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**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 040001-EI
FLORIDA POWER & LIGHT COMPANY**

SEPTEMBER 9, 2004

**IN RE: LEVELIZED FUEL COST RECOVERY
AND CAPACITY COST RECOVERY**

EXHIBITS OF T. HARTMAN

**CONTRACT FOR SCHERER UNIT 3 (TLH-1)
CONTRACT FOR HARRIS UNIT 1 (TLH-2)
CONTRACT FOR FRANKLIN UNIT 1(TLH-3)**

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(Confidentiality Designation Revised 11/2/2004)

DOCUMENT NUMBER-DATE

11780 NOV-23

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**CONTRACT FOR THE
PURCHASE OF CAPACITY AND ENERGY
BETWEEN**

SOUTHERN COMPANY SERVICES, INC.

AND

FLORIDA POWER & LIGHT COMPANY

FROM

PLANT SCHERER UNIT NO. 3

DATED AS OF AUGUST 11, 2004

**CONFIDENTIALITY
DESIGNATION REVISED
11/2/2004**

**TLH-1
DOCKET NO. 040001-EI
FPL WITNESS: T. HARTMAN
EXHIBIT _____
SEPTEMBER 9, 2004**

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**CONTRACT FOR THE PURCHASE OF
CAPACITY AND ENERGY
BETWEEN
SOUTHERN COMPANY SERVICES, INC.,
AS AGENT FOR
GEORGIA POWER COMPANY AND GULF POWER COMPANY,
AND
FLORIDA POWER & LIGHT COMPANY**

This CONTRACT FOR THE PURCHASE OF CAPACITY AND ENERGY is made and entered into as of this 11th day of August, 2004 ("Effective Date"), between **SOUTHERN COMPANY SERVICES, INC.**, an Alabama corporation having its principal office and place of business at 600 North 18th Street, Birmingham, Alabama 35203, acting as agent (in such capacity hereinafter referred to as "SCS") for Georgia Power Company (hereinafter referred to as "Georgia Power"), a Georgia corporation having its principal office and place of business at 241 Ralph McGill Boulevard NE, Atlanta, Georgia 30308, and Gulf Power Company (hereinafter referred to as "Gulf Power" and collectively with Georgia Power referred to as "Seller"), a Maine corporation having its principal office and place of business at One Energy Place, Pensacola, Florida 32520, and **FLORIDA POWER & LIGHT COMPANY** (hereinafter referred to as "FPL" or "Buyer"), a Florida corporation having its principal office and place of business at 700 Universe Boulevard, Juno Beach, Florida 33408. Seller and Buyer are hereafter referred to individually and collectively as a "Party" or the "Parties," respectively.

RECITALS:

Buyer desires to purchase and Seller desires to sell, capacity and energy in accordance with this Agreement.

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Subject to the terms and conditions of this Agreement, Seller will provide and sell to Buyer, and Buyer will accept and purchase from Seller, capacity and energy from the Facility or from other resources as provided in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the respective meanings set forth below.

"Affiliate" means, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such corporation, partnership, or other entity.

"After-Tax Basis" – means, with respect to any payment under Section 12.2 to any Person, the amount of such payment ("Base Payment") supplemented by a further payment ("Additional Payment") to that Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Federal, state and local income taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state and local income tax rates applicable to the Person for whom the calculation is being made for all

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relevant periods, and shall take into account the deductibility of state and local income taxes for Federal income tax purposes.

“Agreement” means this Contract for the Purchase of Capacity and Energy, including, to the extent applicable, any appendices hereto and any amendments that the Parties may execute now or at any time in the future.

“Alternate Delivery Point(s)” means, when Seller designates an Alternate Resource(s) pursuant to Section 5.5 or Section 5.6 (including a Replacement Resource), the applicable point(s) of delivery designated by Seller.

“Alternate Resource(s)” means any resource or resources other than the Facility (whether such other resources are owned, purchased or otherwise controlled by Seller, or that are otherwise available to Seller) that Seller designates pursuant to Section 5.5 or Section 5.6.

“Available Capacity” means, at any given time, the Contract Capacity less the sum of: (i) the Force Majeure Capacity at such time; and (ii) the Outage Capacity at such time.

“Billing Month” means each Month during the Term beginning with the second Month of the first Contract Year and includes the Month immediately following the expiration or early termination of this Agreement.

“Btu” means British Thermal Units.

“Business Day” means any Day on which Federal Reserve Member Banks in New York, New York are open for business. A Business Day shall begin at 0800 CPT and end at 1700 CPT.

“Buyer” has the meaning set forth in the introductory paragraph hereof.

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“Buyer Delivery Point(s)” means, for any hour of any Delivery Day, the point(s) on the Southern Company Transmission System to which Buyer intends to transmit energy delivered by Seller under this Agreement.

“Buyer Percentage” means 19.57 percent.

“Central Prevailing Time” or **“CPT”** means the local time at any point in Birmingham, Alabama.

“Change in Law” means the adoption, enactment, promulgation or issuance of, a change in, or a new or changed interpretation by a Government Agency of, any Law after February 6, 2004.

“Commercially Reasonable” or **“Commercially Reasonable Efforts”** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision, or other action, including without limitation, electric system reliability and stability, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, and the commercial environment in which such purchase, sale, decision, or other action occurs.

“Contemporaneous Agreements” means: (i) this Agreement; (ii) the Contract for the Purchase of Capacity and Energy from Plant Franklin Unit No. 1 dated as of August 11, 2004 between Southern Company Services, Inc. (acting as agent for Southern Power Company) and Buyer; and (iii) the Contract for the Purchase of Capacity and Energy from Plant Harris Unit No. 1 dated as of August 11, 2004 between Southern Company Services, Inc. (acting as agent for Southern Power Company) and Buyer.

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“Contest” means with respect to any Person, a contest of any Governmental Approval or Law, acts or omissions by any Government Agency, a requirement of any Government Agency, or any related matters, so long as the contesting Party could not reasonably be expected to be prevented from performing its material obligations under this Agreement pending the outcome of such contest.

“Contract Capacity” means, for the applicable calendar year, the product of: (i) the Buyer Percentage; and (ii) the applicable Total Facility Capacity, rounded down to the nearest whole MW.

“Contract Year” means: (i) for the first Contract Year, the Service Commencement Date through the next date that is May 31; and (ii) for each Contract Year thereafter, each twelve (12) Month period beginning June 1 and ending May 31; provided, however, the last Contract Year shall end on the date that this Agreement terminates or expires.

“Day” means the period of time beginning at hour ending 0100 CPT and ending at hour ending 2400 CPT.

“Delivery Day” means any Day for which Buyer Schedules energy to be delivered in accordance with this Agreement.

“Delivered Energy” means, for any hour, the amount of energy (expressed in MWh) delivered by Seller in accordance with this Agreement and shall equal the sum of energy delivered by Seller to the Delivery Point pursuant to Buyer’s Schedule and any energy provided and/or procured by Seller to resolve energy imbalances at the Delivery Point. Delivered Energy shall not exceed Scheduled Energy for any hour.

“Delivered Energy Credit” means, for any hour, to the extent such difference is positive, the difference of: (i) Delivered Energy for such hour; less (ii) Available Capacity plus

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the portion of Delivered Energy provided from an Alternate Resource(s) designated for such hour pursuant to Section 5.5.1 in response to a Force Majeure Event.

“Delivery Excuse” means: (i) an Event of Default by Buyer; (ii) the interruption of transmission service procured by Buyer or the unavailability of transmission service to Buyer beyond the Delivery Point(s); or (iii) any directive from the applicable transmission provider and/or the control area operator to cease deliveries of energy from the Facility.

“Delivery Point” means the Facility Delivery Point when Seller designates the Facility as the source of Delivered Energy and/or the Alternate Delivery Point(s) (as applicable) to which Seller shall deliver energy to Buyer hereunder.

“Effective Date” has the meaning set forth in the introductory paragraph hereof.

“Electric Metering Equipment” means electric meters and associated equipment, including metering transformers and back-up meters.

“EFMH” or **“Equivalent Force Majeure Hour”** shall occur in any hour (or portion of an hour) in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point is occurring or is continuing. During such an hour, EFMH shall equal the ratio of: (A)(i) Force Majeure Capacity for such hour; less (ii) the amount of electric capacity associated with an Alternate Resource(s), whether available or unavailable, that has been designated for such hour pursuant to Section 5.5.1 in response to the Force Majeure Event causing the Force Majeure Capacity to exist; to (B) the Contract Capacity.

“EUH” or **“Equivalent Unavailable Hour”** shall occur in any hour (or portion of an hour) in which there is Unavailable Capacity. For such an hour, EUH shall equal the ratio of: (i) Unavailable Capacity for such hour; to (ii) the Contract Capacity for such hour.

“Event of Default” has the meaning set forth in Section 14.1.

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“Facility” means Seller’s coal fired steam turbine electric generating unit known as Plant Robert W. Scherer Unit No. 3 (as may be modified) and all appurtenant facilities located near Juliette, Georgia which directly interconnects to the Georgia Integrated Transmission System.

“Facility Delivery Point” means the substation where the Facility interconnects to the Georgia Integrated Transmission System (or other applicable transmission system) at the transmission system voltage.

“FERC” means the Federal Energy Regulatory Commission, or any successor to its functions.

“Florida Interface” means the transmission interface between the Southeastern Electric Reliability Council (or its successor) region and the Florida Reliability Coordinating Council (or its successor) region as such regions exist on the Effective Date.

“Force Majeure Capacity” means, for any hour in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point occurs or is continuing, the product of: (i) the portion of the Total Facility Capacity that is not available from the Facility as a result of such Force Majeure Event; and (ii) the Buyer Percentage.

“Force Majeure Event” has the meaning set forth in Section 13.1.

“Forced Outage” means any condition or circumstance in which the generating capability of the Facility is eliminated or reduced (in whole or in part) for any reason, including an actual or threatened component failure. A Forced Outage does not include those times that the Facility’s capability is reduced (in whole or in part) due to a Force Majeure Event, Delivery Excuse, or during Scheduled Outages or Maintenance Outages. In addition, a Forced Outage

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shall not occur solely because of Seller's ability to sell capacity and/or energy from the Facility to a third party or an Affiliate(s).

"Georgia Integrated Transmission System" or **"GITS"** means the electric transmission systems owned individually by Georgia Power, Georgia Transmission Corporation, the Municipal Electric Authority of Georgia and the City of Dalton, Georgia, and operated as an integrated transmission system, as well as any successor transmission system.

"Georgia Power" has the meaning set forth in the introductory paragraph hereof.

"Government Agency" means any federal, state, local, territorial or municipal government and any department, commission, board, court, bureau, agency, instrumentality, judicial or administrative body thereof.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of or regulation of any Government Agency relating to the Facility or to the execution, delivery or performance of this Agreement.

"Guarantor" has the meaning set forth in Section 14.1.

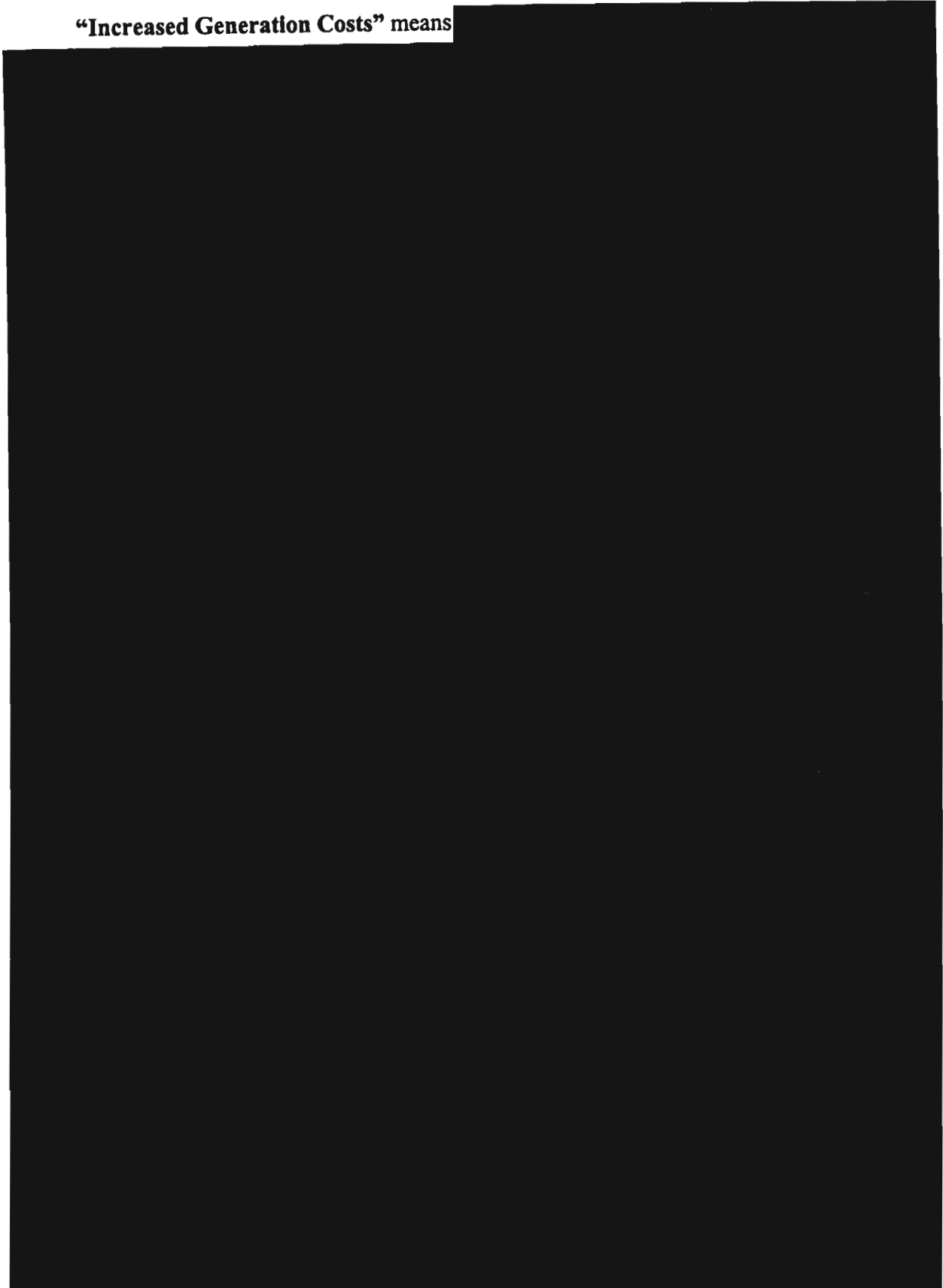
"Guaranty" means a guaranty or other instrument guaranteeing a Party's obligations under this Agreement as contemplated under Article 18.

"Gulf Power" has the meaning set forth in the introductory paragraph hereof.

"IIC" means the Southern Company System Intercompany Interchange Contract among the electric operating companies of Southern Company (or any successor arrangement), as the same may be changed or amended from time to time.

"Imaged Agreement" has the meaning set forth in Section 19.17.

“Increased Generation Costs” means



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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **“kW”** means kilowatt(s).
18 **“kWh”** means kilowatt hour(s).
19 **“Law”** means any act; statute; law; requirement; ordinance; order; ruling or rule;
20 regulation; standards and/or criteria contained in any permit, license or other approval;
21 legislative or administrative action; or a decree, judgment or order of any Government Agency
22 imposed, whether in effect now or at any time in the future.

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“Long Term Firm Transmission Service” means firm point-to-point (or other equivalent) transmission service for a term of one year or more.

“Maintenance Outage” has the meaning set forth in Section 4.2.

“Minimum Schedule Amount” has the meaning set forth in Appendix D.

“MMBtu” means one million Btu.

“Month” means a calendar month.

“Monthly Capacity Payment” means the payment for Contract Capacity to be made by Buyer to Seller pursuant to Section 6.1.

“Monthly Energy Payment” means the payment for Delivered Energy to be made by Buyer to Seller pursuant to Section 6.2.

“Monthly Start Payment” means the payment for Successful Starts to be made by Buyer to Seller pursuant to Section 6.3.

“Moody’s” has the meaning set forth in Section 17.1.

“MW” means megawatt(s).

