



## 1 APPEARANCES:

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4 appearing on behalf of New Hope Power Partnership.

5 CHARLES A. GUYTON, ESQUIRE, Steel, Hector & Davis,  
6 LLP, 215 South Monroe Street, Suite 601, Tallahassee, Florida  
7 32301-1804, appearing on behalf of Florida Power & Light  
8 Company.

9 JENNIFER BRUBAKER, ESQUIRE, FPSC General Counsel's  
10 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
11 32399-0850, appearing on behalf of the Commission staff.

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WITNESSES

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EXHIBITS

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## P R O C E E D I N G S

1  
2 COMMISSIONER BAEZ: We'll go on the record, Linda,  
3 and call this hearing to order. Counsel, will you read the  
4 notice, please.

5 MS. BRUBAKER: Certainly. Pursuant to notice, this  
6 time and place has been set aside for the purposes of  
7 conducting a hearing for Dockets Numbers 040766-EI and  
8 040767-EI. The purpose of the hearing is set forth more fully  
9 in the notice.

10 COMMISSIONER BAEZ: Thank you. And we'll take  
11 appearances now.

12 MR. GUYTON: Commissioners, my name is Charles  
13 Guyton. I'm with the law firm of Steel, Hector & Davis, and  
14 I'm appearing on behalf of Florida Power & Light Company.

15 MR. WRIGHT: Mr. Chairman, Commissioners, Robert  
16 Scheffel Wright, Law Firm of Landers & Parsons, and I'm  
17 appearing on behalf of New Hope Power Partnership.

18 MS. BRUBAKER: And Jennifer Brubaker on behalf of the  
19 Commission.

20 COMMISSIONER BAEZ: Thank you. Ms. Brubaker, do we  
21 have any preliminary matters?

22 MS. BRUBAKER: Yes, Chairman. There are several  
23 preliminary matters. The first I would recommend we take up is  
24 there is a number of stipulated exhibits that the parties and  
25 staff have agreed to, and we've compiled the list and we

1 believe it can be entered into the record by stipulation.

2 We've compiled a chart that we provided to the parties, the

3 Commissioners and the court reporter that list those, and I'd

4 suggest that the list itself be marked as the first hearing

5 exhibit.

6 COMMISSIONER BAEZ: Without objection show the  
7 document titled "Comprehensive Stipulated Exhibits for Entry  
8 into Hearing Record" marked as Exhibit 1.

9 (Exhibit 1 marked for identification.)

10 MS. BRUBAKER: And then I would subsequently  
11 recommend that the other exhibits be marked in sequential order  
12 as they appear on that list.

13 COMMISSIONER BAEZ: And do you want to go through  
14 them really quickly so we can mark them.

15 MS. BRUBAKER: Certainly. Exhibit 2 is a staff  
16 composite exhibit. It consists of responses to Staff's  
17 Interrogatories Numbers 1 through 6.

18 Exhibit Number 3 is the agreement that's attached as  
19 a prefiled direct exhibit to Mr. Cepero's testimony.

20 And Exhibit Number 4 would be Mr. Scroggs' analysis  
21 of the New Hope agreement.

22 COMMISSIONER BAEZ: Thank you. And show those listed  
23 in order marked as Exhibits 2, 3, 4, and 5.

24 MS. BRUBAKER: With the marking of those exhibits,  
25 staff would move that Exhibits 1 through 4 be entered into the

1 record. And just for note for purposes of the record that  
2 Exhibits 3 and 4 are sponsored by FPL and New Hope's witnesses.

3 COMMISSIONER BAEZ: Well, now I've just marked them  
4 2, 3, 4 and 5. So you want to go 1 through 5; is that -- do we  
5 need to --

6 MS. BRUBAKER: Exhibit 5 is?

7 COMMISSIONER BAEZ: Well, the list was Number 1.

8 MS. BRUBAKER: The list is Number 1, staff's  
9 composite is Number 2, the agreement would be Number 3 and then  
10 the analysis of the agreement would be Number 4.

11 COMMISSIONER BAEZ: Oh, I guess you, you included --  
12 I'm sorry. Because you, you sort of threw me for a loop there.  
13 You marked it -- you marked the very list as one and listed it  
14 in the list.

15 MS. BRUBAKER: The list itself. That's just the  
16 procedure we've been following.

17 COMMISSIONER BAEZ: This is sort of a Borgean  
18 labyrinth here. You can strike that, Linda. I'm sorry.

19 Very well. Then we'll show, show Exhibits 1, 2,  
20 3 and 4 moved into the record.

21 (Exhibits 2, 3 and 4 marked for identification.)

22 (Exhibits 1, 2, 3 and 4 admitted into the record.)

23 MS. BRUBAKER: The next preliminary matter I'd  
24 suggest that the panel take up is that regarding the stipulated  
25 testimony. Copies of the testimony have been provided to the

1 court reporter and proffered to the panel, and parties and  
2 staff have been able to stipulate to its entry. Staff would  
3 recommend that it would be appropriate for FPL and New Hope to  
4 request the testimony be moved into the record as though, as  
5 though read.

6 COMMISSIONER BAEZ: Very well. Mr. Guyton.

7 MR. GUYTON: Florida Power & Light Company would ask  
8 that the direct testimony of Steven Scroggs be inserted into  
9 the record as though read.

10 COMMISSIONER BAEZ: Without objection, show the  
11 testimony of Witness Scroggs entered into the record as though  
12 read.

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                               **NEW HOPE POWER PARTNERSHIP**

3                               **FLORIDA POWER & LIGHT COMPANY**

4                               **DIRECT TESTIMONY OF STEVEN SCROGGS**

5                               **DOCKET NO. 04\_\_\_\_-EI**

6                               **July 2004**

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9  
10           **Q.    Please state your name and business address.**

11           **A.    My name is Steven D. Scroggs, and my business address is 9250 West Flagler**  
12                       **Street, Miami, FL, 33174.**

13  
14           **Q.    By who are you employed and what position do you hold?**

15           **A.    I am employed by Florida Power & Light Company (FPL) as Manager, Integrated**  
16                       **Resource Planning.**

17  
18           **Q.    Please describe your duties and responsibilities in that position.**

19           **A.    I manage the Integrated Resource Planning department within the Resource**  
20                       **Assessment and Planning Business Unit. The department is responsible for**  
21                       **conducting economic and reliability analyses supporting the selection of**  
22                       **generation resources for addition to the FPL system.**

23

1           **Q.    Please describe your education and professional experience.**

2           A.    I graduated from the University of Missouri – Columbia in 1984 with a Bachelor  
3           of Science Degree in Mechanical Engineering. From 1984 until 1994 I served in  
4           the United States Navy as a Nuclear Submarine Officer. From 1994 to 1996 I was  
5           a research associate at The Pennsylvania State University, where I earned a  
6           Masters Degree in Mechanical Engineering. In 1996 I joined DAI Management,  
7           Inc. as a power industry consultant and manager. In that role I provided economic  
8           analysis of power generation facilities supporting financial transactions and  
9           managed several small cogeneration facilities on behalf of our clientele. In 2001,  
10          I provided turnaround management for a small energy services company resulting  
11          in the successful sale of that firm at the end of the year. From January 2002 until  
12          April 2003, I was employed by Calpine Corporation as Director of Performance  
13          Engineering. In this role I supervised a team of engineers and analysts who  
14          conducted performance acceptance testing and performance enhancement analysis  
15          on Calpine’s fleet of national generating assets. In May 2003, I accepted my  
16          current position with FPL.

17

18          **Q.    What is the purpose of your testimony?**

19          A.    My testimony addresses four areas. First, I explain FPL’s economic need for the  
20          proposed purchase of as-available energy from New Hope Power Partnership  
21          (New Hope). Second, I show that the proposed purchase is the most cost-  
22          effective option available for the purchase of as-available energy for FPL. Third,  
23          I explain that there are no demand side management (DSM) or energy

1 conservation measures available to mitigate FPL's need for the proposed  
2 purchase. Finally, I set forth the adverse consequences to FPL and its customers  
3 if the determination of need in this case is not granted or if the contract between  
4 FPL and New Hope is not approved.

5  
6 **Q. Are you sponsoring an exhibit in this proceeding?**

7 A. Yes. I am sponsoring Exhibit \_\_\_\_ (SDS-1), titled New Hope Agreement  
8 Analysis, which is attached to my direct testimony.

