing by stamping the extra copy of this letter "filed" and returning same to me. Also included herewith is a computer diskette containing FPL's Petition in WordPerfect. Should you have any questions regarding this filing, please contact me at (561) 691-7101.

Thanking you for your attention to this matter, I remain,

Sincerely,

  
 R. Wade Litchfield

RWL/ec  
 Enclosures

*Orig Tariffs forwarded to ECR*

DOCUMENT NUMBER-DATE  
 12033 NOV 25 8

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's ) Docket No. \_\_\_\_\_  
Request for changes to its existing Performance )  
Guaranty Agreement and for approval of a new ) Date Filed: November 25, 2003  
Performance Guaranty Agreement )

**FLORIDA POWER & LIGHT COMPANY'S  
PETITION FOR APPROVAL OF CHANGES TO ITS  
EXISTING PERFORMANCE GUARANTY AGREEMENT AND FOR  
APPROVAL OF A SECOND PERFORMANCE GUARANTY AGREEMENT**

**NOW BEFORE THIS COMMISSION**, through undersigned Counsel, comes Florida Power & Light Company ("FPL" or the "Company") and hereby requests approval of changes to its existing Performance Guaranty Agreement and for approval of a second performance guaranty agreement. In support of this Petition, FPL states as follows:

1. FPL is a public utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, Florida Statutes. FPL's General Offices are located at 9250 West Flagler Street, Miami, FL 33174.
2. Any pleading, motion, notice, order or other document required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

William G. Walker, III  
Vice President  
Florida Power & Light Company  
215 South Monroe Street  
Suite 810  
Tallahassee, FL 32301-1859  
(850) 521-3910  
(850) 521-3939 (telecopier)

R. Wade Litchfield  
Senior Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
(561) 691-7101  
(561) 691-7135 (telecopier)

### **Introduction and Background**

3. FPL is seeking Commission approval for changes to the existing Performance Guaranty Agreement, to be renamed the “Performance Guaranty Agreement for Incremental Capacity” (sometimes hereinafter referred to as the “PGAIC”). The PGAIC will remain in FPL’s tariff as Sheet Nos. 9.950 through 9.953. The changes to the PGAIC affect only Sheet Nos. 9.950 and 9.952. Second Revised Sheet Nos. 9.950 and 9.952 are attached herewith as Exhibit A in both final and legislative format. FPL also seeks approval of a second performance guaranty agreement, to be named the “Performance Guaranty Agreement” (sometimes hereinafter the “new PGA”) that will be included in FPL’s tariff as Original Sheet Nos. 9.946, 9.947, and 9.948, attached herewith as Exhibit B. Upon approval of the new PGA and changes to the PGAIC, FPL will submit for administrative approval Revised Sheet No. 9.011, FPL’s Index of Standard Forms.

4. By its Order No. PSC-01-0031-TRF-EI in Docket No. 001579-EI, dated January 8, 2001, the Commission approved the existing Performance Guaranty Agreement (“existing PGA”). The existing PGA, to be renamed the PGAIC, will continue to be required in cases where applicants require capacity above the amount typically necessary to provide electric service and where the projected loads are based on speculative or untested assumptions and which therefore may not materialize. The purpose of the existing PGA is to ensure that other customers will be held harmless in the event that a customer’s load at an existing point of delivery (or subject to reasonable estimation from other historical baselines at a new point of

delivery) fails to meet projections and, thus, fails to produce revenues sufficient to offset the cost of the required electric system expansion. On the other hand, if the revenues materialize as projected, the Company refunds or cancels the guaranty.

5. The existing PGA, as approved, has worked well. As noted by the Commission in its Order No. PSC-01-0031-TRF-EI, FPL had received approximately fifty requests for service that could have required a significant expansion of FPL's transmission and/or distribution facilities. At the time the existing PGA was filed, FPL was receiving numerous requests from multiple developers to provide an aggregate of six million square feet of commercial buildings with electrical capacity greatly exceeding that which normally would be required to serve such buildings. The estimated investment required to support the projected 200 MW of incremental load was approximately \$30 million. The speculative nature of the projected load imposed significant risk on FPL and its other customers.