“MWh” means megawatt hour(s).

“NERC” means the North American Electric Reliability Council, or any successor to its functions.

“OATT” means the Open Access Transmission Tariff of Southern Companies or a successor tariff governing transmission on the Southern Company Transmission System, as the same may be changed or amended from time to time.

“Operating Committee” has the meaning set forth in Section 4.5.

“Operating Procedures” has the meaning set forth in Section 4.4.

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“Outage Capacity” means, for any hour in which a Forced Outage occurs or is continuing, the product of: (i) the portion of the Total Facility Capacity that is not available from the Facility as a result of such Forced Outage; and (ii) the Buyer Percentage.

“Person” means any individual, corporation, limited liability corporation, partnership, joint venture, trust, unincorporated organization, Government Agency or other entity.

“Plant” means Seller’s Plant Robert W. Scherer Units 1 through 4 and all appurtenant facilities located near Juliette, Georgia, as such plant and facilities may be modified and/or expanded from time to time (including the addition of generating units).

“Prior Business Day” means the Business Day immediately prior to a Delivery Day.

“Prime Rate” means, for any Day on which the calculation of an interest amount begins under this Agreement, the “Prime Rate” specified for such Day (or, if such Day is not a Business Day, on the first Business Day following such Day) under the “Money Rate” table of the *Wall Street Journal*. In the event that the *Wall Street Journal* ceases to report a Prime Rate, the Prime Rate shall be the prime rate (or its functional equivalent) charged by the Federal Reserve Bank of Atlanta, Georgia.

“Prudent Industry Practices” means any of the practices, methods, standards and acts (including the practices, methods and acts engaged in or approved by a significant portion of the electric power industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance

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standards recommended by equipment suppliers and manufacturers, applicable design limits and applicable Governmental Approvals and Laws.

“Redirect Deadline” means the deadline established by the applicable transmission provider for requesting the redirect of transmission service under the applicable transmission tariff.

“S&P” has the meaning set forth in Section 17.1.

“Schedule” means the right of Buyer to request the delivery of Scheduled Energy in accordance with this Agreement. Any form of the term Schedule (e.g., “Scheduled,” “Schedules” or “Scheduling”) shall refer to the exercise of such right by Buyer.

“Schedule Shut-Down” means any time Buyer goes from having some energy Scheduled to having no energy Scheduled.

“Schedule Start” means each time that Buyer goes from not having any energy Scheduled to having some amount of energy Scheduled.

“Scheduled Energy” means the amounts of energy, expressed in whole MWh, Scheduled by Buyer to be delivered by Seller in accordance with this Agreement.

“Scheduled Outage” means maintenance and/or outages conducted and/or taken by Seller pursuant to Section 4.1.

“Scheduling Parameters” has the meaning set forth in Appendix D.

“SEARUC” means the Southeastern Association of Regulatory Utility Commissioners.

“Seller” has the meaning set forth in the introductory paragraph hereof.

“Service Commencement Date” means June 1, 2010; provided, however, that such date may be extended by Seller due to a Force Majeure Event for a period equal to the period of delay caused by said Force Majeure Event.

1 **"Southern Company"** means the Southern Company, a publicly held corporation,
2 organized and existing under the laws of the State of Delaware and having its principal place of
3 business in Atlanta, Georgia.

4 **"Southern Company Transmission"** means the functional transmission division of
5 Southern Company and its affiliates, as well as any successor transmission service provider.

6 **"Southern Company Transmission System"** means the integrated transmission
7 systems of the electric operating companies of Southern Company, as such systems may be
8 modified or expanded from time-to-time, as well as any successor transmission system(s).

9 **"Successful Start"** means each time that Seller goes from delivering no energy to
10 delivering an amount of energy at least equal to the Minimum Scheduling Amount during [REDACTED]
11 [REDACTED] of Buyer's Schedule (or such lesser amount of time for which Buyer has
12 requested at least the Minimum Scheduling Amount); provided, however, if Seller interrupts the
13 delivery of energy during Buyer's Schedule (other than pursuant to Buyer's request or a
14 Delivery Excuse), a Successful Start shall not be deemed to have occurred when delivery is
15 resumed pursuant to the same Schedule.

16 **"Taxes"** means any or all ad valorem, property, occupational, severance, emissions,
17 generation, first use, conservation, energy, transmission, utility, gross receipts, privilege, sales,
18 use, excise and other taxes, governmental charges, licenses, fees, permits and assessments;
19 provided, however, the term Taxes shall not include taxes based on net income or net worth.

20 **"Term"** has the meaning set forth in Section 2.1.

21 **"Total Facility Capacity"** means, for each calendar year, the full load capacity rating
22 (or equivalent rating) of the Facility (including the portions of the Facility owned by Gulf Power
23 and Georgia Power) for such year as set forth in the applicable informational filing(s) under the

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IIC made at FERC, adjusted to transmission voltage level. Total Facility Capacity (as may be modified) shall be effective for each applicable calendar year beginning on January 1 of such year.

“Unavailable Capacity” means, for any hour: (i) Outage Capacity for such hour; less (ii) the Delivered Energy Credit; less (iii) if positive, the difference of the available portion of capacity associated with an Alternate Resource(s) that has been designated for such hour pursuant to Section 5.5.1 in response to the Forced Outage causing Outage Capacity to exist, less the Delivered Energy Credit; plus (iv) the unavailable portion of capacity associated with an Alternate Resource(s) designated for such hour pursuant to Section 5.5.1 in response to a Force Majeure Event.

ARTICLE 2

TERM OF AGREEMENT

2.1 Term. Subject to the survival provisions herein, this Agreement shall continue in full force and effect from the Effective Date until the end of the Service Term, or on such earlier date on which this Agreement is terminated in accordance with its terms (“Term”).

2.2 Service Term. Subject to early termination of this Agreement as provided hereunder, Seller’s obligation to provide and sell and Buyer’s obligation to accept and purchase Contract Capacity and Scheduled Energy shall extend from the Service Commencement Date through December 31, 2015 (“Service Term”).

2.3 Survival. All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

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2.4 Effect of Termination. Subject to the exercise of a non-defaulting Party's rights under Section 14.2, in the event that this Agreement is terminated, the rights and obligations of the Parties hereunder shall continue unaffected until the termination is effective in accordance with the terms and conditions thereof. Any termination of this Agreement shall not relieve Buyer of its obligation to pay any unpaid invoices for any Contract Capacity made available and Delivered Energy prior to the effective date of such termination, relieve Seller of its obligation to provide Contract Capacity and to deliver Scheduled Energy prior to the effective date of such termination, or relieve either Party of any of its other liabilities or obligations accruing prior to termination.

ARTICLE 3

SALE AND PURCHASE OF CAPACITY AND ENERGY

3.1 Sale and Purchase of Capacity. Subject to the terms and conditions of this Agreement, beginning on the Service Commencement Date and until the end of the Service Term, Seller shall make available and sell to Buyer, and Buyer shall accept and purchase, the Contract Capacity.

3.2 Sale and Purchase of Energy. Subject to the terms and conditions of this Agreement, beginning on the Service Commencement Date and until the end of the Service Term, Seller shall deliver and sell to Buyer, and Buyer shall accept and purchase from Seller, energy up to the Contract Capacity as and when Scheduled by Buyer.

ARTICLE 4

FACILITY MAINTENANCE

4.1 Scheduled Outages. Commencing in 2010 and each year thereafter, Seller shall submit to Buyer, before February 1, a schedule of Facility outages during which maintenance

1 and/or the installation of equipment required by Law or Prudent Industry Practices will be
2 performed for the next Contract Year ("Scheduled Outages"). Such maintenance and outages
3 shall be scheduled in accordance with Prudent Industry Practices. Prior to or during any
4 Contract Year, Seller may reschedule any Scheduled Outages in accordance with Prudent
5 Industry Practices.

6 **4.2 Maintenance Outages.** [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 **4.3 Permits and Compliance with Laws.**

16 4.3.1 Subject to the right of Contest, each Party shall acquire and maintain in
17 effect all Governmental Approvals necessary for it to perform its obligations under this
18 Agreement.

19 4.3.2 Subject to the right of Contest, each Party shall at all times comply with
20 all Laws and Governmental Approvals applicable to such Party that are necessary for such Party
21 to perform its obligations under this Agreement.

22 **4.4 Operating Procedures.** Buyer and Seller shall begin to develop written
23 Operating Procedures no later than six (6) months before the Service Commencement Date.

1 Such Operating Procedures shall be completed no later than thirty (30) Days before the Service
2 Commencement Date. The Operating Procedures shall establish the protocol under which the
3 Parties shall perform their respective responsibilities under this Agreement, including method of
4 Day-to-Day communications, key personnel lists, and logging and tracking of hours of EUH
5 and EFMH, Scheduled Outages, Maintenance Outages and hours of Delivery Excuse.

6 **4.5 Operating Committee.** The Parties shall form a committee to act in matters
7 relating to the performance of their respective obligations under this Agreement (“Operating
8 Committee”). Each Party shall appoint one representative and one alternate representative to
9 serve on the Operating Committee. The Parties shall notify each other in writing of such
10 appointments and any changes thereto. The Operating Committee shall have no authority to
11 modify the terms or conditions of this Agreement. Beginning in 2009, the Operating
12 Committee shall meet no less than two times per calendar year (which meetings may be by
13 telephone), and all of its decisions must be the unanimous decision of the representatives.
14 Within a reasonable time after the conclusion of each meeting of the Operating Committee, the
15 representatives of each Party shall exchange written summaries of such meeting, including a
16 description of issues discussed and decisions made.

17 **ARTICLE 5**

18 **SCHEDULING AND THE PROVISION OF CAPACITY AND ENERGY**

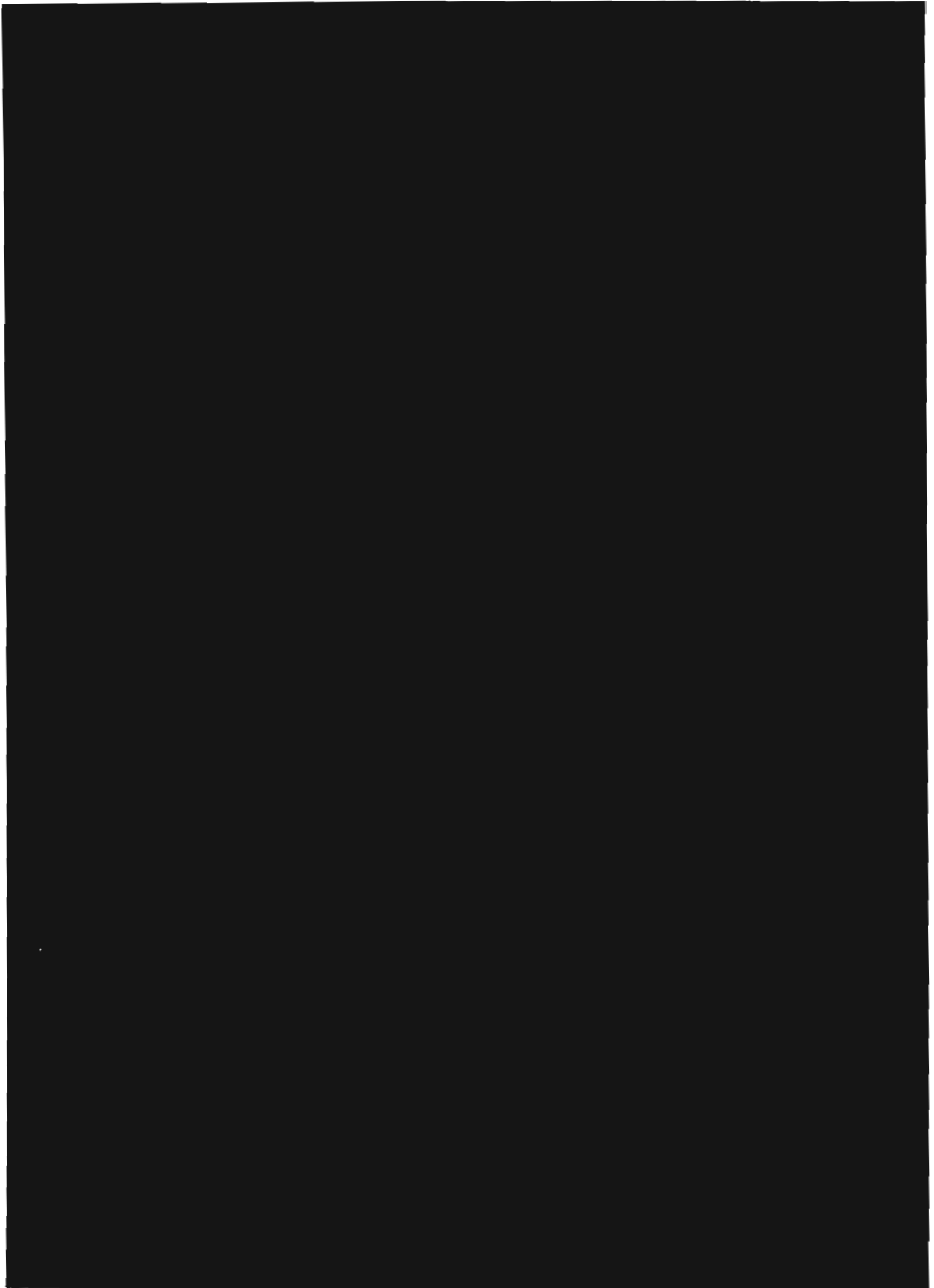
19 **5.1 Scheduling.**

20 **5.1.1** [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]



1 **5.2 Transmission and Scheduling Requirements.** Buyer shall be responsible for
2 complying with all transmission reservation, scheduling and tagging requirements associated
3 with energy provided hereunder at and after the Delivery Point.

4 **5.3 Costs and Expenses.** Except as specifically provided hereunder, all costs and
5 expenses associated with Delivered Energy at and after the Delivery Point shall be the sole
6 responsibility of Buyer. Except as specifically provided hereunder, all costs and expenses
7 associated with Delivered Energy prior to the Delivery Point shall be the responsibility of
8 Seller. Any penalties associated with Delivered Energy shall be the responsibility of the Party
9 whose action or inaction caused the penalty to be assessed.

10 **5.4 Delivery of Energy.** Subject to the terms of this Agreement and the Scheduling
11 Parameters, energy provided by Seller pursuant to Buyer’s Schedule shall be deemed to be
12 delivered at the Delivery Point.