9  
10 **Q. Please explain the relief FPL seeks in this proceeding.**

11 A. FPL, as the primarily affected utility and as a co-applicant with New Hope, seeks  
12 from the Florida Public Service Commission (Commission) an affirmative  
13 determination of need for an expansion of New Hope's Okeelanta Plant. The  
14 expansion (Project) will add additional steam turbine generator (STG) capability  
15 which will be necessary for New Hope to perform obligations under the  
16 Agreement For The Purchase Of As-Available Energy From New Hope Power  
17 Partnership By Florida Power & Light Company (Agreement) negotiated and  
18 executed by FPL and New Hope. The Agreement obligates New Hope to provide  
19 seventy percent (70%) of the energy output of its Project on an as-available basis  
20 at a discount of one percent to FPL's as-available energy rate for an initial term of  
21 five years; the Agreement also provides for renewals of up to three additional  
22 five-year terms upon the mutual consent of FPL and New Hope.

23

1           **Q.    Why is the Project needed?**

2           A.    The Project will allow FPL's customers access to a source of discounted as-  
3           available energy that will lower the cost of electric service. Under the terms of  
4           the Agreement, the energy will be purchased by FPL at ninety-nine percent of  
5           FPL's as-available energy price. Any purchase of as-available energy at a rate  
6           below FPL's tariff rate is cost-effective and will lower the cost of electricity to  
7           FPL's customers. Therefore, FPL has an economic need for the energy available  
8           under this Agreement.

9  
10          **Q.    Will the purchase of discounted as-available energy by FPL under the**  
11          **Agreement improve FPL's system reliability?**

12          A.    No. As the Commission has recognized, the purchase of as-available energy,  
13          which is non-firm energy provided if and when available, provides no reliability  
14          benefit from a planning perspective. This is because FPL cannot rely upon such  
15          purchases when computing reserve margin, which is the reliability criterion that  
16          currently drives FPL's resource additions. So, in this way the purchases will  
17          provide no capacity deferral benefit. However, the existence of the as-available  
18          energy source may, under certain operational situations, provide added reliability  
19          to the FPL system by increasing the fuel and geographic diversity of generating  
20          resources that may be called upon. FPL administers this voluntary supply of as-  
21          available generation under its COG-3 tariff. Such a situation would be the result  
22          of an urgent need that is voluntarily met by the Project, and as such, could not be  
23          relied upon by FPL for system planning purposes. In any event, the purchases

1 under the Agreement will not harm FPL system reliability or the quality of service  
2 FPL provides.

3  
4 **Q. Are the projected purchases under the Agreement the most cost-effective**  
5 **alternative to meet FPL's needs for as-available energy?**

6 A. Yes. Each kWh provided pursuant to the Agreement will be provided at a  
7 discount to FPL's as-available energy rate. Absent the Agreement, FPL would be  
8 obligated to purchase the output of this facility at 100% of its as-available energy  
9 rate, which under Rule 25-17.0825, is the measure of FPL's avoided cost for as-  
10 available energy. This means that every kWh purchased under the terms of the  
11 Agreement is cost-effective and will serve to lower the cost of electric service to  
12 FPL's customers. There is no other known source of as-available energy  
13 available to FPL at such a discounted price. FPL projects that purchases pursuant  
14 to this Agreement will save FPL customers \$198,450 (net present value at a  
15 discount rate of 7.82 percent) over the initial 5-year term of the Agreement. The  
16 analysis supporting the estimate of savings is provided in S. D. Scroggs Exhibit  
17 No. 1, attached. The estimates of as-available energy prices are produced using  
18 FPL's production costing models, and the assumptions regarding the FPL system  
19 are consistent with FPL's Ten Year Power Plant Site Plan (2004 – 2013).  
20  
21  
22

1           **Q.    Are there any DSM or energy conservation measures available to avoid or**  
2           **mitigate the need for the Project or for the energy to be purchased pursuant**  
3           **to the Agreement?**

4           A.    No. FPL has already captured or identified the reasonably achievable, cost-  
5           effective DSM on its system, and FPL's as-available energy tariff assumes the  
6           implementation of that cost-effective DSM. Therefore, there is no other DSM  
7           available that would mitigate the need for the energy to be purchased pursuant to  
8           this Agreement.

9  
10          In addition, the tariff rate established for FPL's purchase of as-available energy  
11          reflects FPL's avoided cost for as-available energy. Since the energy purchases  
12          pursuant to the Agreement will be at a discount from that rate, and since the cost-  
13          effectiveness of DSM and energy conservation measures is measured against  
14          avoided cost, even if there were more DSM available on FPL's system, there is no  
15          basis to conclude that it would be more cost-effective than FPL's opportunity to  
16          purchase energy at a price that is guaranteed to be below its avoided cost.

17  
18          **Q.    What adverse consequences would FPL's customers face if the Agreement**  
19          **between FPL and New Hope were not approved or if an affirmative**  
20          **determination of need were not granted for the Project?**

21          A.    FPL's customers would lose the prospect of FPL being able to purchase as-  
22          available energy from New Hope's Project for at least five and perhaps as long as  
23          twenty years at a discounted price. Absent contract approval and an affirmative

1 determination of need for the Project, the Agreement does not become effective.

2 If the Agreement becomes effective, FPL projects its customers would save

3 \$198,450 (net present value at 7.82%) over the initial five years of the Project,

4 with savings that would grow over subsequent terms if the Agreement is

5 extended. In addition, FPL's customers would lose the benefit of having part of

6 their energy requirements provided by this renewable resource and the diversity

7 of supply represented by purchasing from this new resource.

8

9 **Q. Does this conclude your testimony?**

10 **A. Yes.**

1           MR. WRIGHT: And New Hope Power Partnership would ask  
2 that the Commission receive the direct testimony of  
3 Gustavo R. Cepero into the record as though read.

4           COMMISSIONER BAEZ: Without objection we'll show  
5 Witness Cepero's direct testimony entered into the record as  
6 though read.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**JOINT PETITION FOR A DETERMINATION OF NEED FOR THE**  
**EXPANSION OF THE OKEELANTA COGENERATION PLANT**

**DIRECT TESTIMONY OF GUSTAVO R. CEPERO**

1     **Q.    Please state your name, address, and position.**

2     **A.    My name is Gustavo R. Cepero, and my business address is 1 N. Clematis**  
3           **St., West Palm Beach, Florida 33401. I am Vice President of Florida Crystals**  
4           **Corporation.**

5  
6     **Q.    Please describe your duties, qualifications, and experience.**

7     **A.    I have been with Florida Crystals for 13 years and am responsible for energy**  
8           **activities as well as corporate planning and business development activities. I**  
9           **have degrees in engineering, business administration, and law and over 30**  
10          **years of engineering, business, and regulatory experience in power and**  
11          **energy related matters.**

12                I worked for Florida Power & Light Company (“FPL”) from 1971 to  
13                1991. During my tenure with FPL, I served in various engineering and  
14                managerial positions, including at various times heading up the departments  
15                responsible for power system planning, fuel procurement and delivery, and  
16                bulk power market transactions

17

18     **Q.    Have you previously testified before the Florida Public Service**  
19           **Commission?**

20     **A.    While employed by FPL, I testified before the Florida Public Service**  
21           **Commission numerous times in dockets related to need determinations, cost**

1 recovery of capital projects under the oil back-out clause, cogeneration and  
2 energy efficiency rulemaking, approval of cogeneration agreements, and fuel  
3 adjustment and cost recovery clauses. While employed by Florida Crystals, I  
4 have participated in FPSC dockets and/or workshops related to renewable  
5 energy, competitive bidding, and regional transmission organizations.

6  
7 **PURPOSE AND SUMMARY OF TESTIMONY**

8 **Q. What is the purpose of your testimony?**

9 **A.** I am testifying on behalf of New Hope Power Partnership, which owns and  
10 operates the Okeelanta Cogeneration Plant and which will own and operate  
11 the expansion Project as well. My testimony, in conjunction with the  
12 testimony filed by FPL's witness Steven D. Scroggs, demonstrates that the  
13 proposed expansion ("Project") of the Okeelanta Cogeneration Plant  
14 ("Okeelanta Plant" or "Plant") satisfies the requirements established by the  
15 Commission to find that there is a need for the Project pursuant to the  
16 Commission's need determination statute, Section 403.519, Florida Statutes,  
17 Commission Rules 25-22.080-.081, Florida Administrative Code, the Florida  
18 Electrical Power Plant Siting Act, and the Florida Energy Efficiency and  
19 Conservation Act.

20 My testimony (a) describes the Plant and the proposed Project, (b)  
21 describes the Power Purchase Agreement with FPL (the "PPA"), and (c)  
22 explains the reasons why the Project will be cost effective to Florida  
23 ratepayers and will contribute to the diversification of fuel supplies in the  
24 state.