6. The concerns and caution upon which approval of the existing PGA were predicated appear to have been well-founded. As noted in FPL's first performance guaranty monitoring report provided to the Commission on July 31, 2001, only two agreements were signed in the initial reporting period, reflecting the beginning of a significant contraction in the telecommunications industry. As shown in the final performance guaranty monitoring report provided to the Commission on March 4, 2003, given the rapid downturn in the telecommunications industry only three developers executed a performance guaranty for a combined amount of about \$1.1 million. Of those three, one business ultimately failed resulting in recovery by FPL of about \$700,000. Another fulfilled the terms of the agreement and the

guaranty was released. The third entity has approximately one year remaining under its agreement. Other developers that had requested significant expansions of FPL's infrastructure were unwilling to post the necessary guaranty and, in fact, abandoned their proposed projects due to the industry downturn. Thus, the existing PGA succeeded in bringing discipline to the speculative infrastructure requests and protecting the general body of customers from unreasonable business risk being shifted to them by certain other prospective customers.

### **The Need for the new PGA**

7. In its current form, the existing PGA specifically focuses on customers requesting a level of capacity per square foot that is not typically required for that type of building or premises. Thus, facilities in excess of what was deemed "Baseline Capacity," i.e., the currently existing capacity at a site, or the level of capacity that would typically be required at the site and reasonably estimated based on other historical baselines, are considered incremental and require the posting of a Performance Guaranty. The amount of the Performance Guaranty is calculated based on the difference between the cost of the expansion required by the applicant and the cost of providing the Baseline Capacity. At the same time, the revenues used to offset the payment of the Performance Guaranty are based on the applicant's actual Base Revenue less Baseline Base Revenue. Baseline Base Revenue is the level of base revenue attributable to Baseline Capacity.

8. While the existing PGA works well in many situations, such as the refurbishment of an existing site, it is not easily applied in all situations. In some cases, because of the nature, location, voltage or other characteristics of the requested facilities, the risk of unrecovered

investment may extend to the entire projected load associated with the installation of the new facilities. In such cases, the Company is asked to make an investment in special facilities that are not likely to be required by other customers. Specially-sized and/or types of transformers that cannot generally be used by other customers are one such example. Another example would be a system expansion at a previously undeveloped site where the new facilities are likely to be required by only the requesting customer for a substantial period of time.

9. To adequately provide for cost recovery in cases where the risk extends to the entire projected load, FPL requests approval of the second performance guaranty agreement, the new PGA. As previously stated, FPL also proposes that the existing PGA be renamed for Incremental Capacity, or PGAIC. This change will highlight the principal distinction between the two agreements and clarify that the PGAIC is intended only for those cases in which the system expansion involves a request for additional capacity in excess of that which would typically be required for the premises.

10. It is anticipated that the new PGA, like the PGAIC, will have very limited use. Specifically, the application of the new PGA will be limited to applicants requesting facilities that, absent the Applicant's use, would not likely be required for service to other customers within five years following the requested date for the proposed system expansion. The five-year horizon is consistent with the horizon employed in Rule 25-6.064(4), Florida Administrative Code, regarding the extension of overhead facilities and contributions in aid of construction.

11. The new PGA is generally consistent with the PGAIC. Like the PGAIC, the new PGA establishes a guaranty amount based on the cost of the required system expansion that is at

risk of not being recovered. In addition, the actual base revenues from the applicant are used as an offset against any required performance guaranty due. As noted, the primary difference between the two agreements is the absence of the concept of “baseline capacity” in the new PGA. Indeed, the two agreements produce equivalent results if a zero level of baseline capacity in the PGAIC is assumed. Thus, the PGAIC and the new PGA are consistent in their treatment of customers who have substantial incremental capacity requirements or special infrastructure needs.