13 **5.5 Alternate Resources.**

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

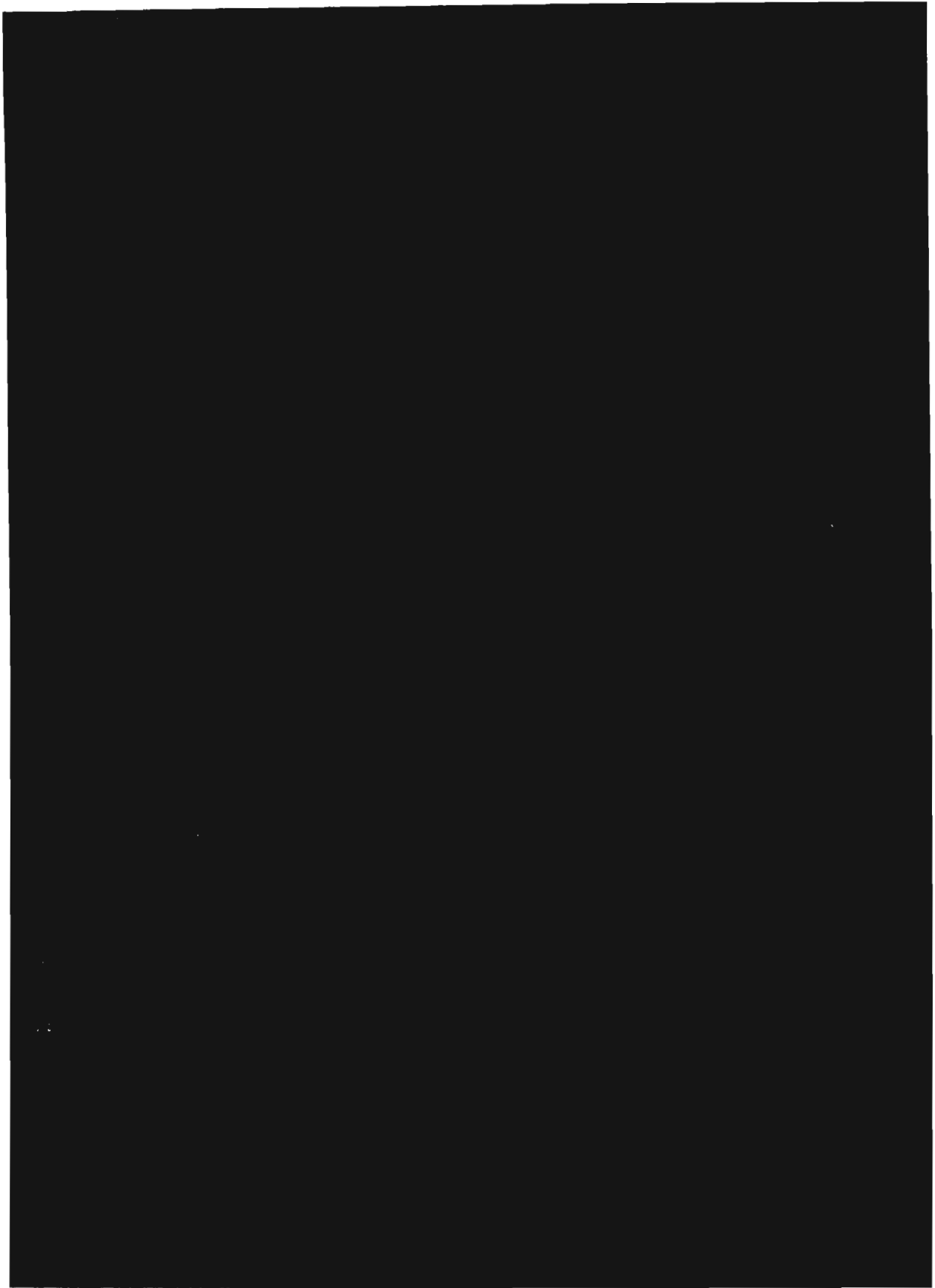
19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]







1 [REDACTED]
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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

5.6 Unavailability of an Alternate Resource(s).

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 **5.7 Seller's Rights to the Facility.** To the extent Buyer has not submitted a
20 Schedule requesting energy associated with the full Contract Capacity, and/or to the extent
21 Scheduled Energy is being provided from Alternate Resources, Seller shall have the right to
22 dispatch the Facility to utilize for its own purposes energy from the Facility not Scheduled
23 and/or replaced with Alternate Energy.

1 **5.8 Title and Risk of Loss.** Seller shall be deemed to be in exclusive control of the
2 Delivered Energy prior to the Delivery Point. Buyer shall be deemed to be in exclusive control
3 of the Delivered Energy at and after the Delivery Point. Custody, title and risk of loss of
4 Contract Capacity and Delivered Energy shall transfer from Seller to Buyer at the Delivery
5 Point.

6 **5.9 Force Majeure Event.**

7 5.9.1 For any hour in which a Force Majeure Event affecting the Facility or the
8 electric facilities prior to the Facility Delivery Point occurs or is continuing, Seller shall only be
9 obligated to deliver to Buyer the lesser of: (i) Scheduled Energy; or (ii) energy associated with
10 the difference of the Contract Capacity less Force Majeure Capacity. In addition, to the extent
11 of such Force Majeure Event, Seller may elect in its sole discretion pursuant to the procedures
12 under Section 5.5 (but shall not be required) to deliver Scheduled Energy from Alternate
13 Resources.

14 5.9.2 For any hour during which a Force Majeure Event affecting the Facility
15 or the electric facilities prior to the Facility Delivery Point occurs or is continuing, Seller shall
16 be required to accumulate EFMH (as applicable) for such hour. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 **5.10 Forced Outages and Unavailable Capacity.**

2 5.10.1 Seller shall notify Buyer as soon as reasonably practicable of: (i) the
3 occurrence of any Forced Outage that is expected to result in Outage Capacity and the estimated
4 duration of such outage; (ii) the cessation of such Forced Outage; and (iii) if requested by Buyer
5 within 30 Days after the outage and if known to Seller, the cause of such outage.

6 5.10.2 For any hour during which there is Unavailable Capacity, Seller shall
7 be required to accumulate EUH (as applicable) for such hour [REDACTED]
8 [REDACTED], Seller's sole and exclusive liability and Buyer's
9 sole and exclusive remedy for Seller's failure to provide capacity and/or energy from any
10 resource under this Agreement shall be [REDACTED]

11 [REDACTED]

12 **5.11 Delivery Excuse.** For any hour in which a Delivery Excuse is occurring or is
13 continuing, Seller shall not be obligated to deliver, and Buyer shall not be entitled to receive, or
14 submit a Schedule for, Scheduled Energy. In such event, Seller shall not be required to
15 accumulate EFMH or EUH. Buyer shall not be relieved of its performance obligations during a
16 Delivery Excuse, including its obligation to pay Seller the Monthly Capacity Payment.

17 **5.12 Scheduled and Maintenance Outages.** Buyer shall not have the right to
18 submit a Schedule for any period of time during which maintenance is being performed and/or
19 outages are taken consistent with Sections 4.1 and 4.2.

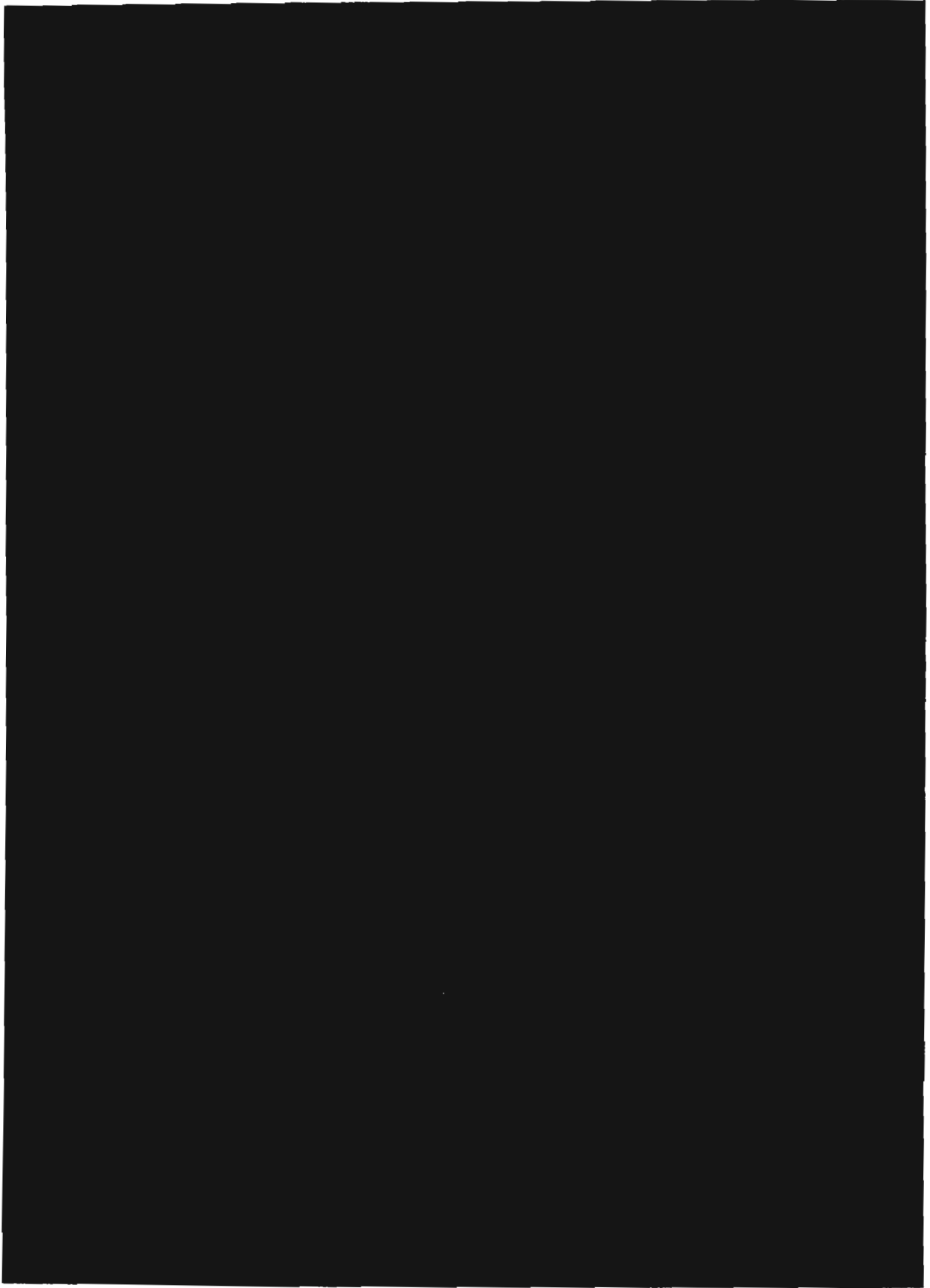
20 **5.13 Available Capacity.** [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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[Redacted text block]

5.14 Early Termination

[Redacted text block]



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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

ARTICLE 6

PAYMENTS

6.1 Capacity Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Capacity Payment for the Contract Capacity. The calculation of the Monthly Capacity Payment is set forth in Appendix A.

6.2 Energy Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Energy Payment. The calculation of the Monthly Energy Payment is set forth in Appendix B.

6.3 Start Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Start Payment. The calculation of the Monthly Start Payment is set forth in Appendix C.

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6.4 Additional Payments. In addition to the payments specified in this Article 6, the Parties shall pay all amounts due pursuant to the other provisions of this Agreement.

ARTICLE 7

TRANSMISSION SERVICE

7.1 Buyer Obligations. Buyer, or its designee, shall have the sole and exclusive responsibility at all times to arrange, obtain, contract and pay for any and all transmission service and ancillary services required (including service under any applicable transmission tariff) to deliver any energy hereunder from and beyond the Delivery Point. Buyer assumes all risk associated with the availability, adequacy and cost of such transmission service and ancillary services.

7.2 Seller Obligations. Seller, or its designee, shall have the sole and exclusive responsibility at all times to arrange, obtain, contract, and pay for any and all transmission service required to deliver energy hereunder to the Delivery Point.

7.3 Imbalances and Penalties. Upon receiving notice of any interruption of the delivery of energy under this Agreement for any reason (e.g., a Forced Outage or a Force Majeure Event), Buyer shall promptly notify the applicable transmission provider and/or system operator in order to avoid any energy imbalances. Any penalties or imbalances (including associated costs) resulting from actions or inactions of Buyer (including the failure to provide required notice to the applicable transmission provider and/or system operator), its designee or any third party to which Buyer may be supplying the capacity and energy provided hereunder will be the responsibility of Buyer as between the Parties. Any penalties or imbalances (including associated costs) resulting from actions or inactions of Seller or its designee will be the responsibility of Seller as between the Parties. If either Party incurs any costs associated

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with penalties or imbalances that are the responsibility of the other Party under this Section, such other Party shall provide prompt reimbursement of such costs.

7.4 Buyer's Request for Transmission Service.

7.4.1 Within 30 Days after the Effective Date, Buyer shall request from Southern Company Transmission (including by submitting such request on Southern Company Transmission's OASIS and completing any required application(s)) 165 MW of Long Term Firm Transmission Service from the Facility Delivery Point to the Florida Interface, such service to commence on June 1, 2010 ("Requested Service"). As entered into Southern Company Transmission's OASIS, such request shall designate the point of delivery as "FPL." In addition, from the Effective Date, Buyer shall make and/or continue Commercially Reasonable Efforts to have Southern Company Transmission provide Buyer with an offer to provide the Requested Service no later than December 1, 2005 ("Transmission Deadline"); provided, however, the Transmission Deadline shall automatically be extended on a Month to Month basis until either Party provides timely notice to the other that it does not desire for the Transmission Deadline to be extended under this Agreement and in Section 7.4.1 of both of the other Contemporaneous Agreements. Such notice must be provided no later than 5 Days prior to the then existing Transmission Deadline (as may be extended). Notwithstanding the foregoing, the Transmission Deadline in this Agreement shall be extended only to the same extent as such deadline is also extended under Section 7.4.1 of both of the other Contemporaneous Agreements.

7.4.2 No later than 2 Business Days after the earlier of: (i) the Transmission Deadline; (ii) Southern Company Transmission's notice to Buyer that it will not be able to provide any of the Requested Service to Buyer; or (iii) Southern Company Transmission's

1 notice to Buyer that it will be able to provide some or all of the Requested Service to Buyer,
2 Buyer shall notify Seller ("Transmission Notice") of the total amount of the Requested Service
3 that Southern Company Transmission is able to provide to Buyer at any price and cost ("SCT
4 Service"). In the event that the total cost ("Total Cost") of any portion of the SCT Service is
5 higher than the embedded rate for Long Term Firm Transmission Service under the OATT
6 ("Tariff Rate"), the Transmission Notice shall specify the amount of SCT Service offered at a
7 Total Cost higher than the Tariff Rate and include any and all documentation of such Total Cost
8 provided to Buyer by Southern Company Transmission. For purposes of this Section 7.4,
9 "Total Cost" shall mean those costs that would be imposed on Buyer directly by the applicable
10 transmission provider for the Requested Service.

11 7.4.3 Within 2 Business Days after its receipt of the Transmission Notice,
12 Seller may offer to sell to Buyer (including by reassignment) up to 165 MW of Long Term Firm
13 Transmission Service from the Facility Delivery Point to the Florida Interface on any applicable
14 transmission system, such service to commence on June 1, 2010 ("Seller Service"). Such offer
15 shall set forth the amount of Seller Service and the price for such service. For purposes of this
16 Agreement the sum of the Seller Service and the SCT Service shall be referred to as the
17 "Available Service."

18 7.4.4 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 7.4.5 Once the procedures in Sections 7.4.1 through 7.4.4 have been completed
5 (as applicable), Buyer may elect to reduce the Contract Capacity for the Service Term by an
6 amount up to the sum of: [REDACTED]

7 [REDACTED]

8 Buyer shall notify Seller of such election within three (3) Business Days after the later of the
9 date of (if applicable) the Reduction Notice, receipt of Seller's offer under Section 7.4.3 or the
10 Transmission Notice ("Election Deadline"). In addition, after the procedures in Sections 7.4.1
11 through 7.4.4 have been completed (as applicable), if Available Service of at least [REDACTED] MW is
12 not available to Buyer so that Buyer is in effect able to procure Long Term Firm Transmission
13 Service from the Facility at a Total Cost equal to or less than the Tariff Rate (taking into
14 account any offset of Excess Cost by Seller), Buyer may provide notice to Seller that it will
15 terminate this Agreement. Such notice must be provided no later than the Election Deadline.

16 7.4.6 If Buyer elects, pursuant to Section 7.4.5, to reduce the Contract Capacity
17 by an amount greater than [REDACTED] MW, Seller shall be entitled to either: [REDACTED]

18 [REDACTED] Seller shall provide Buyer with notice of
19 its election of either (i) or (ii) no later than 2 Business Days after its receipt of Buyer's notice to
20 reduce the Contract Capacity. If Seller accepts the reduction in Contract Capacity, the Parties
21 shall mutually agree on modifications to this Agreement in order to reflect such reduction.

22 7.4.7 In the event that either Party provides notice to the other Party under this
23 section 7.4 that it has elected to terminate this Agreement, this Agreement and the other

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Contemporaneous Agreements shall immediately terminate. Upon such termination, no Party shall have any further obligation under any of the Contemporaneous Agreements except for any liabilities and/or obligations accruing prior to such termination. The Parties acknowledge that the other Contemporaneous Agreements contain a provision similar to this Section 7.4.7 and that this Agreement is subject to termination as provided in such similar provisions.

7.4.8 Nothing in this Section 7.4 shall be construed as requiring Buyer to actually purchase any transmission service.

7.4.9 The MW amounts set forth in this Section 7.4 refer to MW amounts at the Facility Delivery Point. As appropriate and/or required, such amounts shall be adjusted consistent with the OATT (or other applicable transmission tariff) to reflect transmission losses to the Florida Interface (e.g., including for purposes of submitting the required transmission service request through Southern Company's OASIS and/or other required application(s) for such service).