25  
26

1 **Q. Are you sponsoring any exhibits to your testimony?**

2 **A. Yes. I am sponsoring the following exhibit:**

3

4 Exhibit \_\_\_\_ (GRC-1): Power Purchase Agreement Between Florida  
5 Power & Light Company and New Hope Power  
6 Partnership.

7

8

### THE OKEELANTA COGENERATION PLANT

9 **Q. Please provide a summary description of the Plant.**

10 **A. The Okeelanta Plant is a 74.9 MW biomass-fired cogeneration facility**  
11 **located in western Palm Beach county and is part of an agro-industrial**  
12 **complex which includes facilities to mill and process sugar cane into food**  
13 **grade sugar and related products. The Plant is interconnected with the FPL**  
14 **system at the FPL Okeelanta 138 kV substation via two (2) 138 kV lines, the**  
15 **Okeelanta-South Bay 138 kV line and the Okeelanta-Clewiston 138 kV line.**

16 The Plant supplies process steam to the adjacent Okeelanta sugar mill  
17 during the sugar cane grinding season, which is usually October through  
18 March, and to the sugar refinery on a year-round basis. The Plant also sells  
19 electricity to the Florida wholesale markets. For example, during 2003, the  
20 Plant supplied about  $3.4 \times 10^9$  pounds of process steam, or about 45 percent  
21 of the Plant's total steam production, to the sugar mill and refinery and sold  
22 about 500,000 MWH of energy to Florida utilities, including FPL, Tampa  
23 Electric Company ("TECO"), and Seminole Electric Cooperative, Inc.  
24 ("Seminole").

25 The Plant is a renewable energy facility in that biomass fuels  
26 represent over 98 percent of the fuel consumed by the Plant. The sources of  
27 biomass are bagasse, which is the fibrous residue of the sugar cane grinding  
28 process, and clean, processed wood waste. Bagasse is supplied by the

1 Okeelanta sugar mill and occasionally by other sugar mills in the vicinity.  
2 Clean wood waste is procured from multiple municipal and private waste  
3 recyclers and wood processing operations throughout south and southwest  
4 Florida. The clean wood waste includes urban yard waste; woody materials  
5 (whole trees and shrubs) from land, road, and right-of-way clearing  
6 activities; forestry wood; and the clean wood component of construction and  
7 demolition debris. During 2003, the existing Plant used over 900,000 tons of  
8 bagasse and over 700,000 tons of clean wood waste.

9 Fossil fuels (No. 2 fuel oil or natural gas) represent the other 1 to 2%  
10 of the fuel supply and are normally used only during start-up or upset  
11 conditions.

12  
13 **Q. Please describe the major Plant equipment and systems.**

14 **A.** Steam is generated by three (3) identical Combustion Engineering stoker  
15 fired boilers, each with a design maximum continuous rating of 440,000  
16 lbs/hour of steam at 1500 psig and 950°F (Plant total of 1,320,000 lbs/hour).  
17 The Plant feedwater system includes redundant feedwater pumps, a  
18 deaerator, and four (4) heaters.

19 Biomass fuel is delivered to the boilers via two (2) independent and  
20 redundant biomass fuel storage, retrieving, and feeding systems, one for  
21 bagasse and one for wood fuel. The Plant can run on bagasse only, wood  
22 waste only, or any combination of bagasse and wood waste.

23 The Plant emissions control systems include dust collectors and  
24 electrostatic precipitators for particulate control, selective non-catalytic  
25 reduction for controlling emissions of oxides of nitrogen ("NOx"), and  
26 carbon injection for mercury control. The boiler combustion control system  
27 also manages carbon monoxide emissions.

1 Steam is delivered to a single steam turbine generator ("STG") with  
2 multiple extraction ports, which direct steam to the sugar mill and to the  
3 plant feedwater heaters. The generator is rated at 85 MVA at a 0.85 power  
4 factor.

5 Steam that exhausts from the turbine is condensed in a water-cooled  
6 surface condenser. Heat is removed from the condenser by a closed-loop  
7 circulating water system, which includes a mechanical draft cooling tower.

8 The balance of plant equipment includes a state of the art, plant-wide  
9 digital control system ("DCS"); water treatment and demineralizer plant; and  
10 typical auxiliary air and water systems.

11

12 **Q. Please briefly describe the ownership structure of the Plant and the**  
13 **relationship to Florida Crystals.**

14 **A.** The Plant is owned by New Hope Power Partnership ("New Hope"), which is  
15 a Florida partnership. Florida Crystals, through subsidiaries, owns 100  
16 percent of the partnership interests in New Hope. Florida Crystals also owns  
17 the Okeelanta sugar mill and refinery.

18

19 **Q. Is the Okeelanta Plant a qualifying facility?**

20 **A.** The Plant is certified by the Federal Energy Regulatory Commission  
21 ("FERC") as a qualifying facility ("QF"). The Plant meets the requirement  
22 for a "cogeneration facility" and additionally meets the requirements for a  
23 "small power production facility". Following completion of the proposed  
24 expansion Project, the Plant will continue to qualify as a "cogeneration  
25 facility" even though it will exceed the 80 MW limit for small power  
26 production facilities.

27

1           New Hope will update the QF status of the facility when the Project  
2 commences commercial operation.

3  
4     **Q. Please describe how the plant currently sells its power and to whom.**

5     **A.** The Plant sells all of its net capacity and energy to the wholesale markets,  
6 typically under short-term arrangements. Over the past five (5) years, the  
7 Plant has generated and sold to various wholesale market participants  
8 approximately 2,100,000 MWH of energy. Virtually 100 percent of this  
9 energy has been sold to Florida retail utilities. More specifically, about 68  
10 percent of this energy was sold to FPL under FPL's COG-1 tariff, and most  
11 of the remainder was sold to Tampa Electric and to Seminole under bilateral  
12 agreements. Small amounts have been sold to other Florida utilities.

13  
14                           **THE OKEELANTA EXPANSION PROJECT**

15     **Q. Please describe the expansion Project.**

16     **A.** As stated above, the Plant supplies process steam to the Okeelanta sugar mill  
17 and refinery. The process steam demand is seasonal; it is higher in the fall  
18 and winter than in the spring and summer. Accordingly, during the spring  
19 and summer when the process steam demand is lower, the plant has the  
20 capacity to generate additional steam but is constrained by the size of the  
21 existing STG. The basic idea of the expansion Project is to add a steam  
22 turbine generator, plus related auxiliaries, to more effectively utilize the  
23 steam generating capacity of the Plant on a year-round basis.

24           The Project will consist of a second steam turbine generator, rated for  
25 approximately 65 MW net, which would increase the Plant's total net  
26 generating capacity to approximately 140 MW (74.9 MW existing plus 65  
27 MW new). The Project will also include a condenser, cooling tower and

1 associated equipment, expansion of the fuel yard, step-up transformer and  
2 protective systems to interconnect the new generator to the FPL system, and  
3 necessary modifications to the mechanical, electrical, and control systems to  
4 accommodate the new equipment.

5 The projected in-service date of the Project is May 31, 2006.

6  
7 **Q. What is the expected output of the Project?**

8 **A.** New Hope projects that the net output of the Project will range from 150,000  
9 MWH/year to 190,000 MWH/year. Most of this electrical energy will be  
10 produced during the spring and summer months.

11 It should be emphasized that the actual output will be a function of  
12 several variables, some of which are outside the control of New Hope, such  
13 as variability in process steam deliveries to the mill and general wholesale  
14 market conditions. Therefore, the actual output for any given year may  
15 deviate from the above range.

16 New Hope projects that virtually all the additional energy will be  
17 generated with biomass fuels. New Hope plans to continue to use fossil fuels  
18 only for start-up and transient conditions.

19  
20 **THE POWER PURCHASE AGREEMENT BETWEEN**  
21 **NEW HOPE AND FPL**

22 **Q. Please describe the Power Purchase Agreement between New Hope and**  
23 **FPL.**

24 **A.** FPL and New Hope executed the PPA on July 19, 2004. Pursuant to the  
25 terms of the PPA, New Hope will sell and FPL will purchase 70 percent of  
26 the net output of the Project for a minimum term of five (5) years, which  
27 commences on January 1, 2007 and extends to December 31, 2011. At the

1 end of the initial 5-year term, the parties, subject to mutual agreement, have  
2 the option to extend the term by up to three more 5-year terms.