12. Like the PGAIC, the new PGA requires an applicant to post a Performance Guaranty in the form of cash, a surety bond, or a bank letter of credit. Under the new PGA, however, the amount of the Performance Guaranty is determined using FPL’s estimate of the total costs less CIAC (versus an increment of costs above a baseline) for the facilities necessary to serve the premises, multiplied by a carrying cost factor. The carrying cost factor in the new PGA represents the carrying cost (return, depreciation, property taxes, and insurance) to FPL over the 30-year life of the investment and is identical to the factor in the existing PGA approved by the Commission in its Order No. PSC-01-0031-TRF-EI. The estimated total cost to serve may include the upgrade of both transmission and distribution facilities.

13. During the three-year Performance Guaranty Period in the new PGA, FPL will compare the “Base Revenues” collected from the customer to the Performance Guaranty amount. Base Revenue is the portion of electric revenue received by the Company during the Performance Guaranty Period for electric service to the Premises consisting only of applicable base demand charges, base non-fuel energy charges, and facilities rental charges, if applicable.

Base Revenue excludes, without limitation, capacity payment, customer, conservation, environmental, and fuel charges, franchise fees, and taxes.

14. During the three-year Performance Guaranty Period the total Base Revenues received could equal or exceed the Performance Guaranty amount posted. If this occurs, and the applicant secured the Performance Guaranty through a surety bond, or irrevocable letter of credit, such bond or letter of credit shall be released or cancelled, or the amount secured by such instrument shall be reduced by the amount of the Performance Guaranty, as applicable.

15. If the applicant elects to post the Performance Guaranty in cash, the Company proposes on a monthly basis to reduce the Performance Guaranty cash balance by the amount of the previous month's Base Revenue charges and credit the same amount to Applicant's previous monthly electric service billing, until such time the Performance Guaranty cash balance is depleted. In this way, the amount of the applicant's Performance Guaranty will be reduced each month by the amount of the Base Revenue charges realized by the Company and the Company and its other customers will continue to be fully secured for the remaining amount of Base Revenue under the agreements. If at the end of the three-year Performance Guaranty Period the Base Revenues received are less than the Performance Guaranty amount posted, a settlement will be made and the Performance Guaranty amount will be applied to the deficit.



### **Changes to the Existing Performance Guaranty Agreement, renamed the PGAIC**

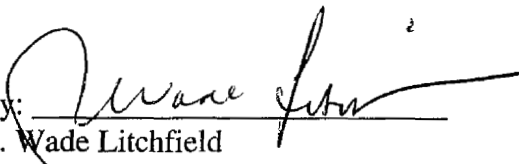
16. In addition to the change of title, the PGAIC reflects a few minor changes from the existing PGA to be consistent with provisions in the new PGA. For example, FPL proposes to include in the definition of Base Revenues any facility rental revenues received from the customer. Recognition of such facility rental revenues received by the Company better recognizes the ultimate cost effect of the facilities required to serve the customer and isolates the potential burden for which the Company's other electric customers are at risk. Also consistent with the new PGA, the PGAIC includes the provision whereby, if a customer elects to post a cash deposit, FPL would reduce the Performance Guaranty cash balance on a monthly basis and credit the applicant's monthly electric service billing for the amount of the Incremental Base Revenue charges, until such time as the Performance Guaranty cash deposit is depleted.

### **Conclusion**

17. FPL respectfully submits that the new PGA and the PGAIC, as revised, are consistent with its tariff and Rule 25-6.095(3) of the F.A.C. In particular, as noted by the Commission in its Order No. PSC-01-0031-TRF-EI, Section 2.2 of FPL's General Rules and Regulations for Electric Service, "allows FPL to require an applicant for service who requires an extension of FPL's facilities to provide a guaranty, a CIAC calculated pursuant to Commission rules, and/or advances for construction when in FPL's opinion the potential revenues do not justify the cost of the extension. . . . The underlying purpose of this provision is to ensure that ratepayers are not unduly burdened with the expense of facilities that are not fully utilized." FPL requests approval of the new PGA and PGAIC consistent with such purpose and intent.