7.5 Regional Transmission Organizations.

7.5.1 In the event that a Regional Transmission Organization(s) or similar organization ("RTO") is formed and such formation materially changes the scheduling requirements and/or costs associated with the delivery of energy to and/or from the Delivery Point, Seller shall be solely responsible for complying with all scheduling requirements and paying all such costs to the Delivery Point (including but not limited to all congestion and/or basis costs). In addition, Buyer shall be solely responsible for complying with all scheduling requirements and paying all such costs at and beyond the Delivery Point to any other point(s) of delivery (including but not limited to all congestion and/or basis costs). Seller agrees to indemnify and hold harmless Buyer for any costs and expenses incurred by Buyer that are

1 Seller's responsibility under this Section 7.5.1. Buyer agrees to indemnify and hold harmless
2 Seller for any costs and expenses incurred by Seller that are Buyer's responsibility under this
3 Section 7.5.1.

4 7.5.2 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19

ARTICLE 8

20

ELECTRIC METERING

21

8.1 Metering. At no cost to Buyer, Seller shall be responsible for performing, or

22

causing to be performed, the installation, maintenance, testing and calibration of the Electric

23

Metering Equipment owned by Seller and/or its Affiliates at the Delivery Point(s).

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8.2 Industry Standards. All Electric Metering Equipment owned by Seller and/or its Affiliates at the Delivery Point(s), shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Industry Practices.

8.3 Records. The Parties shall maintain accurate and detailed records relating to the metering of energy at the Delivery Point(s) for one year or for such longer period as may be required by an applicable Government Agency or Law. All records shall be available for inspection by either Party upon reasonable notice.

8.4 Meter Errors. If the Electric Metering Equipment at the Delivery Point(s) fails to register, or if the measurement made by a metering device is found upon testing to vary by more than 0.5% from the measurement made by the standard meter used in a test, an adjustment shall be made correcting all measurements of energy made by the Electric Metering Equipment during: (i) the actual period when inaccurate measurements were made, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the latter half of the period from the date of the last test of the Electric Metering Equipment to the date such failure is discovered or such test is made (each being an "Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (ii) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test.

ARTICLE 9

BILLING AND PAYMENT

1
2
3 **9.1 Timing and Method of Payment.** Seller will submit to Buyer, as promptly as
4 practicable after the first of each Billing Month, an invoice (by mail, facsimile or electronic
5 means) for the amounts due under the terms of this Agreement for the preceding Month.
6 Amounts due pursuant to such invoice shall be due and payable on [REDACTED]
7 [REDACTED] ("Payment Due
8 Date"). Such invoice shall include adjustments (either a charge or a credit, as applicable) as
9 expressly provided pursuant to Appendix B. If the Payment Due Date falls on a Day that is not
10 a Business Day, the Payment Due Date shall be the next Business Day. Payment shall be made,
11 on or before the due date, to Seller in accordance with the invoice in immediately available
12 funds through wire transfer, or other mutually agreeable method.

13 **9.2 Late Payment.** Amounts that are owed Seller shall, if not remitted within the
14 time period specified under Section 9.1, be subject to a late payment charge equal to the interest
15 calculated pursuant to Section 19.7, accrued and payable on a Monthly basis with respect to the
16 unpaid amount. Such late payment charge shall accrue from the due date of such amount until
17 the date on which it is paid.

18 **9.3 Disputed Billings.** In the event that either Party has a bona fide dispute with any
19 invoice submitted hereunder, such Party shall inform the other Party in writing of its grounds
20 for disputing such invoice. [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 **9.4 Adjustments.** If any overcharge or undercharge in any form whatsoever shall at
7 any time be found and the invoice therefor has been paid, the Party that has been paid the
8 overcharge shall refund the amount of the overcharge to the other Party, and the Party that has
9 been undercharged shall pay the amount of the undercharge to the other Party, within thirty (30)
10 Days after final determination thereof; provided, however, that no retroactive adjustment shall
11 be made for any overcharge or undercharge unless written notice of the same is provided to the
12 other Party within a period of 12 Months from the date of the invoice in which such overcharge
13 or undercharge was first included. Any such adjustments shall be made with interest calculated
14 in accordance with Section 19.7 from the date that the undercharge or overcharge actually
15 occurred.

16 **9.5 Audit Rights.** Subject to Section 8.3, the Parties shall keep complete and
17 accurate records of their operations under this Agreement and shall maintain such data for a
18 period of at least 2 years after the completion of the relevant Billing Month hereunder;
19 provided, however, records relating to a disputed matter shall be retained until the dispute is
20 resolved. Such records shall be available for inspection and audit by the other Party upon
21 reasonable request during any regular Business Day.

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ARTICLE 10

REGULATORY

10.1 Initial Approval of the Florida Public Service Commission.

10.1.1 No later than 90 Days after the Effective Date, Buyer shall make a filing with the Florida Public Service Commission ("FPSC") seeking approval for Buyer to recover from its customers all payments required to be made to Seller under the Contemporaneous Agreements without material modification or condition with respect to such agreements ("FPSC Approval"). After making such filing, Buyer shall utilize diligent efforts to obtain the FPSC Approval for the Contemporaneous Agreements by no later than 180 Days after the Effective Date ("Approval Deadline"). Seller agrees to reasonably assist and support Buyer's efforts to obtain the FPSC Approval. Buyer shall promptly notify Seller when it receives the FPSC Approval.

10.1.2 If FPSC Approval for the Contemporaneous Agreements is not received by the Approval Deadline, but the date of the Transmission Notice under Section 7.4.2 has not yet occurred and the FPSC has not yet issued an order denying the Buyer's request for FPSC Approval ("FPSC Denial"), the Approval Deadline shall automatically be extended until the date of the Transmission Notice. During this extended period, Buyer shall keep Seller closely informed as to the progress of its efforts to obtain FPSC Approval and Buyer shall continue diligent efforts to obtain FPSC Approval.

10.1.3 If FPSC Approval is not received by the Approval Deadline (as extended under Section 10.1.2) or if an FPSC Denial is issued prior to the Approval Deadline, Buyer shall provide notice to Seller within 30 Days after the Approval Deadline or the FPSC Denial (whichever occurs first) that it desires to either: (i) terminate all (but not less than all) of

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the Contemporaneous Agreements, in which case all of the Contemporaneous Agreements shall immediately terminate; or (ii) continue all (but not less than all) of the Contemporaneous Agreements regardless of FPSC Approval. If Buyer elects option (ii) under the foregoing sentence, all of the Contemporaneous Agreements shall continue in full force and effect for the Term notwithstanding any subsequent action or inaction of the FPSC (including the subsequent issuance of a FPSC Denial or failure to issue an FPSC Approval).

10.1.4 The Parties acknowledge that the other Contemporaneous Agreements contain provisions that are substantially similar to Sections 10.1.1 through 10.1.3 above and that this Agreement may be subject to termination as provided in such similar provisions.

10.1.5 After the procedures in Sections 10.1.1, 10.1.2, and 10.1.3 (as applicable) have been completed, except as provided under Section 10.3, at no time shall this Agreement be subject to termination or modification due to any action or inaction of any Government Agency or Buyer's inability to recover from its customers amounts to be paid to Seller pursuant this Agreement whether such inability is due to action of any Government Agency or otherwise.

10.2 Changes in Agreement. Except for any changes pursuant to Section 10.3, absent the agreement of all Parties to the proposed change, the standard of review for changes to this contract proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. (1956) (the "Mobile-Sierra" doctrine).

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10.3 Federal Energy Regulatory Commission.

10.3.1 The Parties anticipate that this Agreement is not required to be filed and accepted by FERC because it is a market-based contract. Therefore, this Agreement shall not be contingent on FERC acceptance. Having freely negotiated and agreed upon the economic bargain among them as set forth hereunder, Seller and Buyer waive all rights under Sections 205 and 206 of the Federal Power Act to effect a change in the Agreement. Moreover, it is the Parties' mutual intent that FERC be precluded, to the fullest extent permitted by law, from altering this Agreement in any way. Notwithstanding the foregoing, if at any time FERC takes some action that reduces the economic benefit of this Agreement to either Party ("Impacted Party") as contemplated on the Effective Date ("Original Economic Benefit"), Impacted Party shall be deemed to have retained rights under Section 205 to file for changes in the Agreement, but only to the extent required to restore the Original Economic Benefit.

10.3.2 Impacted Party may exercise its Section 205 rights provided under Section 10.3.1 if at any time it reasonably determines in its sole discretion that it may be able to have some or all of the Original Economic Benefit restored. Before exercising such rights, Impacted Party shall negotiate with the other Party in an effort to reach mutual agreement regarding amendments to this Agreement (including amendments regarding those provisions addressing the determination of payments between the Parties and adjustments to capacity payments due to unavailability) that would restore some or all of the Original Economic Benefit. Impacted Party shall file any resulting amendments for acceptance by FERC, and the other Party shall actively support such filing(s). If the Parties are unable to agree upon such amendment(s), Impacted Party shall be entitled to make unilateral filing(s) at FERC to modify the Agreement in order to restore some or all of the Original Economic Benefit. In this latter

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event, the other Party shall actively support Impacted Party's right to recover the Original Economic Benefit, including by making filings at FERC (provided that the non-impacted Party shall retain the right to challenge the amount of and/or the methodology for calculating the Original Economic Benefit).

10.3.3 Any amendment(s) or unilateral filing(s) contemplated hereunder shall restore the Original Economic Benefit (or any allowed portion thereof) for the remainder of the Term, including any portion of the Original Economic Benefit associated with prior periods (with interest). Such amendment(s) or filing(s) by the Impacted Party shall not require the other Party to bear more of an economic burden than originally contemplated in this Agreement on the Effective Date. Nothing in this Agreement is intended to or shall restrict the number of times that a Party may exercise the above-described Section 205 rights during the Term or within any specific time frame.

ARTICLE 11

CHANGE IN LAW

11.1 **Increased Generation Costs.** The Parties acknowledge that during the Term of this Agreement, Changes in Law that increase Seller's cost of providing capacity and/or energy hereunder could occur. Any Increased Generation Costs will be paid by Buyer through an additional payment or surcharge each Month ("Change in Law Surcharge"). Once Seller has incurred Increased Generation Costs, Buyer shall pay for all Increased Generation Costs through the Change in Law Surcharge, as provided below.

11.2 **Determination.** If Seller determines that a Change in Law will or has resulted in Increased Generation Costs and that Buyer is responsible for such costs under this Agreement, Seller shall, within six (6) Months after identifying such costs, notify Buyer of: (a) the

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applicable Change in Law giving rise to the Increased Generation Costs; and (b) the resulting Increased Generation Costs. Provided, however, the failure by Seller to provide such notice within such time period shall not under any circumstance result in an Event of Default, nor shall such failure prejudice or affect in any way Seller's right to receive reimbursement from Buyer for any Increased Generation Costs under this Agreement. Provided further, such notice by Seller shall include reasonable documentation of the applicable Change in Law and resulting Increased Generation Costs. Within sixty (60) Days after receipt of such notice, Buyer will: (i) make a good faith determination of whether the Increased Generation Costs result from a Change in Law as specified in this Agreement; (ii) make a good faith determination of whether the Increased Generation Costs are determined in accordance with this Agreement; and (iii) provide Seller written notice of its determination. In the event that Buyer does not provide written notice of its determination within such time period, Buyer shall be deemed to have concurred that the specified Increased Generation Costs result from a Change in Law. If Buyer does not concur, the Parties shall commence discussions in an effort to address and resolve the basis for Buyer's disagreement. If the Parties are unable to resolve their disagreement within thirty (30) Days after commencing such discussions, the Parties shall submit the issue to arbitration under the procedures set forth in Section 16.2. The arbitrators shall determine whether a Change in Law has occurred and, if so, the amount of the resulting Increased Generation Costs.

11.3 Initiation of Surcharge. In the event that Increased Generation Costs result from a Change in Law, Seller shall provide Buyer with written notice of a Change in Law Surcharge or an increase in an existing Change in Law Surcharge to recover Increased Generation Costs. No earlier than thirty (30) Days thereafter, Seller may initiate a Change in

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Law Surcharge (or, if applicable, an increase in an existing Change in Law Surcharge) consistent with such notice. Provided, however, Seller shall reduce any Change in Law Surcharge to the extent that any costs included in such surcharge are not incurred. After the end of the Term, Seller shall not be entitled to initiate a Change in Law Surcharge, an increase in an existing Change in Law Surcharge, or any other additional charge intended to recover costs resulting from a Change in Law unless: (i) Seller has provided Buyer with notice of the applicable Change in Law, surcharge or increase prior to the expiration of the Term; and (ii) the costs Seller seeks to recover were incurred during the Service Term as a result of such Change in Law.

11.4 Timing. Any Change in Law Surcharge (or increase in an existing Change in Law Surcharge) hereunder due to Increased Generation Costs shall recognize the timing of the Increased Generation Costs (including the recovery through such payments of amounts associated with the Increased Generation Costs in prior periods, with interest) for which Buyer is responsible under this Agreement.

ARTICLE 12

LIABILITY ALLOCATION; LIMITATIONS ON LIABILITY

12.1 Costs, Taxes and Charges. Except as otherwise provided in this Agreement, in addition to all other amounts due and payable under this Agreement: (i) Seller shall be responsible for all costs, Taxes, and charges of any kind prior to the Delivery Point relating to the delivery of energy and provision of capacity under this Agreement, transmission, and/or related services (by way of clarification of the foregoing, Taxes prior to the Delivery Point include: ad valorem taxes); and (ii) Buyer shall be responsible for all costs, Taxes, and charges of any kind at and after the Delivery Point relating to the delivery of energy and provision of

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capacity under this Agreement, transmission, and/or related services (by way of clarification of the foregoing, Taxes at and after the Delivery Point include: any Taxes incurred in connection with sales of the Delivered Energy). Each Party shall provide the other Party upon written request a certificate of exemption or other reasonably satisfactory evidence of exemption if any exemption from or reduction of any Tax is applicable. Each Party shall exercise Commercially Reasonable Efforts to obtain and to cooperate in obtaining any exemption from or reduction of any Tax. In addition, each Party shall be responsible for paying its own income taxes and net worth taxes on it or its property.

12.2 Indemnification. Unless otherwise agreed in writing by the Parties, Seller and Buyer shall each defend, indemnify and save harmless, on an After-Tax Basis, the other and their respective officers, directors, servants, agents, employees and representatives from and against any and all claims, demands, costs or expenses (including reasonable attorneys' fees) for loss, damage or injury to any person, property or interest arising out of or in any way related to this Agreement to the extent such loss, damage or injury occurs on its own side of the Delivery Point, irrespective of negligence, whether actual or claimed, of the other. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

12.3 Limitation of Liability.

12.3.1 THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH HEREIN. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

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12.3.2 SUBJECT TO SECTION 14.2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OF THAT PARTY, FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR CONTRACT, UNDER ANY PROVISION OF INDEMNITY OR OTHERWISE. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

12.3.3 In the event that any provision of this Section 12.3 is held to be invalid or unenforceable, this Section shall be void and of no effect solely to the extent of such invalidity or unenforceability, and no claim arising out of such invalidity or lack of enforceability shall be made by one Party against the other or its officers, agents, or employees. Notwithstanding the foregoing, this Section 12.3 shall not limit or negate the right of either Party to be fully indemnified as provided in Section 12.2 or limit the remedies set forth in this Agreement for an Event of Default.

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12.3.4 Without prejudice to the obligations and liabilities of an entity pursuant to an Eligible Guaranty, neither any Affiliate of a Party nor any stockholder, officer, director or employee of a Party or of any Affiliate of a Party (collectively, the "Nonrecourse Persons") shall have any liability to the other Party for the payment of any sums now or hereafter owing by such Party or for the performance of any of the obligations of such Party contained herein, and each of the Parties hereto agrees that all of the obligations of the other Party under this Agreement shall be obligations solely of such other Party and recourse in enforcing said obligations shall only be had against the assets of such other Party; provided that the foregoing provision shall not constitute a waiver, release or discharge of any of the terms, covenants or conditions of this Agreement or any Eligible Guaranty and the same shall continue until fully paid, discharged, observed or performed.