3 The energy will be sold at a 1 percent discount from FPL's avoided  
4 energy cost, i.e., at 99 percent of FPL's hourly COG-1 energy purchase rate.  
5 Therefore, the sale is by definition cost effective to FPL's customers because  
6 FPL will be paying less than it would otherwise cost FPL to generate or  
7 purchase the same amount of electrical energy.

8 The terms of delivery will be the same as in FPL's COG-1 tariff. New  
9 Hope will control the quantity delivered for any given hour of the period,  
10 provided that New Hope delivers 70 percent of the net output of the Project  
11 for each calendar year of the term. If New Hope fails to deliver 70 percent of  
12 the net output during any given calendar year, the PPA includes a true-up  
13 provision that effectively requires New Hope to deliver 100 percent of the  
14 net output of the Project to FPL until the prior year's commitment is  
15 satisfied.

16 New Hope is required to maintain the QF status of the facility for the  
17 term of the agreement and will operate the facility, including the Project, in  
18 accordance with the terms of the Interconnection Agreement between the  
19 parties.

20 The Power Purchase Agreement becomes effective only upon  
21 approval by the Commission of the need for the Project and of the PPA  
22 itself.

23 New Hope retains the right to terminate the PPA without any further  
24 obligation or liability at any time prior to July 1, 2005. In such an event,  
25 New Hope must surrender or withdraw any pending applications for or  
26 actual approvals of certification under the Power Plant Siting Act, including  
27 any determinations of need issued by the Commission.



1       **Q.    Please explain New Hope's plans for the 30 percent of the Project's**  
 2       **output that is not contractually committed to FPL.**

3       **A.    First, the Power Purchase Agreement contemplates that New Hope can sell**  
 4       **more than 70 percent of the Project's output to FPL. Energy in excess of 70**  
 5       **percent of the Project's output can be delivered either under the COG-1 tariff,**  
 6       **at FPL's full avoided energy cost, or under any bilateral arrangement**  
 7       **negotiated between the parties.**

8               Beyond sales to FPL, based on historical trends and experience, New  
 9       Hope expects to sell the additional energy from the Project to other Florida  
 10      utilities. In sum, New Hope expects that during the term of the PPA, most if  
 11      not all of the net output of the Project will be sold to Florida utilities serving  
 12      retail customers.

13

14                               **KEY BENEFITS OF THE PROJECT TO FLORIDA**

15      **Q.    Please discuss the key benefits of the Project to Florida.**

16      **A.    As briefly discussed above, the Project will be cost effective to FPL**  
 17      **ratepayers. FPL's witness Steven Scroggs elaborates on this point and**  
 18      **quantifies the expected level of direct savings to FPL ratepayers. Likewise,**  
 19      **sales to other Florida utilities under bilateral agreements will be by definition**  
 20      **cost effective because the purchaser would not otherwise have an incentive**  
 21      **to make the purchase.**

22               Fossil fuels are projected to remain the predominant fuel source as  
 23      well as the marginal fuel for the Florida power system for the foreseeable  
 24      future. The Project will use Florida-based renewable fuels to generate its  
 25      energy and will therefore necessarily displace imported fossil fuels that  
 26      would otherwise be needed to generate the displaced energy. New Hope  
 27      expects the Project will sell between 150,000 MWH/year and 190,000

1 MWH/year of renewable energy. Assuming an average heat rate for Florida  
2 power plants of 10,000 Btu/kWh, the expected energy output of the Project  
3 would displace between 240,000 and 300,000 equivalent barrels of oil per  
4 year.

5 Finally, the Project will use about 250,000 tons /year of clean biomass  
6 fuel. To provide perspective, this amount represents about 10 percent of the  
7 wood waste annually generated in Dade, Broward, and Palm Beach counties.  
8 Most if not all of this material does not have an alternative productive use  
9 and, but for the Project, would be landfilled. The Project, therefore,  
10 conserves landfill space and makes an important contribution to the cost  
11 effective and environmentally responsible management of solid waste in  
12 Florida.

13

14 **Q. Does this conclude your direct testimony?**

15 **A. Yes, it does.**

16

1 MS. BRUBAKER: The final prehearing or, excuse me,  
2 initial matter staff recommended we might take up is there are  
3 a number of issues which the parties and staff propose be  
4 approved as stipulations. They begin at Page 5 of the  
5 prehearing order. We're prepared to address any questions the  
6 panel may have or, if there are no questions, staff would  
7 recommend that the stipulations be approved as proposed.

8 COMMISSIONER BAEZ: Commissioners, the proposed  
9 stipulation language was included in your prehearing order. I  
10 hope you've had a chance to review it. If you have any  
11 questions, I guess now, now is, now is the time.

12 No questions, Commissioners? We can, we can  
13 entertain a motion to accept the proposed stipulations.

14 COMMISSIONER DAVIDSON: So moved.

15 COMMISSIONER BRADLEY: Second.

16 COMMISSIONER BAEZ: Moved and seconded. All those in  
17 favor, say aye.

18 (Unanimous affirmative vote.)

19 COMMISSIONER BAEZ: Show the proposed stipulations  
20 accepted by the panel unanimously.

21 MS. BRUBAKER: With the acceptance of those  
22 stipulations, Commissioner, at this time it would be  
23 appropriate if you would -- if the panel would like to have an  
24 oral recommendation by staff, we can offer one, or it would be  
25 appropriate also to make a bench vote.

1           COMMISSIONER BAEZ: Commissioners, what's your  
2 pleasure? We have the option at this point, having the record  
3 before us, to, to request a bench vote. And, and as you heard  
4 Ms. Brubaker say, she's, staff's prepared to render a  
5 recommendation at this point, if it's your pleasure.

6           COMMISSIONER DAVIDSON: (Inaudible. Microphone off.)

7           COMMISSIONER BAEZ: Okay. Commissioner Bradley, are  
8 you all right with that?

9           Very well. Ms. Brubaker, can you have staff issue  
10 its recommendation?

11           MS. SICKEL: Staff recommends that the Commission  
12 grant the petitions for determination of need for the proposed  
13 Okeelanta Cogeneration Expansion, and for approval of the  
14 contract for sale of as-available energy to FP&L.

15           As to the need for electric system reliability and  
16 integrity, the proposed generation expansion will provide an  
17 as-available energy rather than capacity; therefore, it does  
18 not offer a reliability benefit from the perspective of meeting  
19 system demand. Nonetheless, under certain operational  
20 circumstances, the existence of this as-available energy source  
21 may enhance the system reliability for FP&L. FPL forecasts  
22 indicate that the peak energy needs will occur in the summer  
23 season by Year 2007. As the New Hope Project is planned, the  
24 energy would be available in the season when it will be needed  
25 the most.

1 Further, this project appears to be a positive  
2 response to legislatively recognized needs: Specifically to  
3 promote the use of renewable resources, to promote the use of  
4 cogeneration technologies, and to conserve the use of expensive  
5 primary energy resources.

6 As to the need for adequate electricity at a  
7 reasonable cost, the proposed project will provide power to FPL  
8 and to FPL's customers at a cost below what it would otherwise  
9 cost FPL to generate or purchase that same power.

10 As to the most cost-effective alternative available,  
11 the cost for each kilowatt hour provided under the contract for  
12 sale of energy to be generated by this expansion project will  
13 be at a discount to FPL's as-available energy rate, which is  
14 itself the lowest cost that FPL would incur to generate or  
15 otherwise purchase that same energy.

16 As to conservation measures available to mitigate the  
17 need for energy from New Hope, as-available energy rate is  
18 calculated with all reasonably achievable, cost-effective  
19 demand side management included. Therefore, because a discount  
20 is cost-effective when compared to the as-available rate, the  
21 discount is even more cost-effective than any demand side  
22 management beyond that already implemented.

23 The agreement for purchase of as-available energy,  
24 the agreement satisfies requirements of Chapter 366, Florida  
25 Statutes, as to reasonableness and prudence of costs, as well

1 as the Commission's Cogeneration Rules which are contained in  
2 Chapter 25-17.0825 of the Florida Code. The costs incurred  
3 under this agreement will be reviewed annually during the fuel  
4 hearing procedures, and costs prudently incurred would be  
5 allowed for pass through under the fuel clause.

6 The petitions by FP&L and New Hope Power Partnership  
7 should be approved. Based on resolution of factual issues and  
8 the stipulations by all parties, staff recommends that the  
9 Commission accept the stipulations and grant petitions for  
10 determination of need for the Okeelanta Expansion and for  
11 approval of the Agreement for Purchase of As-Available Energy.  
12 And this docket should be closed.