**WHEREFORE**, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission grant this Petition for Approval of Changes to its Existing Performance Guaranty Agreement (the Performance Guaranty Agreement for Incremental Capacity, as revised) and for Approval of a Second Performance Guaranty Agreement (the Performance Guaranty Agreement).

Respectfully submitted,

By: 

R. Wade Litchfield  
Florida Authorized House Counsel  
Attorney for  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
(561) 691-7101  
(561) 691-7135 telecopier

Florida Power & Light Company  
Docket No. \_\_\_\_\_  
Petition for Approval for Changes to Its Existing  
Performance Guaranty Agreement and for  
Approval of a Second Performance Guaranty Agreement

EXHIBIT A  
Legislative and Final Formats  
Second Revised Sheet Nos. 9.950 and 9.952

**PERFORMANCE GUARANTY AGREEMENT FOR INCREMENTAL CAPACITY**

This Performance Guaranty Agreement for Incremental Capacity ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is by and between \_\_\_\_\_ (hereinafter "Applicant") and FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, (hereinafter the "Company").

**WITNESSETH:**

**Whereas**, in connection with the property located at \_\_\_\_\_, in \_\_\_\_\_, Florida (the "Premises"), Applicant has requested that Company install electric infrastructure in order to provide electric service to the Premises;

**Whereas**, Applicant's estimate of the electric power needs of the Premises will require an expansion of Company's present electric system to provide capacity above and beyond that which typically would be necessary for service to the Premises;

**Whereas**, because of the uncertainty associated with Applicant's projections of the electric power needs of the Premises, Company may not fully recover its investment in such infrastructure expansion, thus potentially burdening Company's other electric customers; and

**Whereas**, Applicant is willing to provide assurance that Company will recover its investment in the expansion of Company's electric system based on Applicant's projections in the event that the estimated load at the Premises does not materialize;

**Now, therefore**, in recognition of the foregoing premises and in consideration of the covenants and promises set forth herein below, Company and Applicant do hereby agree as follows:

**ARTICLE I - DEFINITIONS**

**1.01** "Base Revenue" is the portion of electric revenue received by Company for electric service to the Premises consisting only of applicable base demand charges, base non-fuel energy charges, and facilities rental charges, if applicable. Base Revenue excludes, without limitation, capacity payment, customer, conservation, environmental, and fuel charges, franchise fees, and taxes.

**1.02** "Baseline Base Revenue" is the estimated portion of Base Revenue received during the Performance Guaranty Period that Company attributes to Baseline Capacity. Baseline Base Revenue is calculated by multiplying the Baseline Capacity (as defined in Section 1.03) by the base demand charge and adding to that amount the product of Baseline Capacity, actual load factor, the number of hours in the billing period, and the applicable base non-fuel energy charge.

**1.03** "Baseline Capacity", as determined by Company, is (a) the currently existing capacity where Company has in place facilities ready and available to provide electric service to the Premises albeit at a lower level of capacity than requested; or (b) the amount of capacity necessary to provide service to a more typical level of load given the location and/or type of facility or building, where Company does not have in place facilities ready and available to provide electric service to the Premises.

(Continued on Sheet No. 9.951)

(Continued from Sheet No. 9.951)

### ARTICLE III - PAYMENT AND REFUND

**3.01** At Applicant's option, the Performance Guaranty may be posted with Company in cash, or may be secured either by a surety bond or irrevocable bank letter of credit in a form acceptable to Company. At the end of Performance Guaranty Period, or upon termination of service by Applicant, whichever is earlier, if the Incremental Base Revenue is less than the Performance Guaranty, Applicant shall pay to Company the Performance Guaranty, less the amount of Incremental Base Revenue.