ARTICLE 13

FORCE MAJEURE EVENT

13.1 Force Majeure Event Defined.

13.1.1 As used herein, an Event of Force Majeure with respect to a Party means an occurrence, non-occurrence, or set of circumstances that is beyond the reasonable control of such Party and is not caused by the fault or negligence of such Party, including but not limited to acts of God, strike, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, or terrorism, which, by the exercise of due diligence, it is unable to overcome.

13.1.2 Notwithstanding anything contained in Section 13.1.1, the term Force Majeure shall not include any of the following:

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- (i) the inability of Buyer, for any reason, to obtain or maintain adequate transmission service from and after the Delivery Point;
- (ii) a change or circumstance in market conditions that affect the cost, price, or demand for capacity and/or energy from the Facility;
- (iii) a change or circumstance in market conditions or otherwise that affects the economic value of this Agreement to any Party;
- (iv) an increase in costs or expenses to any Party as a result (either directly or indirectly) of such Party's performance under this Agreement;
- (v) a change in Law, action or inaction by any Governmental Agency or the inability to comply with any Law; or
- (vi) any event or circumstance that qualifies as a Delivery Excuse.

13.2 Applicability of Force Majeure Event. Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement (except for such Party's performance of its payment obligations hereunder, which shall not be excused by any Force Majeure Event) to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

13.2.1 The non-performing Party shall give the other Party written notice within three (3) Business Days of the commencement of the Force Majeure Event, with available details to be supplied within fifteen (15) Days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

13.2.2 The delay in performance shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

1 13.2.3 The Party whose performance is delayed or prevented shall proceed
2 with Commercially Reasonable Efforts to overcome the events or circumstances preventing or
3 delaying performance and shall, as requested (but not more often than weekly), provide written
4 progress reports to the other Party during the period that performance is delayed or prevented
5 describing actions taken and to be taken to remedy the consequences of the Force Majeure
6 Event, the schedule for such actions and the expected date by which performance shall no
7 longer be affected by the Force Majeure Event; and

8 13.2.4 When the performance of the Party claiming the Force Majeure Event
9 is no longer being delayed or prevented, that Party shall give the other Party written notice to
10 that effect.

11 **13.3 Effect of Force Majeure Event.**

12 13.3.1 Except for the obligation of either Party to make any required payments
13 under this Agreement, the Parties shall be excused from performing their respective obligations
14 under this Agreement and shall not be liable in damages or otherwise if and to the extent that they
15 are unable to so perform or are prevented from performing by a Force Majeure Event.

16 13.3.2 To the extent Seller is unable to provide Contract Capacity or Scheduled
17 Energy from the Facility due to a Force Majeure Event, Seller shall be excused from performance
18 hereunder and shall not be required to provide capacity and/or energy from other resources
19 (including Alternate Resources) in order to satisfy Buyer's Schedule; provided, however, to the
20 extent Seller does provide capacity and/or energy at its sole option to satisfy Buyer's Schedule
21 consistent with this Agreement, [REDACTED]

22 [REDACTED]

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13.4 Early Termination. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

6 ARTICLE 14

7 EVENT OF DEFAULT

8 14.1 Event of Default. The occurrence of any one or more of the following events
9 with respect to a Party shall constitute an "Event of Default" attributable to such Party under
10 this Agreement:

11 14.1.1 The failure by a Party to make payment to the other Party for amounts
12 due under this Agreement after said amounts have become due and payable and such failure is
13 not cured within fifteen (15) Days after receiving written notice of such failure from the Party to
14 which such payments are due;

15 14.1.2 A Party or any Person guaranteeing such Party's obligations hereunder
16 (a "Guarantor") shall: (i) admit in writing its inability to pay its debts as such debts become
17 due; (ii) make a general assignment or an arrangement or composition with or for the benefit of
18 its creditors; (iii) take any action for the purpose of effectuating any of the foregoing; or (iv) fail
19 to comply with the terms and conditions of its Guaranty;

20 14.1.3 A proceeding or case shall be commenced by a Party or against a Party
21 with the consent of such Party or by its Guarantor or against its Guarantor with the consent of
22 such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation,
23 reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its

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debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt;

14.1.4 A proceeding or case shall be commenced without the consent of a Party against such Party or without the consent of its Guarantor against such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, unless such proceeding or case is dismissed within sixty (60) days of the filing thereof;

14.1.5 The failure of any Party to comply with the requirements of Article 18 regarding creditworthiness and/or security;

14.1.6 The failure of a Party to comply with the requirements of Article 17 regarding assignment;

14.1.7 Any representation or warranty made by a Party under Article 15 proves to have been false or misleading in any material respect when made and such representation or warranty is not made true within thirty (30) Days after such Party has obtained actual knowledge thereof or has been provided notice thereof by the other Party; provided, however, that the cure must also remove any adverse effect on the Non-Defaulting Party;

1 14.1.8 A Party or its Guarantor shall fail to pay when due (subject to any
2 applicable cure or grace period), whether by acceleration or otherwise, any principal or interest
3 on indebtedness aggregating in excess of [REDACTED] in principal amount; or any
4 indebtedness aggregating in excess of [REDACTED] shall be declared due and payable or be
5 required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity
6 of such indebtedness; or

7 14.1.9 [REDACTED]
8 [REDACTED]

9 14.1.10 The material failure by a Party to comply with any material provision of
10 this Agreement if such failure is not the result of a Force Majeure Event or is not otherwise
11 excused in accordance with this Agreement, and such failure continues uncured for thirty (30)
12 Days after written notice thereof from the other Party; provided, however, if such failure is not
13 capable of being cured within such period of thirty (30) Days with the exercise of reasonable
14 diligence, then such cure period shall be extended for an additional reasonable period of time
15 (not to exceed ninety (90) Days), so long as the Party is exercising reasonable diligence to cure
16 such failure. Provided, however, this Section 14.1.10 shall not apply to: (i) any event described
17 in Sections 14.1.1 through 14.1.9; (ii) any event described in Sections 5.9 and 5.10 for which a
18 remedy is expressly provided in those Sections; or (iii) Seller's failure to provide capacity
19 and/or energy pursuant to any provision of this Agreement.

20 The Party in default or the Party to whom an Event of Default is attributable as provided
21 in this Section 14.1 shall be referred to as the "Defaulting Party" and the other Party shall be
22 referred to as the "Non-Defaulting Party."

1 **14.2 Exclusive Remedies.**

2 14.2.1 Upon and after the occurrence of an Event of Default, the Non-
3 Defaulting Party's sole and exclusive remedy (whether arising in contract, tort or otherwise)
4 shall be to suspend its performance under this Agreement and declare an Early Termination
5 Date with the relevant remedies as provided below.

6 14.2.2 If an Event of Default has occurred, the Non-Defaulting Party shall
7 have the right, in its sole discretion, by no more than twenty (20) Days notice to the Defaulting
8 Party, to designate a Day no earlier than the Day such notice is effective as the date on which
9 the Agreement shall terminate ("Early Termination Date"). Subject to Sections 19.3 and 19.15,
10 this Agreement shall terminate on the Early Termination Date and neither Party shall have any
11 further liability or obligation to the other hereunder, except (i) the Defaulting Party shall pay to
12 the Non-Defaulting Party on demand [REDACTED] in liquidated damages and (ii) as provided in
13 Sections 14.2.3 or 14.2.4 below. The exercise by a Party of its rights under this Section 14.2
shall be the sole and exclusive remedy of such Party for an Event of Default by or attributable to
the other Party. The Parties acknowledge and agree that in the event of termination of this
Agreement due to an Event of Default, all or a portion of the amount of damages arising
therefrom are not susceptible to an accurate determination. The Parties further acknowledge
and agree that the liquidated damages set forth above are not intended as a penalty and represent
a fair and reasonable approximation of all or a portion of the damages a Non-Defaulting Party
may incur in each particular case.

 14.2.3 With respect to an Event of Default by or attributable to Buyer, within
fifteen (15) Days after Seller's notice under Section 14.2.2, the Parties shall each select an
independent party to determine the Seller's Damages. Within thirty (30) Days after such notice,

1 the two independent parties shall select a third independent party to determine the Seller's
2 Damages. Within sixty (60) Days after such notice, the three (3) independent parties shall
3 provide the Parties with their respective estimates of the Seller's Damages. The actual Seller's
4 Damages shall equal the arithmetic average of the three estimates. If one Party disputes the
5 actual Seller's Damages, within five (5) Business Days of notice of the Seller's Damages
6 determined by the independent parties, such Party may submit the dispute for resolution
7 pursuant to the arbitration procedures of Article 16 and the arbitration order or finding regarding
8 the Seller's Damages shall be conclusive, provided, however, in no event shall the Seller's
9 Damages be less than [REDACTED] nor greater than [REDACTED] at any time whether or not arbitrated.
10 Subject to such qualification, the Seller's Damages will be paid by Buyer to Seller within three
11 (3) Business Days after being determined by the independent parties unless disputed and
12 arbitrated pursuant to the terms of this Agreement in which event it shall be paid within three
13 (3) Business Days of the relevant arbitration finding or order. As used herein, "Seller's
14 Damages" means [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 14.2.4 With respect to an Event of Default by or attributable to Seller, within
22 fifteen (15) Days after Buyer's notice under Section 14.2.2, the Parties shall each select an
23 independent party to determine the Buyer's Damages. Within thirty (30) Days after such notice,

1 the two independent parties shall select a third independent party to determine the Buyer's
2 Damages. Within sixty (60) Days after such notice, the three (3) independent parties shall
3 provide the Parties with their respective estimates of the Buyer's Damages. The actual Buyer's
4 Damages shall equal the arithmetic average of the three estimates. If one Party disputes the
5 actual Buyer's Damages, within five (5) Business Days of notice of the Buyer's Damages
6 determined by the independent parties, such Party may submit the dispute for resolution
7 pursuant to the arbitration procedures of Article 16 and the arbitration order or finding regarding
8 the Buyer's Damages shall be conclusive, provided, however, in no event shall the Buyer's
9 Damages be less than [REDACTED] at any time whether or not arbitrated.
10 Subject to such qualification, the Buyer's Damages will be paid by Seller to Buyer within three
11 (3) Business Days after being determined by the independent parties unless disputed and
12 arbitrated pursuant to the terms of this Agreement in which event it shall be paid within three
13 (3) Business Days of the relevant arbitration finding or order. As used herein, "Buyer's
14 Damages" means [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

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ARTICLE 15

REPRESENTATIONS AND WARRANTIES

15.1 Execution. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has all the necessary corporate and legal power and authority and has been duly authorized by all necessary corporate action to enable it to lawfully execute, deliver and perform under this Agreement; and (ii) it is a valid legal entity duly organized and validly existing in good standing under the laws of the state of its formation and is, to the extent required, qualified to do business in the state where it is organized;

15.2 Permits. Each Party represents and warrants to the other Party that as of the Effective Date it has all permits, licenses or approvals necessary to lawfully perform its obligations contained herein in the manner prescribed by this Agreement.

15.3 Binding Obligations. Each Party represents and warrants to the other Party that as of the Effective Date this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principals are considered in a proceeding at law or in equity.

15.4 Execution and Consummation. Each Party represents and warrants to the other Party that as of the Effective Date the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any law applicable to it or result in a

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breach or default under any evidence of its indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the Party of any of its obligations under this Agreement.

15.5 Actions and Proceedings. Each Party represents and warrants to the other that as of the Effective Date there is no pending or, to the knowledge of such Party, threatened action or proceeding affecting such Party before any Government Agency that has a reasonable likelihood of materially adversely affecting or reasonably threatening the ability of such Party to perform its obligations under this Agreement or the validity or enforceability of this Agreement against it and that there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

15.6 Absence of Certain Events. Each Party represents and warrants to the other Party that as of the Effective Date no Event of Default attributable to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

ARTICLE 16

DISPUTE RESOLUTION

16.1 Senior Officers.

16.1.1 Each of the Parties will designate in writing to the other Parties a representative who will be authorized to resolve any dispute arising under this Agreement and,

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unless otherwise expressly provided herein, to exercise the authority of such Party to make decisions by mutual agreement.

16.1.2 If such designated representatives are unable to resolve a dispute under this Agreement, such dispute will be referred by each Party's representative, respectively, to a designated senior officer.

16.1.3 The Parties hereto agree: (i) to attempt to resolve all disputes arising hereunder promptly; and (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged and non-confidential records, information and data pertaining to any such dispute. Non-privileged and non-confidential information shall be made available to a Party pursuant to a confidentiality agreement consistent with the confidentiality provisions of this Agreement.

16.2 Arbitration.

16.2.1 All disputes arising under, out of, or in relation to any provision of this Agreement that are not resolved pursuant to Section 16.1 within 30 Days after either Party's receipt of notice referring the dispute to the senior officers of the Parties (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute of limitations) will be submitted upon written request of any Party to binding arbitration. Each Party will have the right to designate an arbitrator of its choice, who need not be from the American Arbitration Association ("AAA") panel of arbitrators but who (a) will be an expert in the independent power electric generation field and (b) will not be and will not have been previously an employee or agent of or consultant or counsel to either Party or any of its Affiliates and will not have a direct or indirect interest in either Party or any of its Affiliates or the subject matter of the arbitration. Such designation will

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be made by notice to the other Party and to the AAA within ten (10) Days or, in the case of payment disputes, five (5) Days after the date of the giving of notice of the demand for arbitration. The arbitrators designated by the Parties will designate a third arbitrator, who will have a background in legal and judicial matters (and who will act as chairman), within ten (10) Days or, in the case of payment disputes, five (5) Days after the date of the designation of the last of the arbitrators to be designated by the Parties, and the arbitration will be decided by the three arbitrators. If the two arbitrators cannot or do not select a third independent arbitrator within such period, either Party may apply to the AAA for the purpose of appointing any person listed with the AAA as the third independent arbitrator under the expedited rules of the AAA. Such arbitration will be held in alternating locations of the home offices of the Parties, commencing with Buyer's home office, or in any other mutually agreed upon location. The rules of the AAA will apply to the extent not inconsistent with the rules herein specified. Each Party will bear its own expenses (including attorneys' fees) with respect to the arbitration. The arbitrators will designate the Party to bear the expenses of the arbitrators or the respective amounts of such expense to be borne by each Party.

16.2.2 Subject to Section 14.2, the arbitrators conducting an arbitration proceeding under this Section shall have no authority to award to any Party consequential, incidental, punitive, exemplary or indirect damages or any lost profits or business interruption damages, whether by virtue of any Law or otherwise. Provided further, the fact that any arbitration proceeding is conducted hereunder and the decision of the arbitrators shall be deemed Confidential Information under Section 19.2; provided further, notwithstanding any provision in Article 19, Confidential Information, to the extent relevant, may be disclosed by

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1 any Party to the arbitrators conducting the arbitration and any court of competent jurisdiction
2 enforcing the arbitrators' award.