13 COMMISSIONER BAEZ: Commissioners, any questions of  
14 the staff recommendation at this point?

15 COMMISSIONER DAVIDSON: Move staff.

16 COMMISSIONER BAEZ: A motion --

17 COMMISSIONER BRADLEY: Second.

18 COMMISSIONER BAEZ: There's a motion to accept  
19 staff's recommendation and a second. All those in favor, say  
20 aye.

21 (Unanimous affirmative vote.)

22 COMMISSIONER BAEZ: And that included closure of the  
23 docket as well; correct?

24 MS. BRUBAKER: Correct.

25 COMMISSIONER BAEZ: Very well. Any, anything else at

1 this point, Ms. Brubaker?

2 MS. BRUBAKER: Staff is aware of no further  
3 procedural matters that need to be addressed by the panel.  
4 Staff would note simply that the order reflecting today's vote  
5 would be due on November 4th.

6 COMMISSIONER BAEZ: All right. But there's no  
7 additional process, the order is self-confirming and --

8 MS. BRUBAKER: That's correct.

9 COMMISSIONER BAEZ: Very well. If there's nothing  
10 else from the parties, I want to thank staff and the parties  
11 for, for such an expeditious process at this point. I think  
12 that's, as always, proof that when we work together, I think  
13 the public interest gets served. Thank you, Commissioners, for  
14 coming down this morning. We are adjourned. Have a good  
15 morning everybody.

16 (Hearing adjourned at 9:49 a.m.)

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1 STATE OF FLORIDA        )  
                                   :  
 2 COUNTY OF LEON         )                    CERTIFICATE OF REPORTER


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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th DAY OF OCTOBER, 2004.

  
 \_\_\_\_\_  
 LINDA BOLES, RPR  
 FPSC Official Commission Reporter  
 (850) 413-6734



<b>Comprehensive Stipulated Exhibits for Entry into Hearing Record</b>			
<b>Hearing I.D. #</b>	<b>Witness</b>	<b>I.D. # As Filed</b>	<b>Exhibit Description</b>
<i>Staff</i>			
1		Exhibit List- Stip-1	Comprehensive Stipulated Exhibit List
2		Stip-2	Response to staff's first set of interrogatories, Interrogatory Nos. 1-6
<i>Testimony Exhibit List</i>			
<i>Florida Power &amp; Light Company/New Hope Power Partnership</i>			
3	Gustavo R. Cepero	(GRC-1)	Agreement
4	Steven Scroggs	(SDS-1)	New Hope Agreement Analysis

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 040767-EI &  
NO. 040766-EI EXHIBIT NO. 1  
COMPANY/ F.P.S.C. STAFF  
WITNESS: Exhibit List - Stip-1  
DATE: 10/15/04

**EXHIBIT NO. \_\_\_\_\_**

**DESCRIPTION:**

**STAFF COMPOSITE EXHIBIT – 2**

**New Hope's Responses to Staff's Interrogatories Nos. 1-6**

**PROFERRING PARTY: STAFF**

**DOCKET NO. 040766-EI**

In re: Petition for determination of need for expansion of electrical cogeneration power plant in Palm Beach County by Florida Power & Light Company and New Hope Power Partnership.

**AND**

**DOCKET NO. 040767-EI**

In re: Petition for approval of as-available energy purchase agreement between Florida Power & Light Company and New Hope Power Partnership.

**FLORIDA PUBLIC SERVICE COMMISSION**  
**DOCKET 040766-EI+**  
**NO. 040767-EI EXHIBIT NO. 2**  
**COMPANY/ F.P.S.C. STAFF**  
**WITNESS: Stio-2**  
**DATE: 10-15-04**

## INTERROGATORIES

1. There is an apparent discrepancy relating to energy produced thus far by the 74.9 MW cogenerating plant at Okeelanta. The petition, at paragraph 15 page 7, states that over the past six years, the plant has generated approximately 2,100,000 net megawatt-hours for sale into the wholesale power market. Mr. Cepero states in his testimony, on page 6 lines 6 through 8: "Over the past five (5) years, the Plant has generated and sold to various market participants approximately 2,100,000 MWH of energy." Please clarify this apparent discrepancy.

**Mr. Cepero's testimony is accurate. Over the past five years, the Plant has generated and sold to various market participants approximately 2,100,000 MWH of energy. The reference to six years in the Joint Petition appears to have simply been an error in drafting.**

2. Using the production of 2,100,000 MWH over a six year period implies an average annual production of about 350,000 MWH. In Exhibit SDS-1 submitted with the direct testimony of Mr. Scroggs, the projected total available energy for years 2007 through 2011 is less than 323,000 MWH for each year. Please explain why the total available energy is expected to be less than the energy produced for the most recent five or six years.

**As a preliminary matter, consistent with NHPP's response to Staff's Interrogatory No. 1 above, the correct starting point is 2,100,000 MWH over five years, which indicates an annual average output of approximately 420,000 MWH per year. Beyond that, the "total as-available energy" shown in the sixth column of Mr. Scroggs's exhibit is FPL's projection of the total as-available energy that will be delivered to FPL, on an FPL system basis, over the projection horizon; these values include, as part of the aggregate projected as-available energy, the as-available energy from the existing Okeelanta Cogeneration Plant but do not include the energy from the Expansion Project. The projected energy to be delivered to FPL from the Expansion Project is shown in the eighth column of Mr. Scroggs's exhibit. Thus, the values shown in Mr. Scroggs's exhibit are not comparable to the Okeelanta Plant's production, with or without the proposed expansion.**

The total net production reported in Mr. Cepero's testimony and also cited in the Joint Petition is in fact the total net production from the Okeelanta Cogeneration Plant, of which only a portion has been, and is projected to be, sold to FPL. For reference, on a historical basis, Okeelanta has sold approximately 68 percent of its net output, or about 285,000 MWH per year on an annual average basis, to FPL (Cepero Testimony at page 6). Assuming that as-available deliveries to FPL were to continue at this level, Okeelanta would be projected to deliver about 400,000 MWH (285,000 MWH from the existing Plant and 115,000 from the Expansion Project) per year to FPL, out of total production of about 570,000 MWH per year from the Plant including the Expansion Project.

3. Please provide the following historical information for each month of the most recent two years:
  - (a) Net energy produced
  - (b) Energy used to serve internal electrical loads, separated between the sugar milling processes and the refinery processes
  - (c) Energy sold into the wholesale power market

**See Attachment "A."**

4. Please provide the following projections for each month of the first years after installation of the proposed 65 MW steam generator addition:
  - (a) Net energy produced
  - (b) Energy used to serve internal electrical loads, separated between the sugar milling processes and the refinery processes
  - (c) Energy sold into the wholesale power market

**NHPP does not make projections of monthly energy output, either for the Okeelanta Cogeneration Plant as a whole or for each specific steam turbine generator.**

5. Will there be any modifications made to the boiler in order to produce the steam required to run the proposed 65 MW generator?

**There will be no modifications made to the existing three boilers in order to produce the steam required to run the proposed 65 MW generator.**

6. During the October to March season, the cane grinding operation requires process steam. To date, what has been done with the process steam (or alternatively, the capability to produce the process steam) during the months April through September?

**The demand for process steam during the non-grinding season of April through September is less than the process steam demand required to support sugar mill operations during the grinding season of October to March, therefore, the additional process steam is not generated during the non-grinding season. Stated alternately, the capability to produce steam is simply not used during the non-grinding season, because there is no useful need for additional steam during the non-grinding season.**

**Attachment - A**

New Hope Power Partnership - Okeelanta Cogeneration Plant  
 All figures in MWH

	<u>Net Energy Produced</u>		<u>Internal Electrical Loads*</u>		<u>Energy Sold Into Wholesale Power Market</u>	
	2002	2003	2002	2003	2002	2003
Jan	32,012	36,635	7,283	7,133	32,012	36,635
Feb	31,505	45,941	7,130	8,726	31,505	45,941
Mar	48,135	42,988	8,671	7,917	48,135	42,988
Apr	5,312	45,493	527	5,021	5,312	45,493
May	26,268	42,825	2,063	4,195	26,268	42,825
Jun	54,468	49,773	4,628	5,483	54,468	49,773
Jul	45,200	47,779	4,213	5,948	45,200	47,779
Aug	35,369	49,685	5,391	6,950	35,369	49,685
Sep	48,577	43,104	6,495	5,833	48,577	43,104
Oct	38,711	13,718	6,468	2,246	38,711	13,718
Nov	22,929	40,066	6,858	7,981	22,929	40,066
Dec	17,773	37,961	6,151	6,227	17,773	37,961
<b>Total</b>	<b>406,259</b>	<b>495,968</b>	<b>65,878</b>	<b>73,660</b>	<b>406,259</b>	<b>495,968</b>