**3.02** If, during the Performance Guaranty Period, Incremental Base Revenue equals or exceeds the Performance Guaranty and Applicant secured the Performance Guaranty through a surety bond, or irrevocable letter of credit, such bond or letter of credit shall be released or cancelled, or the amount secured by such instrument shall be reduced by the amount of the Performance Guaranty, as applicable.

**3.03** If the Applicant elects to post the Performance Guaranty in cash, the Company agrees on a monthly basis to reduce the Performance Guaranty cash balance by the amount of the previous month's Incremental Base Revenue charges and credit the same amount to Applicant's previous monthly electric service billing, until such time the Performance Guaranty cash balance is depleted.

**3.04** In the event that Company's construction of facilities shown on Exhibit A commences but is not completed due to a change in Applicant's plans or other circumstances related to the Premises that are not within Company's control, or if twelve months following the effective date of this Agreement Company has been unable to complete the requested installation and provide an In-Service Date due to changes or delays in Applicant's schedule or plans, Company shall be immediately entitled to an amount of the Performance Guaranty equal to Company's construction expenditures incurred in connection with this Agreement. Thereafter, Company may elect to terminate this Agreement and the balance, if any, of the Performance Guaranty will be refunded if Applicant posted a cash Performance Guaranty.

### ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall commence on the date first above written and end on the Expiration Date, or on the date Incremental Base Revenue equals the Performance Guaranty, whichever is earlier, unless terminated earlier pursuant to Section 3.04.

### ARTICLE V - FINAL SETTLEMENT

Upon the termination or expiration of this Agreement, any portion of the Performance Guaranty not previously refunded or otherwise eligible for refund under the terms of this Agreement shall be retained by Company, and any remaining balance of the Performance Guaranty that is subject to a letter of credit or surety bond shall become immediately due and payable.

### ARTICLE VI - TITLE AND OWNERSHIP

Title to and complete ownership and control over the above-referenced expansion shall at all times remain with Company and Company shall have the right to use the same for the purpose of serving other customers.

### ARTICLE VII - ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, or representations, whether written or oral, between Company and Applicant, made with respect to the matters herein contained, and when duly executed constitutes the entire agreement between the parties hereto.

(Continued on Sheet No. 9.953)

**PERFORMANCE GUARANTY AGREEMENT FOR INCREMENTAL CAPACITY**

This Performance Guaranty Agreement for Incremental Capacity ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is by and between \_\_\_\_\_ (hereinafter "Applicant") and FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, (hereinafter the "Company").

**WITNESSETH:**

**Whereas**, in connection with the property located at \_\_\_\_\_, in \_\_\_\_\_, Florida (the "Premises"), Applicant has requested that Company install electric infrastructure in order to provide electric service to the Premises;

**Whereas**, Applicant's estimate of the electric power needs of the Premises will require an expansion of Company's present electric system; to provide capacity above and beyond that which typically would be necessary to provide for service to the Premises;

**Whereas**, because of the uncertainty associated with Applicant's projections of the electric power needs of the Premises, Company may not fully recover its investment in such infrastructure expansion, thus potentially burdening Company's other electric customers; and

**Whereas**, Applicant is willing to provide assurance that Company will recover its investment in the expansion of Company's electric system based on Applicant's projections in the event that the estimated load at the Premises does not materialize;

**Now, therefore**, in recognition of the foregoing premises and in consideration of the covenants and promises set forth herein below, Company and Applicant do hereby agree as follows:

**ARTICLE I - DEFINITIONS**

**1.01** "Base Revenue" is the portion of electric revenue received by Company for electric service to the Premises consisting only of applicable base demand charges ~~and~~ base non-fuel energy charges, ~~and facilities rental charges, if applicable.~~ Base Revenue excludes, without limitation, capacity payment, customer, conservation, environmental, and fuel charges, franchise fees, and taxes.