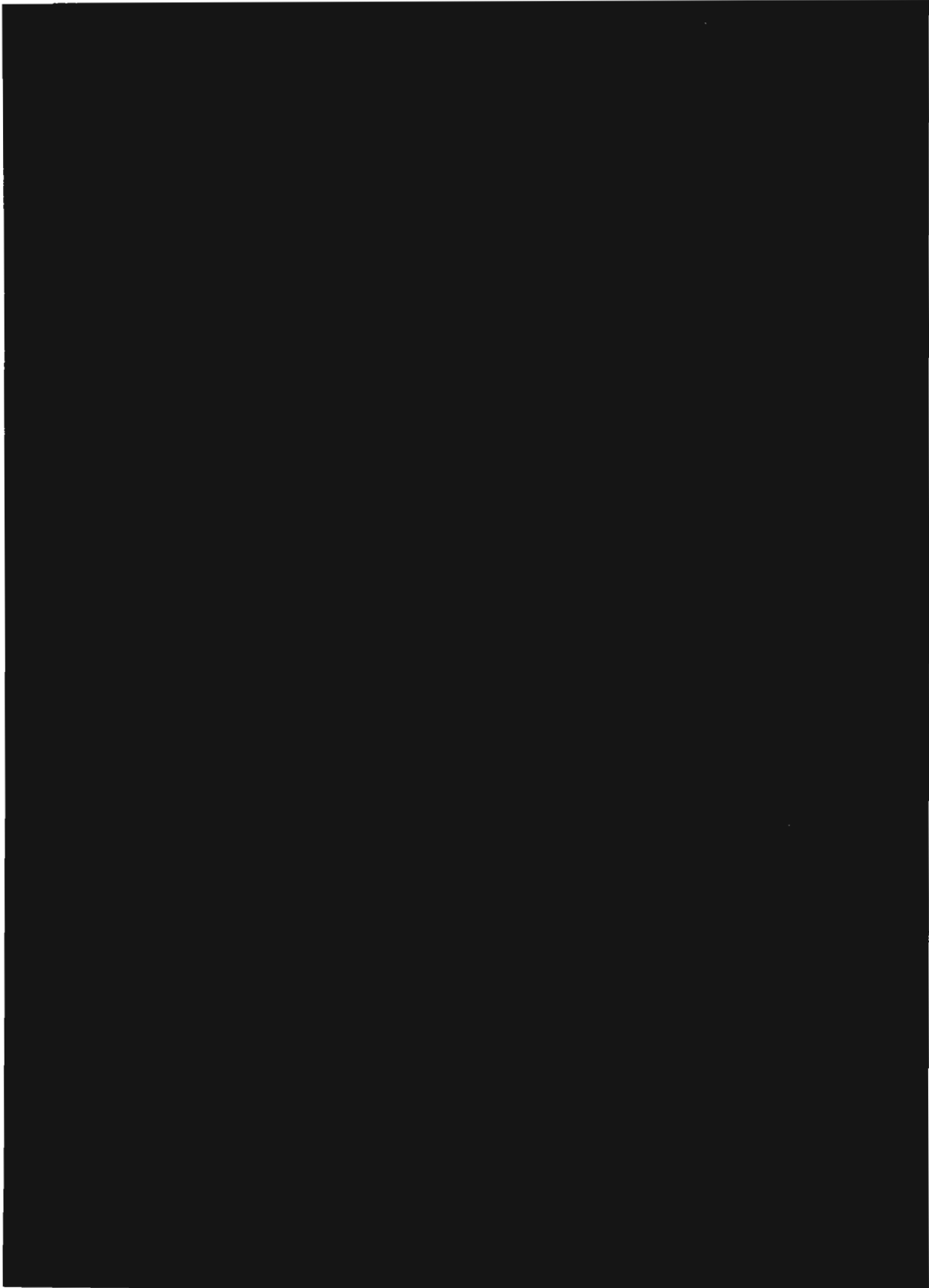
3 **16.3 Binding Nature of Proceedings.** Each Party understands that this Agreement
4 contains an agreement to arbitrate with respect to specified disputes. After signing this
5 Agreement, each Party understands that it will not be able to bring a lawsuit concerning any
6 dispute that may arise that is covered by this arbitration provision. Instead, each Party agrees to
7 submit any such dispute to arbitration pursuant to Section 16.2. Any award of the arbitrator
8 may be enforced by the Party in whose favor such award is made in any court of competent
9 jurisdiction.

10 **ARTICLE 17**

11 **ASSIGNMENT**

12 **17.1 Assignment.** Either Party may assign outright or collaterally this Agreement
13 and its rights and obligations hereunder subject to the written consent of the other Party (which
14 consent shall not be unreasonably withheld); provided that either Party may assign outright this
15 Agreement and its rights and obligations hereunder without the consent of the other Party to any
16 person with at [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]



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who has the legal power and authority, licenses and technical ability to perform and satisfy the obligations of the assigning Party under this Agreement (an "Eligible Assignee"). The assigning Party will notify the other Party in writing prior to any assignment with respect to which consent is not required hereunder. No assignment by a Party of this Agreement or its rights or obligations hereunder shall relieve the assigning Party of liability for its obligations under this Agreement without the written release of the other Party. Such release shall not be withheld if the Assignment Conditions (defined below) are satisfied.

17.2 Assignment Conditions. The non-assigning Party's obligation to recognize or perform for any person claiming rights in this Agreement by outright assignment or through collateral assignment (an "Assignee") shall be subject to such Assignee: (i) establishing that it satisfies the qualifications of an Eligible Assignee; (ii) having cured all existing Events of Default under this Agreement; and (iii) having executed and delivered to the non-assigning Party an assignment and assumption agreement whereby the Assignee assumes and agrees to satisfy all conditions and pay and perform all obligations in favor of the non-assigning Party then existing and/or thereafter arising under this Agreement (the "Assignment Conditions"). Any attempted assignment, directly or indirectly, by way of merger or otherwise, which is not in compliance with the terms hereof shall be void and ineffective.

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ARTICLE 18

CREDITWORTHINESS AND SECURITY

Buyer's Provision of a Letter of Credit or Guaranty. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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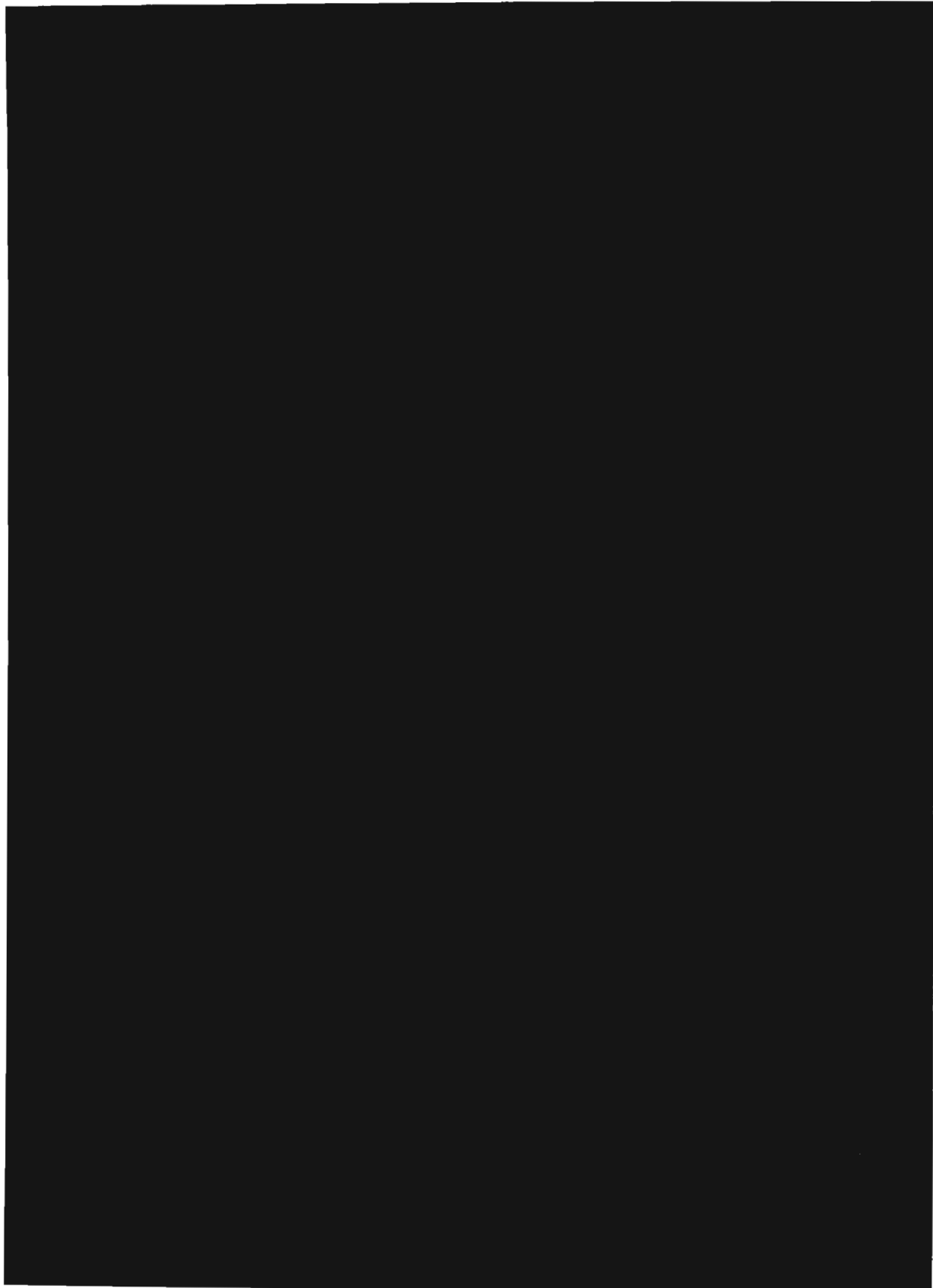
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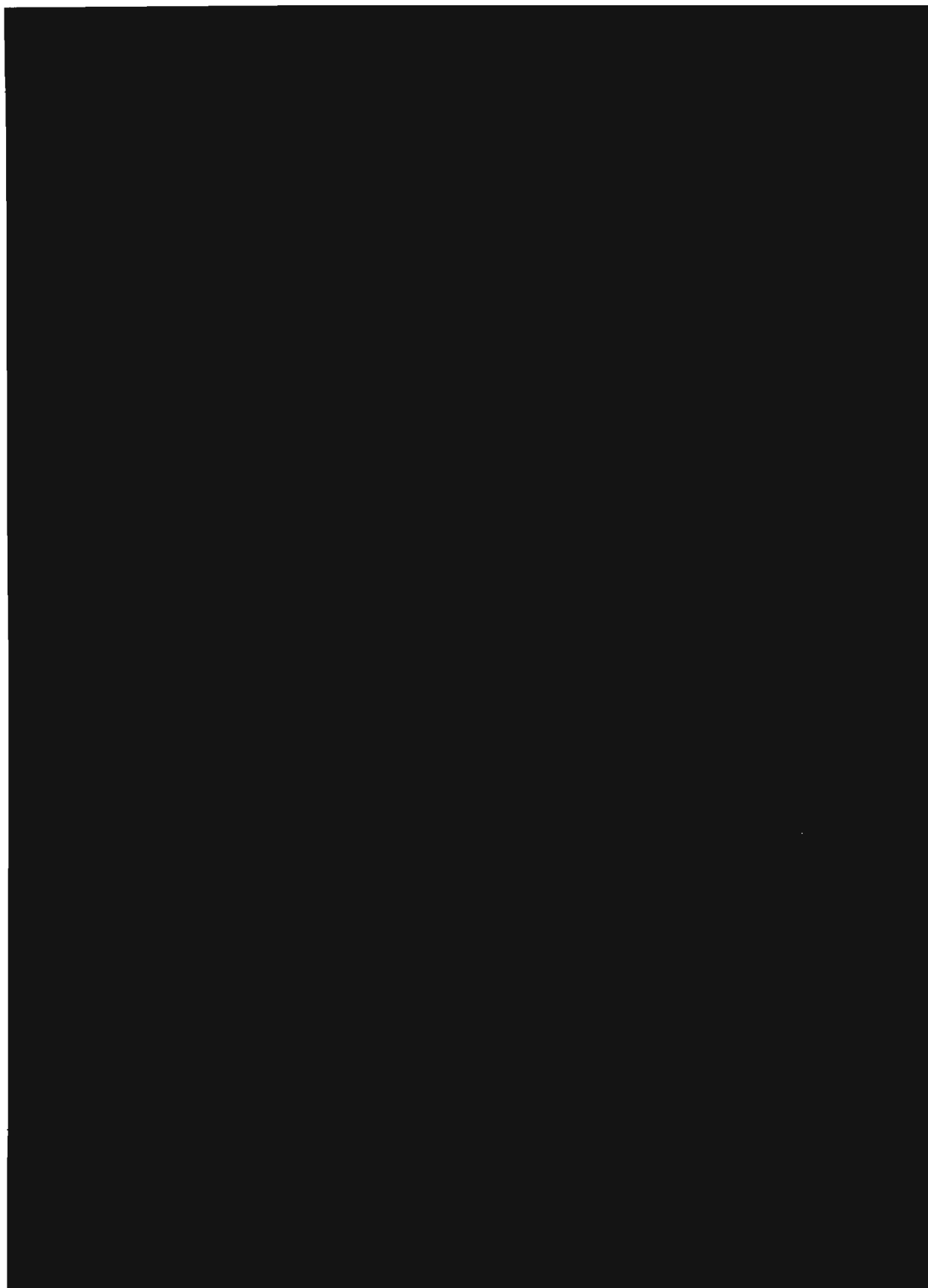
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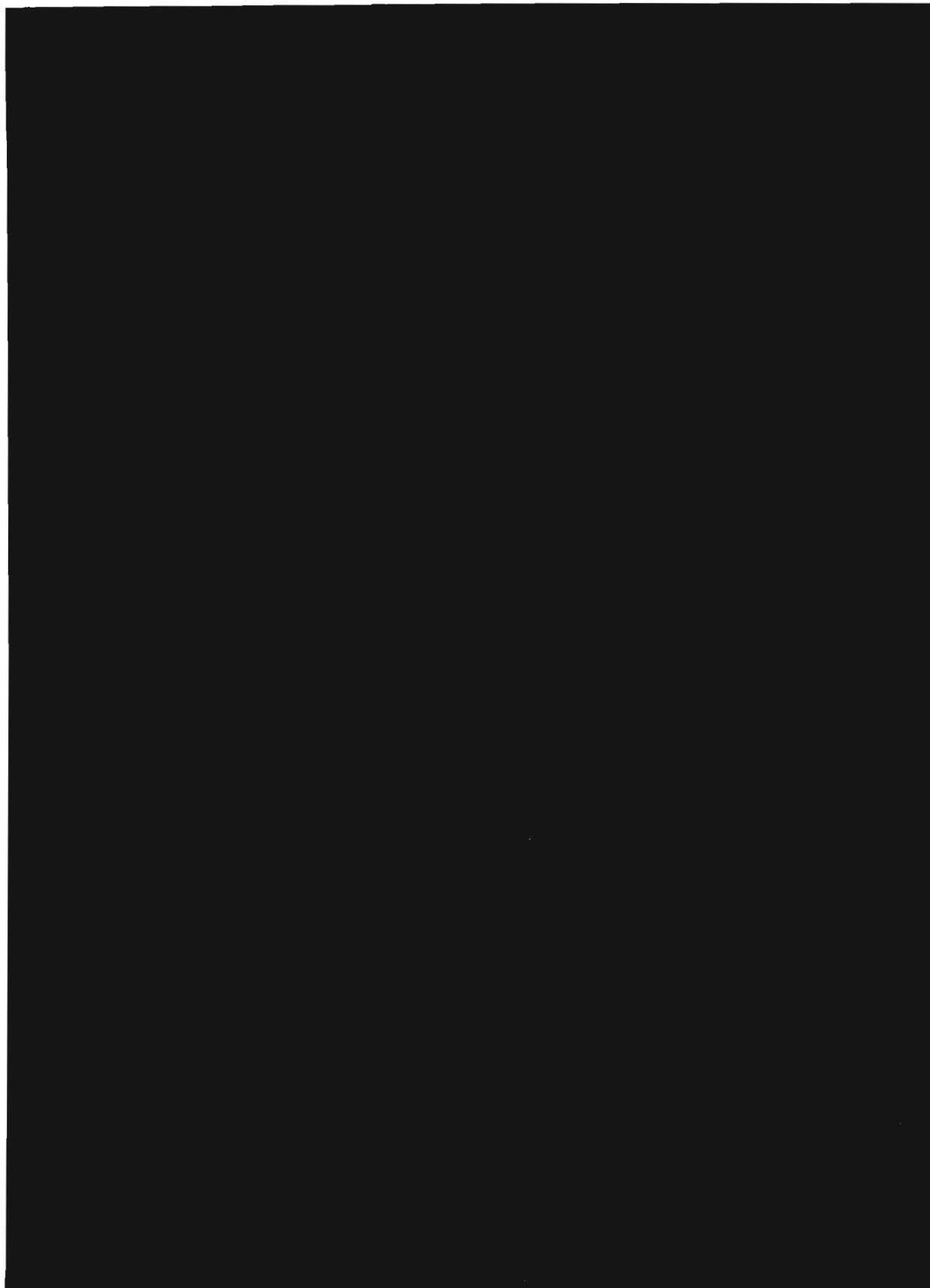
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[REDACTED]