\* - Figures reflect internal electrical load of cogeneration plant

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination )  
of Need for Expansion of an )  
Electrical Cogeneration Power )  
Plant in Palm Beach County by )  
Florida Power & Light Company and )  
New Hope Power Partnership )  
\_\_\_\_\_ )

DOCKET NO. \_\_\_\_\_-EI

FILED: JULY 21, 2004

EXHIBIT

OF

GUSTAVO R. CEPERO

ON BEHALF OF

NEW HOPE POWER PARTNERSHIP

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 040766-EI +  
NO. 040767-EI EXHIBIT NO. 3  
COMPANY/ FP+L/New Hope Power Partn  
WITNESS: GRC-1c Agreement 51  
DATE: 10-15-04

**AGREEMENT FOR THE PURCHASE OF AS-AVAILABLE**  
**ENERGY FROM NEW HOPE POWER PARTNERSHIP**  
**BY FLORIDA POWER & LIGHT COMPANY**

THIS AGREEMENT FOR THE PURCHASE OF AS-AVAILABLE ENERGY ("Agreement") is made and entered this 19<sup>th</sup> day of July, 2004, by and between New Hope Power Partnership ("New Hope"), a Florida partnership, 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 Juno Beach, Florida, and authorized to do business in the State of Florida. New Hope and FPL may be individually identified as a "Party" and collectively identified herein as the "Parties."

**WHEREAS**, New Hope owns the existing Okeelanta Cogeneration Facility (the "Facility"), a 74.9 megawatt ("MW") (net) electrical cogeneration facility located in Palm Beach County, Florida, which Facility is fueled primarily by biomass fuels; and

**WHEREAS**, New Hope proposes to construct and own a 65 MW (net) addition to the Facility, which will also utilize biomass fuels in a cogeneration application to produce electricity and useful thermal energy, said addition referred to hereinafter as the "Project," which is expected to deliver net electric energy on or before May 31, 2006; and

**WHEREAS**, The Project and the Facility (collectively, the "Expanded Facility") are to be interconnected to FPL's



transmission system through a single point of interconnection at the Okeelanta Substation ("Point of Interconnection") and will deliver electrical energy into the Florida bulk power transmission grid through this Point of Interconnection; and

**WHEREAS**, subject to the terms and conditions of this Agreement, and consistent with the applicable provisions of Florida Administrative Code Rules 25-17.080 through 25-17.091, New Hope desires to sell and deliver, and FPL desires to purchase and accept, seventy percent (70%) of the net electrical energy generated by the Project per year commencing on January 1, 2007 and continuing for the term of this Agreement; and

**WHEREAS**, the Florida Public Service Commission ("FPSC") must approve the need for the Project and the sale and purchase of electrical energy herein;

**NOW, THEREFORE**, in consideration of the above premises and of the mutual promises and covenants set forth in this Agreement, and for other mutual, good, and valuable consideration, the Parties agree as follows:

**1.0 Facility's Qualifying Status**

**1.1** New Hope owns the Facility and proposes to construct and own the Project as part of the Expanded Facility. The Expanded Facility will have a net output capability of approximately 140 MW, 65 MW of which is the net output capability of the Project.

**1.2** The Facility is a "qualifying facility" pursuant to

the regulations of the Federal Energy Regulatory Commission (the "FERC") and the FPSC. New Hope will file a notice of self-certification which certifies the Qualifying Status of the Expanded Facility pursuant to the rules and regulations of the FERC. New Hope shall maintain the "qualifying" status of the Expanded Facility throughout the term of this Agreement.

**2.0 Term of this Agreement**

**2.1 Term.** The term of this Agreement shall begin immediately upon its execution by the Parties and shall end at 11:59 p.m. on December 31, 2011, unless otherwise extended (a) by the written mutual consent of the Parties or (b) by the operation of true up adjustments pursuant to Section 3.5. Upon the written mutual consent of the Parties at least thirty (30) days prior to the expiration of this Agreement, the term of this Agreement may be extended for up to three (3) additional five (5) year periods.

**2.2 Conditions Precedent.** The enforceability of the Parties' obligations to deliver, sell, and purchase electrical energy under this Agreement is subject to the following conditions precedent:

(a) The FPSC must approve this Agreement, without change or condition, including FPSC findings

that: (i) this Agreement is reasonable, prudent, and in the best interest of FPL's customers; and (ii) FPL may recover from its customers all payments for energy purchased pursuant to this Agreement. FPL shall promptly submit this Agreement to the FPSC with a request that it review and approve the same, and New Hope shall exercise all reasonable efforts to support FPL's request for such FPSC approval.

(b) The FPSC must approve the need for the Project, as currently required by the Power Plant Siting Act and Section 403.519, Florida Statutes. New Hope and FPL as co-applicants shall promptly submit a mutually acceptable determination of need petition to the FPSC for such approval. FPL and New Hope shall exercise all reasonable efforts to support the joint petition. The Parties further agree that this Agreement shall be submitted to the FPSC as an exhibit to the joint petition.

### **3.0 Terms of Purchase and Sale**

3.1 This Agreement shall apply to the purchase of energy only from the Project and does not apply to the purchase of energy from the Facility. New Hope shall sell and deliver from the Project to the Point of Interconnection and FPL shall purchase, receive and

accept, seventy percent (70%) of the net megawatt-hours ("MWH") per year generated by the Project (the "Committed Energy") for each calendar year beginning with January 1, 2007 and concluding with the calendar year ending December 31, 2011, or the last year of the last contract renewal period (the "Delivery Period"). As set forth in Section 3.5, the Delivery Period may be extended due to the operation of the true up adjustments. The net MWH generated by the Project and the net electrical energy or output of the Project is defined as (a) the electrical output of the new generator which is added as part of the project minus (b) the auxiliary load associated with such generator, measured over a period of time.

**3.2** Except as provided in this Agreement, including without limitation Section 4.1 below, the Committed Energy shall be delivered and purchased in accordance with the terms and conditions of FPL's Rate Schedule COG-1 ("COG-1"), which the parties acknowledge may be amended from time to time and which is incorporated herein by reference. In the event of any conflict between COG-1 and this Agreement, the provisions of this Agreement shall govern. This Agreement shall be subject to and consistent with the applicable Rules 25-17.080 through 25-17.091, Florida Administrative Code, and any changes thereto during the term of this

Agreement, and in the event of any conflict between those Rules and this Agreement, the Rules shall govern.

**3.3** The Parties understand and agree that, during any calendar year within the Delivery Period, the Project may sell to FPL more than the Committed Energy. In each calendar year of the Delivery Period, seventy percent (70%) of the net electrical energy generated by the Project, after true up adjustments for prior years per Section 3.5, shall constitute the Committed Energy in accord with this Agreement and shall be delivered to and purchased by FPL pursuant hereto. During the term of this Agreement, New Hope may sell electrical energy above the amount of the Committed Energy to FPL pursuant to COG-1 or pursuant to such other agreement that the Parties may negotiate for the sale and purchase of such energy.

**3.4** The Parties understand that, during any given hour of the Delivery Period, there may be simultaneous deliveries of energy to FPL from the Project and from the existing Facility and that there may be simultaneous deliveries of energy to FPL and other entities from the Project and the existing Facility.

(a) In hours when there are no deliveries of energy to entities other than FPL, no energy generated

by the existing Facility and delivered to FPL shall be counted as Committed Energy and all the energy generated by the Project and delivered to FPL shall be counted as Committed Energy.

(b) In hours when there are deliveries of energy to entities other than FPL, the lesser of the following shall be counted as Committed Energy: (i) the net energy generated by the Project; or (ii) the total energy delivered to FPL from the Expanded Facility (i.e. the existing Facility plus the Project).

**3.5** At the close of each calendar year during the Delivery Period, the total net MWH generation of the Project for the year shall be compared to the MWH of energy counted as Committed Energy during the year. To the extent that the MWH of energy counted as Committed Energy is less than seventy percent of the total net MWH generation of the Project, there shall be a true up adjustment in the amount of the deficiency, and the true up adjustment shall be an additional commitment by New Hope to deliver energy to FPL pursuant to this Agreement. For years when there is a true up adjustment, New Hope shall be obligated to provide to FPL in the following years until the true adjustment is satisfied the first MWH generated by the Project equal to the true up adjustment. In such years, these

true up adjustment MWH shall not be counted as either Committed Energy or total net generation from the Project for that year.

3.6 Nothing herein shall be construed as prohibiting FPL from exercising its rights under Rule 25-17.086, Florida Administrative Code.