**1.02** "Baseline Base Revenue" is the estimated portion of Base Revenue received during the Performance Guaranty Period that Company attributes to Baseline Capacity. Baseline Base Revenue is calculated by multiplying the Baseline Capacity (as defined in Section 1.03) by the base demand charge and adding to that amount the product of Baseline Capacity, actual load factor, the number of hours in the billing period, and the applicable base non-fuel energy charge.

**1.03** "Baseline Capacity", as determined by Company, is (a) the currently existing capacity where Company has in place facilities ready and available to provide electric service to the Premises albeit at a lower level of capacity than requested; or (b) the amount of capacity necessary to provide service to a more typical level of load given the location and/or type of facility or building, where Company does not have in place facilities ready and available to provide electric service to the Premises.

(Continued on Sheet No. 9.951)

(Continued from Sheet No. 9.951)

### ARTICLE III - PAYMENT AND REFUND

~~3.01~~ At Applicant's option, the Performance Guaranty may be posted with Company in cash, or may be secured either by a surety bond or irrevocable bank letter of credit in a form acceptable to Company. At the end of Performance Guaranty Period, or upon termination of service by Applicant, whichever is earlier, if the Incremental Base Revenue is less than the Performance Guaranty, Applicant shall pay to Company the Performance Guaranty, less the amount of Incremental Base Revenue.

~~3.01~~ At Applicant's option, ~~02~~ If, during the Performance Guaranty may be posted with Company in cash, Period, Incremental Base Revenue equals or may be exceeds the Performance Guaranty and Applicant secured either by the Performance Guaranty through a surety bond, or irrevocable bank letter of credit in a form acceptable to Company. In the event that Incremental Base Revenue is less than the Performance Guaranty, Applicant, such bond or letter of credit shall pay to Company the Performance Guaranty, less be released or cancelled, or the amount secured by such instrument shall be reduced by the amount of Incremental Base Revenue the Performance Guaranty, as applicable.

~~3.02~~ If, during the Performance Guaranty Period, Incremental Base Revenue equals or exceeds the Performance Guaranty: a) if Applicant posted a cash Performance Guaranty, Company will promptly refund such funds; or b) if Applicant secured the Performance Guaranty through a surety bond, or irrevocable letter of credit, such bond or letter of credit shall be released or cancelled, or the amount secured by such instrument shall be reduced by the amount of the Performance Guaranty, as applicable.

~~3.03~~ If the Applicant elects to post the Performance Guaranty in cash, the Company agrees on a monthly basis to reduce the Performance Guaranty cash balance by the amount of the previous month's Incremental Base Revenue charges and credit the same amount to Applicant's previous monthly electric service billing, until such time the Performance Guaranty cash balance is depleted.

~~3.0304~~ In the event that Company's construction of facilities shown on Exhibit A commences but is not completed due to a change in Applicant's plans or other circumstances related to the Premises that are not within Company's control, or if twelve months following the effective date of this Agreement Company has been unable to complete the requested installation and provide an In-Service Date due to changes or delays in Applicant's schedule or plans, Company shall be immediately entitled to an amount of the Performance Guaranty equal to Company's construction expenditures incurred in connection with this Agreement. Thereafter, Company may elect to terminate this Agreement and the balance, if any, of the Performance Guaranty will be refunded if Applicant posted a cash Performance Guaranty.

### ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall commence on the date first above written and end on the Expiration Date, or on the date Incremental Base Revenue equals the Performance Guaranty, whichever is earlier, unless terminated earlier pursuant to Section 3.043.

### ARTICLE V - FINAL SETTLEMENT

Upon the termination or expiration of this Agreement, any portion of the Performance Guaranty not previously refunded or otherwise eligible for refund under the terms of this Agreement shall be retained by Company, and any remaining balance of the Performance Guaranty that is subject to a letter of credit or surety bond shall become immediately due and payable.