1 [REDACTED]
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3 [REDACTED]
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5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 **18.2 Seller's Provision of a Letter of Credit or Guaranty** [REDACTED]

10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

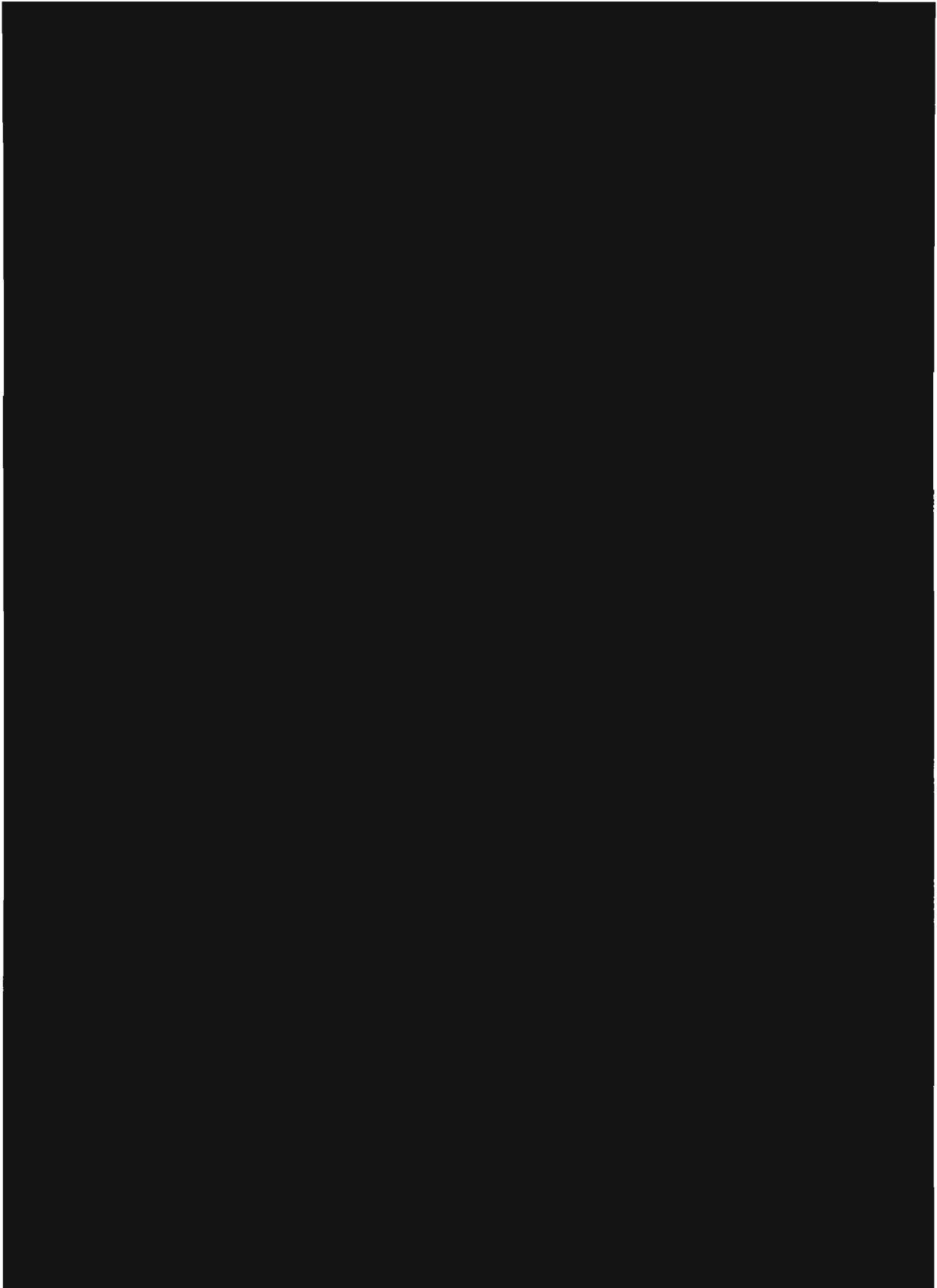
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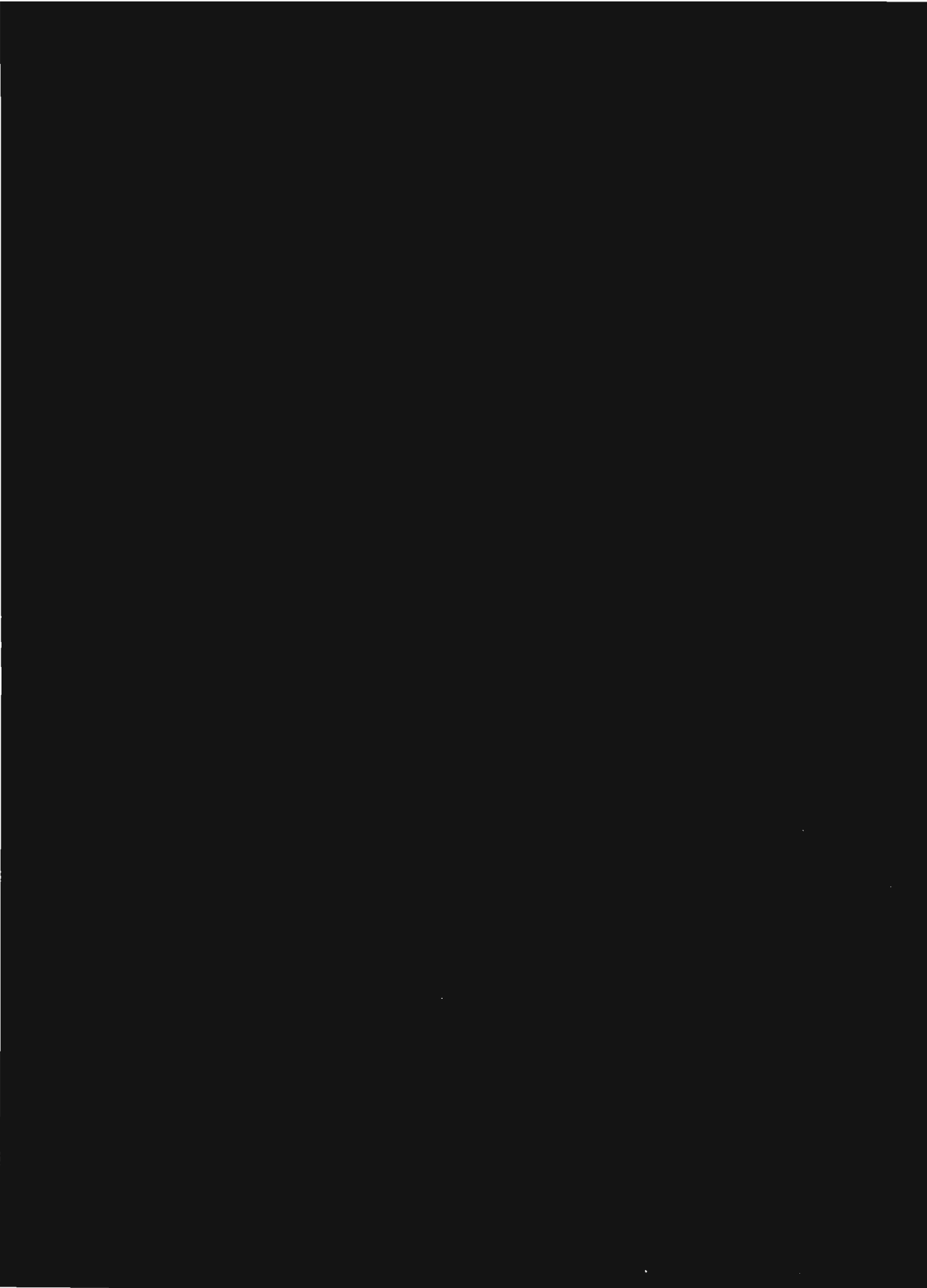
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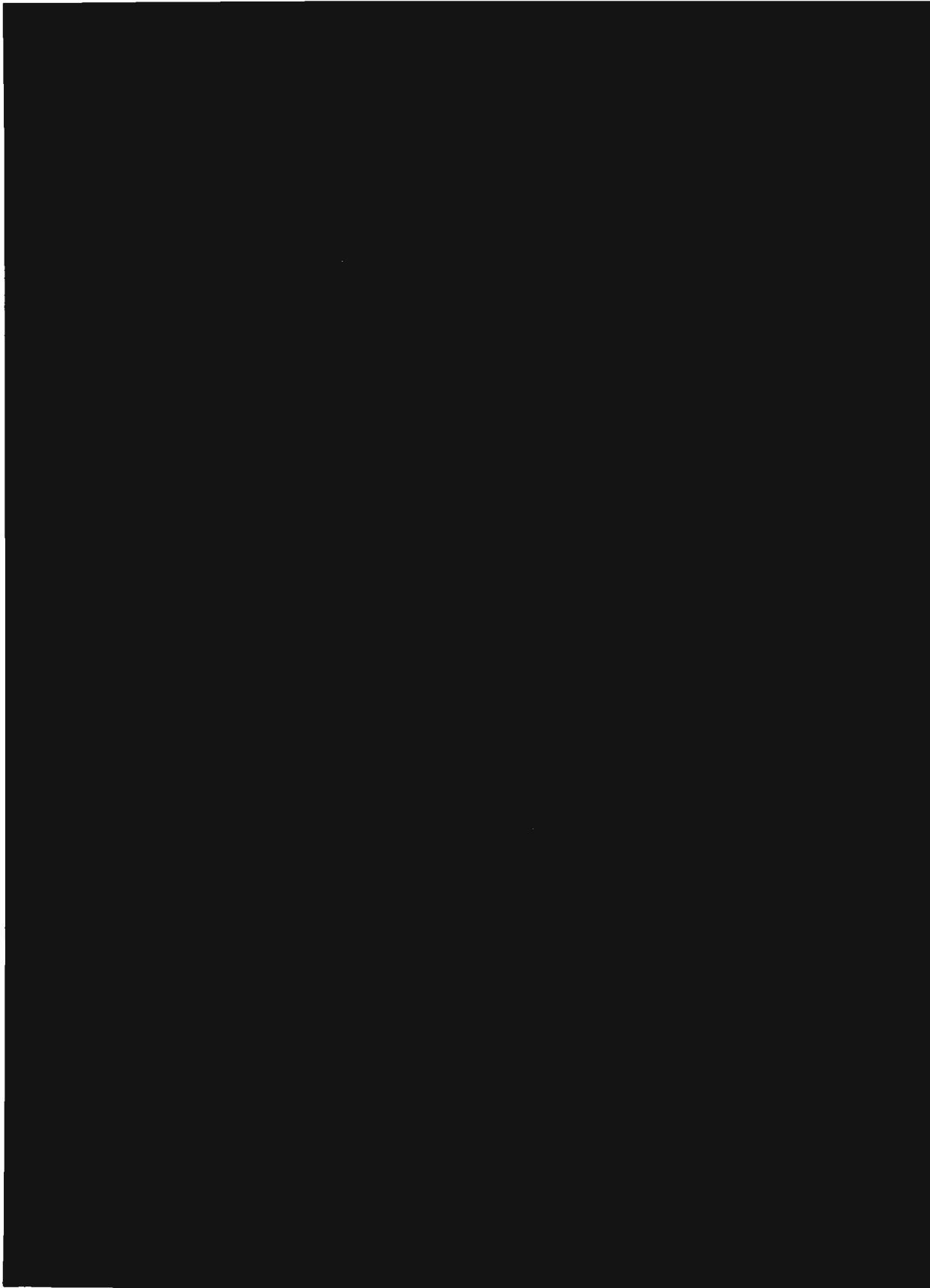
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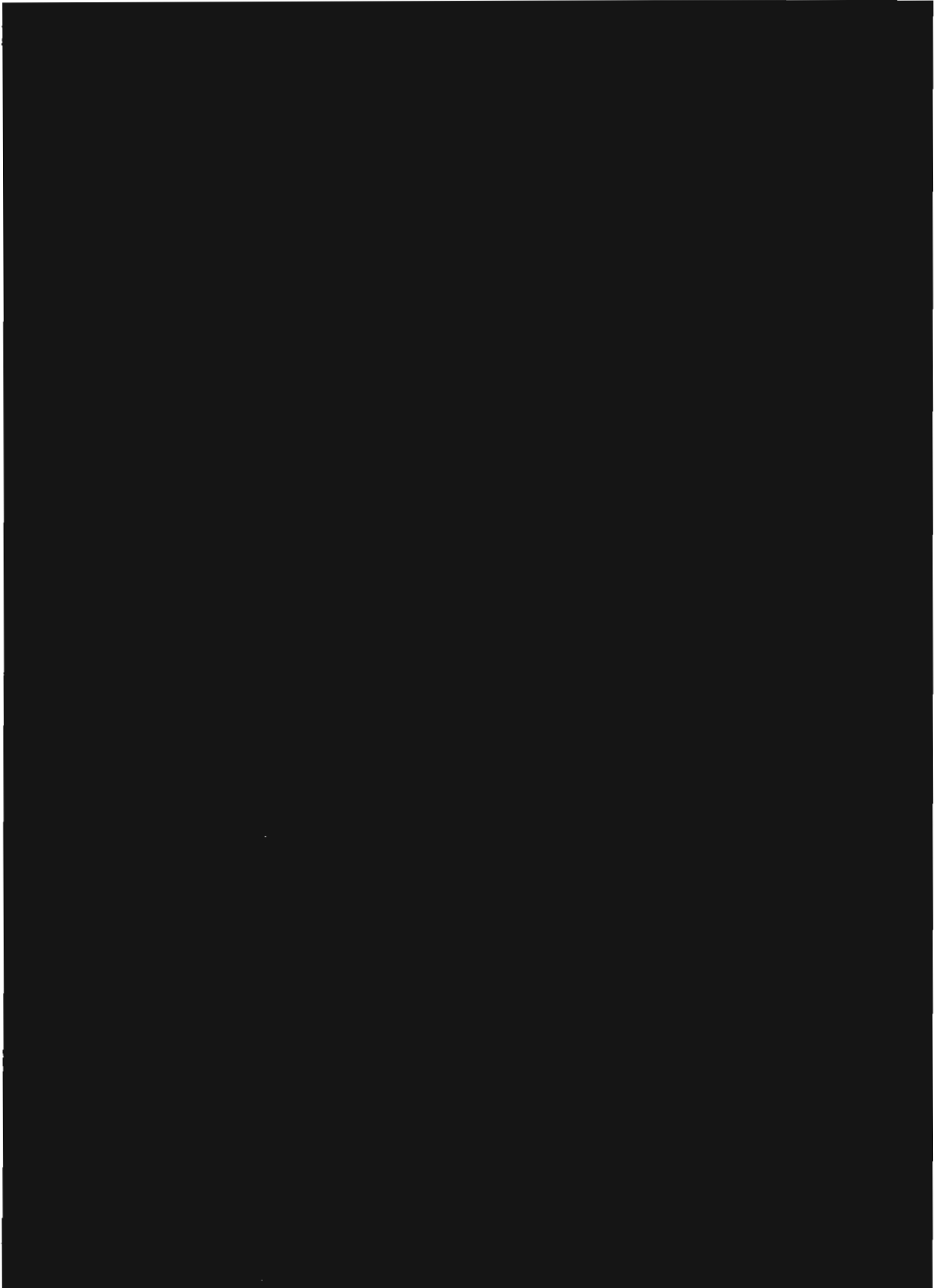
19 [REDACTED]

20 [REDACTED]









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ARTICLE 19

MISCELLANEOUS

19.1 Governing Law; Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA, EXCLUSIVE OF ITS CONFLICTS OF LAW PROVISIONS, AND, TO THE EXTENT APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA. BY CHOOSING TO HAVE THIS AGREEMENT GOVERNED BY AND CONSTRUED UNDER THE LAW OF THE STATE OF FLORIDA, THE PARTIES ARE IN NO WAY SUBMITTING TO OR INCORPORATING INTO THIS AGREEMENT ANY FLORIDA STATUTE, REGULATION, OR ORDER, OR ANY OF THE SAME INVOLVING THE GENERATION, SALE, PURCHASE OR TRANSMISSION OF ELECTRIC CAPACITY OR ELECTRIC ENERGY IN, OR FOR CONSUMPTION IN, THE STATE OF FLORIDA. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

19.2 Confidentiality.

19.2.1 Scope of Protection.

(i) For purposes of this Section 19.2: (a) "Seller Confidential Information" means the terms of this Agreement and all drafts of the same, together with any documents, data or drafts labeled or otherwise expressly identified as "Confidential" by Seller

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when provided to Buyer; (b) "Buyer Confidential Information" means the terms of this Agreement and all drafts of the same, together with any documents, data or drafts labeled or otherwise expressly identified as "Confidential" by Buyer when provided to Seller; and (c) "Confidential Information" means collectively the Seller Confidential Information and the Buyer Confidential Information.