3.7 Subject to the Committed Energy and associated delivery obligations set forth herein and the interconnection terms set forth in Section 5.2 below, nothing in this Agreement shall be construed as limiting in any way the right of New Hope to sell energy from the Project or from the Expanded Facility to any third party.

#### 4.0 Energy Purchase Price

4.1 FPL shall pay New Hope for the Committed Energy and any true up adjustment energy an amount equal to ninety-nine percent (99.0%) of the applicable COG-1 hourly energy rate.

4.2 **Environmental Attributes.** New Hope retains title and full rights and interests over any environmental credits, benefits or attributes related to the Committed Energy and any true-up energy.

## 5.0 Operating Conditions

5.1 During the term of this Agreement, New Hope shall operate the Expanded Facility in accordance with the (a) applicable Interconnection Agreement referred to in Section 5.2, (b) this Agreement, and c) applicable state and federal law and regulations.

5.2 The Parties shall negotiate an Interconnection Agreement to interconnect the Project to the FPL transmission system consistent with FERC policy and any other applicable laws and regulations. FPL shall propose, and New Hope agrees to consider in good faith, a single interconnection agreement for the Expanded Facility consistent with the single point of interconnection. Further, the parties agree to negotiate in good faith in such interconnection agreement, provisions which address generation balancing service arrangements. Should New Hope decline to execute a single interconnection agreement for the Expanded Facility, or should the parties be unable to reach an agreement on an Interconnection Agreement, FPL may, consistent with FERC policy, file an unexecuted Interconnection Agreement with the FERC. In such event, New Hope reserves the right to protest such filing. Upon acceptance by FERC, the Interconnection Agreement would govern interconnection of the Project or the Expanded Facility with the FPL



transmission system. Notwithstanding any other provision in this Agreement, FPL shall have no obligation to purchase the Committed Energy, and New Hope shall have no rights to deliver or sell any energy or capacity to FPL or any other entity from the Project prior to (a) the effective date of an Interconnection Agreement as contemplated in this paragraph and (b) the construction and testing of the interconnection facilities, including synchronizing the Project to the FPL grid consistent with the Interconnection Agreement and good utility practice.

5.3 New Hope agrees to separately meter the net output (net of auxiliaries) of the Project so that the output of the Project may be distinguished from the net output of the Facility and the Expanded Facility. New Hope shall be responsible for such metering costs. New Hope agrees to compensate the meter readings to reflect any and all losses from the point of metering to the Point of Interconnection.

## 6.0 Default and Termination

### 6.1 Default

Each of the following shall constitute an Event of Default:

(a) New Hope fails to obtain and maintain the "qualifying" status of the Expanded Facility

pursuant to applicable state and federal laws or regulations.

- (b) A Party materially fails to perform as specified under this Agreement; however, such failure shall not constitute an Event of Default if the defaulting Party, within thirty (30) days after receiving notice from the non-defaulting Party describing in reasonable detail the nature of such failure, has remedied (cured) such failure, or has demonstrated that such failure does not exist.

## **6.2 Default Remedy**

Subject to the above notice and cure provisions, if either Party is in default under Section 6.1, the non-defaulting Party shall have the right to terminate the Agreement. This remedy is not exclusive of damages or other remedies at law or in equity.

## **6.3 Agreement Survival after Default**

Unless and until the Agreement is terminated as provided in Section 6.2 above or in Section 6.4 below, neither Party shall be relieved of performing its other obligations under this Agreement.

## **6.4 Termination**

At any time between the execution of this Agreement

and July 1, 2005, New Hope, upon satisfying the conditions precedent set forth in the next sentence, may terminate this Agreement without any further obligation or liability under this Agreement. New Hope must meet the following conditions precedent to exercise its right of termination: (a) submission to FPL at least thirty days prior to termination of a written notice of New Hope's decision not to construct the Project as contemplated in this Agreement; and (b) submission to FPL of (i) copies of formal withdrawals filed with the applicable agencies of any pending petition for a determination of need for the Project and any pending application for certification of the Project under the Florida Electrical Power Plant Siting Act and/or (ii) copies of formal notices of abandonment filed with the granting agencies of any determination of need or Florida Electrical Power Plant certification granted for the Project, as applicable.

The above notices of termination and withdrawal apply to the Agreement and the Project as defined in the Agreement. New Hope retains the right to construct a future addition to the Facility similar to the Project or expand the Facility in any way deemed appropriate by New Hope, provided that New Hope secures any required regulatory approvals, including, if

necessary, a new determination of need from the FPSC.

**7.0 Governing Law; Submission to Jurisdiction**

**7.1 Governing Law**

THIS AGREEMENT AND THE RIGHTS AND THE OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.

**7.2 Venue**

ANY LITIGATION BETWEEN THE PARTIES RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT SHALL BE CONDUCTED IN THE COURTS OF THE STATE OF FLORIDA OR IN FEDERAL COURTS SITUATED IN FLORIDA AND ANY TRIAL OR OTHER INITIAL PROCEEDINGS SHALL TAKE PLACE IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SITTING IN PALM BEACH COUNTY FLORIDA. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS; PROVIDED, THAT IF A FLORIDA COURT OR FEDERAL COURT SITUATED IN PALM BEACH COUNTY, FLORIDA, SHALL HAVE DETERMINED THAT IT CANNOT ACCEPT JURISDICTION OVER ANY SUCH ACTION BECAUSE OF THE FAILURE TO JOIN AN INDISPENSABLE PARTY, THEN ANY PARTY HERETO MAY BRING AN ACTION IN ANY OTHER STATE OR FEDERAL COURT OF COMPETENT JURISDICTION.

### **7.3 Waiver of Jury Trial**

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

### **8.0 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 8.0. 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 shall be exempt from this Section 8.0.

Notices and other communications by FPL to New Hope shall be addressed to:

New Hope Power Partnership  
Attn: Florida Crystals Corporation  
General Counsel  
1 N. Clematis St, Suite 200  
West Palm Beach, FL 33401  
Telephone 561-366-5123  
Facsimile 561-659-3206

Notices and other communications by New Hope to FPL shall

be addressed to:

Director of Resource Planning  
Florida Power & Light Company  
9250 West Flagler Street  
Miami, Florida 33174  
Telephone 305-552-3622  
Facsimile 305-552-2905

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.

**9.0 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, New Hope or any assignee of this Agreement, nor does this Agreement create any third party beneficiary rights.

**10.0 Successors and Assigns**

This Agreement shall inure to the benefit of, and be binding upon, New Hope 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.

#### **11.0 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.

#### **12.0 Complete Agreement and Amendments**

This Agreement is entered into pursuant to and consistent with the applicable portions of Rules 25-17.080 through 25-17.091, Florida Administrative Code, and to the extent that any term of this Agreement conflicts with those rules, as they currently exist or may be amended during the term of this Agreement, those rules control. Except as set forth in the preceding sentence, the terms and provisions contained in (a) this Agreement, and (b) FPL's Rate Schedule COG-1, as modified by this Agreement and which is incorporated into this Agreement by reference, constitute the entire agreement between New Hope and FPL with regard to the purchase of Committed Energy as described above, and shall supersede all previous communications,

representations or agreements, either verbal or written, between New Hope and FPL with respect to this Agreement and the contemplated purchase of Committed Energy. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by the Parties with the same formality as this Agreement.

### **13.0 Responsibility and Indemnification**

FPL and New Hope shall each be responsible for its own facilities, and for the protection of its own generating system. FPL and New Hope, to the extent permitted by applicable law, 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 "New Hope Entities") harmless from any and all claims, demands, costs or expenses (including court costs and attorneys' fees related to any claim, administrative proceeding, pretrial, trial or appellate proceeding), for loss, damage or injury to persons or property of the other caused by, arising out of, or resulting from:

**13.1** 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 system or Project or the operation thereof in connection with the other Party's system;

13.2 Any defect in, failure of, or fault related to, a Party's generation system or Project and associated facilities;

13.3 The negligence of a Party or negligence of that Party's Entities; or any other event or act that is the result of, or proximately caused by, that Party's Entities.

**14.0 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.

**15.0 Permits**

New Hope hereby agrees to obtain and maintain any and all governmental permits, certificates or similar authority which New Hope is required to obtain and maintain to engage in the activities covered by this Agreement.