### ARTICLE VI - TITLE AND OWNERSHIP

Title to and complete ownership and control over the above-referenced expansion shall at all times remain with Company and Company shall have the right to use the same for the purpose of serving other customers.

### ARTICLE VII - ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, or representations, whether written or oral, between Company and Applicant, made with respect to the matters herein contained, and when duly executed constitutes the entire agreement between the parties hereto.

(Continued on Sheet No. 9.953)

Florida Power & Light Company  
Docket No. \_\_\_\_\_  
Petition for Approval for Changes to Its Existing  
Performance Guaranty Agreement and for  
Approval of a Second Performance Guaranty Agreement

EXHIBIT B  
Original Sheet Nos. 9.946, 9.947, and 9.948



**PERFORMANCE GUARANTY AGREEMENT**

This Performance Guaranty Agreement ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, is by and between \_\_\_\_\_ (hereinafter "Applicant") and FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, (hereinafter the "Company").

**WITNESSETH:**

**Whereas**, in connection with the property located at \_\_\_\_\_, in \_\_\_\_\_, Florida (the "Premises"), Applicant has requested that Company install electric infrastructure in order to provide electric service to the Premises;

**Whereas**, Applicant's estimate of the electric power needs of the Premises will require an expansion of Company's present electric system and, due to their nature, location, voltage, or other characteristics, the requested facilities are not likely to be required by other customers within five years following the requested date for the proposed system expansion;

**Whereas**, because of the uncertainty that Company will fully recover its investment in such infrastructure expansion should the Customer's projected load not materialize and the need to avoid placing the burden for those costs on Company's other customers; and

**Whereas**, Applicant is willing to provide assurance that Company will recover its investment in the expansion of Company's electric system based on Applicant's projections in the event that sufficient revenue from service to the Premises is not realized;

**Now, therefore**, in recognition of the foregoing premises and in consideration of the covenants and promises set forth herein below, Company and Applicant do hereby agree as follows:

**ARTICLE I - DEFINITIONS**

**1.01** "Base Revenue" is the portion of electric revenue received by Company during the Performance Guaranty Period for electric service to the Premises consisting only of applicable base demand charges, base non-fuel energy charges, and facilities rental charges, if applicable. Base Revenue excludes, without limitation, capacity payment, customer, conservation, environmental, and fuel charges, franchise fees, and taxes.

**1.02** "Performance Guaranty Period" is the period of time commencing with the day on which the requested level of service is installed and available to Customer, as determined by Company, ("In-Service Date"), and ending on the third anniversary of the In-Service Date ("Expiration Date").

**ARTICLE II - PERFORMANCE GUARANTY AMOUNT**

**2.01** The amount of the Performance Guaranty is the total cost of facilities to be installed to serve the Premises, as estimated by Company, less the amount of Contribution In Aid of Construction paid, if any, by the Applicant pursuant to Company's General Rules and Regulations for Electric Service; multiplied by a factor of 1.51.

(Continued on Sheet No. 9.947)

(Continued from Sheet No. 9.946)

= \$	_____	Estimated total cost of facilities to be installed to serve the Premises
- \$	_____	Contribution In Aid of Construction (CIAC) paid by Applicant
= \$	_____	Total cost, less CIAC paid by Applicant
x	1.51	Present value factor
= \$	=====	Performance Guaranty

The Applicant shall provide the above-specified Performance Guaranty to Company prior to Company installing the facilities to ensure that the Base Revenue justifies Company's investment.

**2.02** This Agreement does not apply in lieu of CIAC. Nothing in this Agreement shall be construed as prohibiting Company from collecting from Applicant a CIAC for underground service, where otherwise applicable.

**2.03** The facilities to be installed to serve the Premises, together with their estimated costs, are shown on Exhibit A of this Agreement.