**16.0 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.

**17.0 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:

*Vickie Floyd*  
Name: Vickie Floyd

FPL:

Authorized Representative

*W.G. Walker, III*  
Name: W.G. WALKER, III  
Title: VICE PRESIDENT  
Date: 7/19/2009

ATTEST:

*Isabel M. Rice*  
Name: Isabel M. Rice

NEW HOPE POWER PARTNERSHIP:

Authorized Representative

*Gustavo R. Cepero*  
Name: GUSTAVO R. CEPERO  
Title: Authorized Representative  
Date: \_\_\_\_\_

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2  
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Docket No. 04 \_\_\_ -EI  
Exhibit No. (SDS-1)  
New Hope Agreement Analysis

YEAR	MONTH	BASE CASE Production Cost (\$000)	CHANGE CASE (w/o Cogasa) Production Cost (\$000)	DIFFERENCE (\$000)	TOTAL AS AVAILABLE ENERGY MWH	AS AVAILABLE \$/MWH	NEW HOPE ENERGY (MWH)	NEW HOPE TOTAL SAVINGS (\$)
<b>NET PRESENT VALUE</b>								<b>\$ 198,450</b>
2007	1	\$ 256,359	\$ 257,275	\$ 917	27,138	\$ 33.78	0	\$ -
2007	2	\$ 242,548	\$ 243,499	\$ 951	27,138	\$ 35.04	0	\$ -
2007	3	\$ 223,508	\$ 224,367	\$ 859	27,138	\$ 31.67	7,700	\$ 2,438
2007	4	\$ 259,335	\$ 260,266	\$ 932	27,138	\$ 34.33	18,000	\$ 6,180
2007	5	\$ 315,190	\$ 316,196	\$ 1,006	26,485	\$ 37.97	18,600	\$ 7,063
2007	6	\$ 327,592	\$ 328,653	\$ 1,061	26,485	\$ 40.06	18,000	\$ 7,211
2007	7	\$ 364,216	\$ 365,319	\$ 1,103	26,485	\$ 41.66	18,600	\$ 7,748
2007	8	\$ 357,022	\$ 358,124	\$ 1,102	26,485	\$ 41.60	18,600	\$ 7,738
2007	9	\$ 337,237	\$ 338,316	\$ 1,078	26,485	\$ 40.72	18,000	\$ 7,329
2007	10	\$ 328,956	\$ 330,038	\$ 1,082	27,138	\$ 39.86	0	\$ -
2007	11	\$ 263,829	\$ 264,785	\$ 955	27,138	\$ 35.20	0	\$ -
2007	12	\$ 296,590	\$ 297,640	\$ 1,050	27,138	\$ 38.68	0	\$ -
2008	1	\$ 260,672	\$ 261,575	\$ 903	27,138	\$ 33.28	0	\$ -
2008	2	\$ 246,943	\$ 247,858	\$ 915	27,138	\$ 33.71	0	\$ -
2008	3	\$ 236,421	\$ 237,263	\$ 842	27,138	\$ 31.04	7,700	\$ 2,390
2008	4	\$ 266,863	\$ 267,792	\$ 929	27,138	\$ 34.25	18,000	\$ 6,165
2008	5	\$ 321,032	\$ 322,054	\$ 1,022	26,485	\$ 38.58	18,600	\$ 7,176
2008	6	\$ 343,347	\$ 344,468	\$ 1,121	26,485	\$ 42.33	18,000	\$ 7,619
2008	7	\$ 379,347	\$ 380,488	\$ 1,141	26,485	\$ 43.09	18,600	\$ 8,014
2008	8	\$ 371,235	\$ 372,378	\$ 1,143	26,485	\$ 43.15	18,600	\$ 8,026
2008	9	\$ 343,115	\$ 344,258	\$ 1,143	26,485	\$ 43.16	18,000	\$ 7,768
2008	10	\$ 340,595	\$ 341,843	\$ 1,248	27,138	\$ 45.99	0	\$ -
2008	11	\$ 250,433	\$ 251,373	\$ 939	27,138	\$ 34.61	0	\$ -
2008	12	\$ 286,509	\$ 287,522	\$ 1,014	27,138	\$ 37.35	0	\$ -
2009	1	\$ 276,073	\$ 276,986	\$ 913	27,065	\$ 33.75	0	\$ -
2009	2	\$ 264,379	\$ 265,344	\$ 965	26,178	\$ 36.85	0	\$ -
2009	3	\$ 262,125	\$ 263,085	\$ 960	27,252	\$ 35.24	7,700	\$ 2,713
2009	4	\$ 266,356	\$ 267,358	\$ 1,003	27,138	\$ 36.95	18,000	\$ 6,652
2009	5	\$ 345,421	\$ 346,518	\$ 1,097	26,393	\$ 41.57	18,600	\$ 7,733
2009	6	\$ 357,940	\$ 359,037	\$ 1,097	26,586	\$ 41.27	18,000	\$ 7,428
2009	7	\$ 392,990	\$ 394,100	\$ 1,109	26,485	\$ 41.88	18,600	\$ 7,790
2009	8	\$ 387,917	\$ 389,061	\$ 1,144	26,485	\$ 43.18	18,600	\$ 8,031
2009	9	\$ 357,390	\$ 358,524	\$ 1,134	26,485	\$ 42.81	18,000	\$ 7,707
2009	10	\$ 353,968	\$ 355,088	\$ 1,120	27,065	\$ 41.39	0	\$ -
2009	11	\$ 264,788	\$ 265,767	\$ 980	27,264	\$ 35.94	0	\$ -
2009	12	\$ 299,834	\$ 300,850	\$ 1,017	27,138	\$ 37.46	0	\$ -
2010	1	\$ 288,556	\$ 289,520	\$ 964	26,992	\$ 35.71	0	\$ -
2010	2	\$ 274,450	\$ 275,397	\$ 948	26,178	\$ 36.21	0	\$ -
2010	3	\$ 265,336	\$ 266,225	\$ 889	27,366	\$ 32.49	7,700	\$ 2,502
2010	4	\$ 287,164	\$ 288,152	\$ 988	27,138	\$ 36.42	18,000	\$ 6,556
2010	5	\$ 347,967	\$ 349,034	\$ 1,068	26,393	\$ 40.45	18,600	\$ 7,524
2010	6	\$ 391,987	\$ 393,169	\$ 1,182	26,586	\$ 44.44	18,000	\$ 8,000
2010	7	\$ 426,023	\$ 427,185	\$ 1,163	26,412	\$ 44.02	18,600	\$ 8,188
2010	8	\$ 422,453	\$ 423,657	\$ 1,204	26,597	\$ 45.25	18,600	\$ 8,417
2010	9	\$ 395,852	\$ 397,057	\$ 1,205	26,485	\$ 45.49	18,000	\$ 8,189
2010	10	\$ 375,412	\$ 376,599	\$ 1,187	26,992	\$ 43.99	0	\$ -
2010	11	\$ 308,251	\$ 309,363	\$ 1,112	27,389	\$ 40.61	0	\$ -
2010	12	\$ 328,319	\$ 329,454	\$ 1,135	27,138	\$ 41.81	0	\$ -
2011	1	\$ 319,406	\$ 320,503	\$ 1,097	26,992	\$ 40.62	0	\$ -
2011	2	\$ 311,187	\$ 312,284	\$ 1,098	26,178	\$ 41.93	0	\$ -
2011	3	\$ 285,553	\$ 286,607	\$ 1,054	27,366	\$ 38.50	7,700	\$ 2,964
2011	4	\$ 310,375	\$ 311,473	\$ 1,098	27,057	\$ 40.57	18,000	\$ 7,302
2011	5	\$ 389,590	\$ 390,736	\$ 1,147	26,485	\$ 43.29	18,600	\$ 8,052
2011	6	\$ 405,313	\$ 406,475	\$ 1,162	26,586	\$ 43.70	18,000	\$ 7,866
2011	7	\$ 443,526	\$ 444,707	\$ 1,180	26,339	\$ 44.81	18,600	\$ 8,335
2011	8	\$ 439,002	\$ 440,214	\$ 1,212	26,710	\$ 45.39	18,600	\$ 8,442
2011	9	\$ 400,005	\$ 401,186	\$ 1,182	26,485	\$ 44.61	18,000	\$ 8,030
2011	10	\$ 392,712	\$ 393,932	\$ 1,220	26,992	\$ 45.21	0	\$ -
2011	11	\$ 304,419	\$ 305,486	\$ 1,066	27,389	\$ 38.94	0	\$ -
2011	12	\$ 341,287	\$ 342,369	\$ 1,083	27,065	\$ 40.00	0	\$ -

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FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 040766-EI ✓  
NO. 040766-EI EXHIBIT NO. H  
COMPANY/ FP+L/New Hope Power Partnership  
WITNESS: SDS-1 - New Hope Agreement  
DATE: 10-15-04 & Analyst