**ARTICLE III - PAYMENT AND REFUND**

**3.01** At Applicant's option, the Performance Guaranty may be posted with Company in cash, or may be secured either by a surety bond or irrevocable bank letter of credit in a form acceptable to Company. At the end of Performance Guaranty Period, or upon termination of service by Applicant, whichever is earlier, if the Base Revenue is less than the Performance Guaranty, Applicant shall pay to Company the Performance Guaranty, less the amount of Base Revenue.

**3.02** If, during the Performance Guaranty Period, Base Revenue equals or exceeds the Performance Guaranty and Applicant secured the Performance Guaranty through a surety bond, or irrevocable letter of credit, such bond or letter of credit shall be released or cancelled, or the amount secured by such instrument shall be reduced by the amount of the Performance Guaranty, as applicable.

**3.03** If the Applicant elects to post the Performance Guaranty in cash, the Company agrees on a monthly basis to reduce the Performance Guaranty cash balance by the amount of the previous month's Base Revenue charges and credit the same amount to Applicant's previous monthly electric service billing, until such time the Performance Guaranty cash balance is depleted.

**3.04** In the event that Company's construction of facilities shown on Exhibit A commences but is not completed due to a change in Applicant's plans or other circumstances related to the Premises that are not within Company's control, or if twelve months following the effective date of this Agreement Company has been unable to complete the requested installation and provide an In-Service Date due to changes or delays in Applicant's schedule or plans, Company shall be immediately entitled to an amount of the Performance Guaranty equal to Company's construction expenditures incurred in connection with this Agreement. Thereafter, Company may elect to terminate this Agreement and the balance, if any, of the Performance Guaranty will be refunded if Applicant posted a cash Performance Guaranty.

**ARTICLE IV - TERM OF AGREEMENT**

The term of this Agreement shall commence on the date first above written and end on the Expiration Date, or on the date Base Revenue equals the Performance Guaranty, whichever is earlier, unless terminated earlier pursuant to Section 3.04.

(Continued on Sheet No. 9.948)

(Continued from Sheet No. 9.947)

**ARTICLE V - FINAL SETTLEMENT**

Upon the termination or expiration of this Agreement, any portion of the Performance Guaranty not previously refunded or otherwise eligible for refund under the terms of this Agreement shall be retained by Company, and any remaining balance of the Performance Guaranty that is subject to a letter of credit or surety bond shall become immediately due and payable.

**ARTICLE VI - TITLE AND OWNERSHIP**

Title to and complete ownership and control over the above-referenced expansion shall at all times remain with Company and Company shall have the right to use the same for the purpose of serving other customers.

**ARTICLE VII - ENTIRE AGREEMENT**

This Agreement supersedes all previous agreements, or representations, whether written or oral, between Company and Applicant, made with respect to the matters herein contained, and when duly executed constitutes the entire agreement between the parties hereto.

**ARTICLE VIII - HEIRS, SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto, but Applicant shall not assign this Agreement without first having obtained the written consent of Company, such consent not to be unreasonably withheld.

**ARTICLE IX - SUBJECT TO FPSC RULES**

This Agreement is subject to the Rules and Orders of the FPSC and to Company's Electric Tariff, including, but not limited to the General Rules and Regulations for Electric Service (collectively "Regulations"), as such Regulations are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the Regulations, the provisions of said Regulations shall control, as they are now written, or as they may be hereafter revised, amended or supplemented, and, at Company's request, Customer agrees to conform this Agreement to such provisions, or enter into a new Agreement reflecting such provisions. This Agreement shall not be used in lieu of applicable requirements set forth in the Regulations pertaining to contributions in aid of construction, advances or deposits.

**In Witness Whereof**, Applicant and Company hereby have caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted by:

\_\_\_\_\_  
Applicant (Print/Type Name of Organization)

**FLORIDA POWER & LIGHT COMPANY**

By: \_\_\_\_\_  
Signature (Authorized Representative)

By: \_\_\_\_\_  
Signature (Authorized Representative)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

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

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