(ii) Seller shall not disclose to third parties any Buyer Confidential Information; provided that nothing contained herein shall prohibit Seller from providing any such Buyer Confidential Information to its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons in connection with the acquisition of all or a significant portion of the assets or stock of Georgia Power or Gulf Power or any of their Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or other financing activities by Georgia Power or Gulf Power or any of their Affiliates who in the reasonable judgment of Seller should have access to such Buyer Confidential Information and are bound by an obligation to maintain such confidentiality provided that Seller shall be responsible for any use or disclosure of such Buyer Confidential Information by any of its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons inconsistent with this Section 19.2; provided further that nothing contained herein shall prohibit Seller from providing Buyer Confidential Information to the NERC or SEARUC solely to the extent that (i) Seller determines in its reasonable discretion that the provision of such information is required to enhance and/or maintain reliability; (ii) such entity is obligated to

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maintain such confidentiality; and (iii) Seller has notified Buyer of its intention to release such information no less than five (5) Business Days prior to the release subject to the requirements of applicable law and regulation.

(iii) Buyer shall not disclose to third parties any Seller Confidential Information; provided that nothing contained herein shall prohibit Buyer from providing any such Seller Confidential Information to its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons in connection with the acquisition of all or a significant portion of the assets or stock of Buyer or any of its Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or other financing activities by Buyer or any of its Affiliates who in the reasonable judgment of Buyer should have access to such Seller Confidential Information and are bound by an obligation to maintain such confidentiality provided that Buyer shall be responsible for any use or disclosure of such Seller Confidential Information by any of its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons inconsistent with this Section 19.2; provided further that nothing contained herein shall prohibit Buyer from providing Seller Confidential Information to the NERC or SEARUC solely to the extent that (i) Buyer determines in its reasonable discretion that the provision of such information is required to enhance and/or maintain reliability, (ii) such entity is obligated to maintain such confidentiality, and (iii) Buyer has notified Seller of its intention to release such information no less than five (5) Business Days prior to the release subject to the requirements of applicable law and regulation.

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(iv) Notwithstanding the foregoing, either Party may disclose Confidential Information (i) to the extent relevant, to the independent parties determining Seller's Damages or Buyer's Damages (as appropriate), and (ii) to its and its Affiliates' employees, officers, directors, accountants, counsel and other advisors who need to know such information in connection with the performance of their duties or services for the disclosing Party or its Affiliates; provided, however, that such Persons shall be required to maintain the confidentiality of such information consistent with the requirements of this Agreement..

19.2.2 Required and Other Disclosure.

(i) Notwithstanding anything in this Section 19.2 to the contrary, if Buyer is required by applicable law or regulation, or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Seller Confidential Information or otherwise intends to disclose Seller Confidential Information to FERC or its staff (other than at the request or requirement of FERC or its staff) or pursuant to the request or requirement of any appropriate state regulatory commission or body, Buyer may make disclosure of such Seller Confidential Information; provided, however, that all reasonable steps are taken by Buyer to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as Buyer learns of the disclosure request or requirement or otherwise intends to disclose any Seller Confidential Information pursuant hereto and prior to making disclosure, Buyer shall, to the extent permitted by law, notify Seller of the requirement, request or intention and the terms thereof and any Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. Buyer, at Seller's expense, shall cooperate with Seller to the maximum extent practicable to minimize the disclosure of the Seller Confidential Information consistent

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with applicable law. Buyer shall cooperate with Seller to obtain proprietary or confidential treatment of such Seller Confidential Information by the Person to whom such Seller Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate remedy or the receipt of a waiver by Seller, Buyer is nonetheless, in the written opinion of counsel, legally compelled to disclose Seller Confidential Information or otherwise may become subject to contempt or other censure or penalty, Buyer may, in such instance but not otherwise, without liability hereunder, disclose that portion of the Seller Confidential Information which and to whom such counsel advises Buyer is legally required to be disclosed (but none other), provided that Buyer exercises Commercially Reasonable Efforts to preserve the confidentiality of the Seller Confidential Information, including by cooperating with Seller to obtain an appropriate protective order or other reliable assurance that the Seller Confidential Information shall be accorded confidential treatment. Seller shall be liable for all reasonable legal costs incurred by Buyer in cooperating with Seller to obtain such an appropriate protective order or confidential treatment.

(ii) Notwithstanding anything in this Section 19.2 to the contrary, if Seller is required by applicable law or regulation, or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Buyer Confidential Information or otherwise intends to disclose Buyer Confidential Information to FERC or its staff (other than at the request or requirement of FERC or its staff) or pursuant to the request or requirement of any appropriate state regulatory commission or body, Seller may make disclosure of such Buyer Confidential Information; provided, however, that all reasonable steps are taken by Seller to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as Seller learns of the disclosure

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request or requirement or otherwise intends to disclose any Buyer Confidential Information pursuant hereto and prior to making disclosure, Seller shall, to the extent permitted by law, notify Buyer of the requirement, request or intention and the terms thereof and any Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. Seller, at Buyer's expense, shall cooperate with Buyer to the maximum extent practicable to minimize the disclosure of the Buyer Confidential Information consistent with applicable law. Seller shall cooperate with Buyer to obtain proprietary or confidential treatment of such Buyer Confidential Information by the Person to whom such Buyer Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate protective remedy or the receipt of a waiver by Buyer, Seller is nonetheless, in the written opinion of counsel, legally compelled to disclose Buyer Confidential Information or otherwise may become subject to contempt or other censure or penalty, Seller may, in such instance but not otherwise, without liability hereunder, disclose that portion of the Buyer Confidential Information which and to whom such counsel advises Seller is legally required to be disclosed (but none other), provided that Seller exercises Commercially Reasonable Efforts to preserve the confidentiality of the Buyer Confidential Information, including, without limitation, by cooperating with Buyer to obtain an appropriate protective order or other reliable assurance that the Buyer Confidential Information shall be accorded confidential treatment. Buyer shall be liable for all reasonable legal costs incurred by Seller in cooperating with such Buyer to obtain an appropriate protective order or confidential treatment.

(iii) Nothing in this Section 19.2 shall prohibit or otherwise limit the use or disclosure of Confidential Information if such Confidential Information: (i) was

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previously known to the disclosing or using Party unrelated to this Agreement without an obligation of confidentiality; (ii) was developed by or for the disclosing or using Party unrelated to this Agreement using nonconfidential information; (iii) was acquired by the disclosing or using Party from a third party which is not, to the disclosing or using Party's knowledge, under an obligation of confidence with respect to such information; (iv) is or becomes publicly available other than through a manner inconsistent with this Section 19.2; or (v) is provided or made available for inspection by Seller or Buyer under public records or public disclosure laws but only to the extent required to be so provided or made available.

(iv) The provisions of this subsection shall supercede any contrary provisions of this Section 19.2 regarding the disclosure of information to FERC or its staff pursuant to the request or requirement of FERC or its staff. In providing Buyer Confidential Information to FERC or its staff pursuant to the request or requirement of FERC or its staff, Seller shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. To the extent permitted by law, Seller shall promptly notify Buyer when it is required or requested by FERC or its staff to disclose Buyer Confidential Information. Seller shall not be prohibited to make or liable for the disclosure to FERC or its staff of any Buyer Confidential Information pursuant to the request or requirement of FERC or its staff consistent with this subsection. In providing Seller Confidential Information to FERC or its staff pursuant to the request or requirement of FERC or its staff, Buyer shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. To the extent permitted by law, Buyer shall promptly notify Seller when it is required or requested by FERC or its staff to

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disclose Seller Confidential Information. Buyer shall not be prohibited to make or liable for the disclosure to FERC or its staff of any Seller Confidential Information pursuant to the request or requirement of FERC or its staff consistent with this subsection. Notwithstanding the foregoing, the Parties acknowledge that any request of FERC for confidential treatment of information may be denied by FERC in whole or in part.

(v) The Parties agree to seek confidential treatment of the Confidential Information from the FPSC to the maximum extent possible pursuant to Chapter 366.093, Florida Statutes, and Rule 25-22.006 of the Florida Administrative Code; however, notwithstanding the foregoing, the Parties acknowledge that a request for confidential treatment of Confidential Information may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the FPSC to such information. In the event any Confidential Information will need to be disclosed in connection with the application for the FPSC Approval, Buyer shall consult and cooperate with Seller prior to such disclosure, including, without limitation, in determining the extent to which confidential treatment will be sought for such terms, conditions and provisions.

(vi) Seller may file this Agreement with the Securities and Exchange Commission ("Commission") as may be necessary under the Public Utility Holding Company Act and the rules and regulations thereunder in connection with Seller's application to the Commission for such orders and approvals as may be required for financing and/or the issuance and sale of interests in or debt issued or to be issued by Seller and/or its Affiliates. Seller shall request confidential treatment of the Buyer Confidential Information in this Agreement in connection with such filing; however, the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the

1 Commission to such information. In addition, Seller may disclose such Buyer Confidential
2 Information as required by the Commission pursuant to the Securities and Exchange Act of
3 1934, as amended, and any rule or regulation promulgated thereunder.

4 (vii) Except for filings with the Commission or other regulatory
5 authorities, any public statement and/or press release by a Party hereto concerning this
6 Agreement (except statements or releases by the Non-Defaulting Party after an Event of
7 Default) shall be reviewed and agreed upon by the Parties before release, which agreement shall
8 not be unreasonably withheld or delayed.

9 The obligations under this Section 19.2 with respect to any Party shall survive
10 until the earlier of [REDACTED]

19.3 Survivorship of Obligations. Termination of this Agreement shall not discharge any Party from any obligation it owes the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense or liability occurring, accruing or arising prior to such termination. It is the intent of the Parties that any such obligation owed (whether the same shall be known or unknown as of the termination or cancellation of this Agreement) will survive the termination or cancellation of this Agreement in favor of the Party to which such obligation is owed. The Parties also intend that the indemnification and limitation of liability provisions contained in Sections 12.2 and 12.3 shall remain operative and in full force and effect and that any specific survivability provisions in any other sections be given full effect.

19.4 No Third Party Beneficiaries. This Agreement is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any Persons, corporations, associations, or entities other than the Parties and their permitted successors and assigns, and the rights and obligations of each of the Parties under this Agreement are solely for

1 the use and benefit of, and may be enforced solely by the Parties, their permitted successors and
2 assigns.

3 **19.5 Section Headings Not to Affect Meaning.** The descriptive headings of the
4 various Articles and Sections of this Agreement have been inserted for convenience of reference
5 only and shall in no way modify or restrict any of the terms and provisions thereof. References
6 to "Articles", "Sections" and "Appendices" in this Agreement shall mean the Articles, Sections
7 and Appendices of this Agreement unless otherwise expressly noted.

8 **19.6 Computation of Time.** In computing any period of time prescribed or allowed
9 by this Agreement, the designated period of time shall begin to run on the Day immediately
10 following the Day of the act, event or default that precipitated the running of the designated
11 period of time. The designated period shall expire on the last Day of the period so computed
12 unless that Day is not a Business Day, in which event the period shall run until the end of the
13 next Business Day.

14 **19.7 Interest.** Whenever the provisions of this Agreement require the calculation of
15 an interest rate, such rate shall be computed at an annual rate equal to the Prime Rate as of the
16 date on which the calculation begins, but not to exceed the maximum rate which may be
17 lawfully charged. Interest on obligations arising under this Agreement shall be compounded
18 daily and be calculated based on a 360 day year.

19 **19.8 Entire Agreement.** [REDACTED]
20 [REDACTED] this Agreement constitutes the entire
agreement between the Parties relating to the subject matter hereof and supersedes any other
agreements, written or oral, between the Parties concerning such subject matter. The Parties
have entered into this Agreement in reliance upon the representations and mutual

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understandings contained herein and not in reliance upon any oral or written representation or information provided by one Party to another Party not contained or incorporated herein.

19.9 Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.10 Amendments. This Agreement may only be amended by written agreement signed by duly authorized representatives of the Parties.

19.11 Waivers. Waivers of the provisions of this Agreement or excuses of any violations of this Agreement shall be valid only if in writing and signed by an authorized officer of the Party issuing the waiver or excuse. A waiver or excuse issued under one set of circumstances shall not extend to other occurrences under similar circumstances.

19.12 No Partnership Created. Any provision of this Agreement to the contrary notwithstanding, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. If it should appear that one or more changes to this Agreement would be required in order not to create an entity referenced in the preceding sentence, the Parties agree to negotiate promptly and in good faith with respect to such changes.

19.13 Character of Sale. The sale of capacity and energy hereunder shall not constitute a sale, lease, transfer or conveyance to Buyer or any other party of any contractual rights or ownership interests in any generating unit or other equipment comprising the Facility, nor does the sale of capacity and energy hereunder constitute a dedication of ownership of any generating unit or other equipment comprising the Facility.

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19.14 Notices. Any notice, demand, request, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other, shall be in writing (unless otherwise expressly provided by this Agreement) and shall be considered duly delivered when received by hand delivery, first-class mail, facsimile, or by overnight delivery, at the address(es) and to the attention of the person(s) listed below; provided, however, if actual delivery occurs at a time other than between the hours of 0800 and 1700 CPT on a Business Day (each a "Business Hour"), delivery shall be deemed to have occurred in the next Business Hour after actual delivery.

(i) To Seller:

Vice President, Business Development
Southern Company Generation and Energy Marketing
Bin 935
270 Peachtree Street, NW
Atlanta, Georgia 30303

Telephone: 404-506-0346
Facsimile: 404-506-0399

With a copy to:

Senior Vice President and General Counsel
Georgia Power Company
241 Ralph McGill Boulevard
Atlanta, Georgia 30308

Telephone: 404-506-2700
Facsimile: 404-506-7985

And

Vice President, Chief Financial Officer and Comptroller
Gulf Power Company
1 Energy Place
Pensacola, Florida 32520

Telephone: 850-444-6385
Facsimile: 850-444-6744

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And

Vice President, Fleet Operations and Trading
Southern Company Services, Inc.
600 North 18th Street, GS-8259
Birmingham, Alabama 35203

Telephone: 205-257-6139
Facsimile: 205-257-4441

(ii) To Buyer:

Vice President, Energy Marketing and Trading
Florida Power & Light Company
700 Universe Boulevard
EMT/JB
Juno Beach, Florida 33408

Telephone: 561-691-7878
Facsimile: 561-691-7759

With a copy to:

Director, Resource Assessment and Planning
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Telephone: 305-552-3622
Facsimile: 305 552-2905

Either Party may change the information set forth in this Section 19.14 by giving written notice to the other Party in the manner prescribed by this Section.

19.15 Survival. Any provision(s) of this Agreement that expressly comes into or remains in force following the termination or expiration of this Agreement shall, subject to the express terms of the relevant provision, survive the termination or expiration of this Agreement.

19.16 Construction. The language used in this Agreement is the product of both Parties' efforts. Accordingly, each Party irrevocably waives the benefit of any rule of contract

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construction that disfavors the drafter of a contract or the drafter of specific language in a contract.

19.17 Imaged Agreement. Any original executed Agreement, schedule confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the schedule confirmation, if introduced as evidence in automated facsimile form, the transaction tape, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the transaction tape, the schedule confirmation or the Imaged Agreement (or photocopies of the transcription of the transaction tape, the schedule confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

19.18 Severability. If any provision or provisions of this Agreement or the application thereof to any Person or circumstance or in any jurisdiction is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable as written for any reason, then it is the intent of each of the Parties that any such provision or provisions shall be given force and effect to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Agreement and the application of such provision or provisions to other Persons or circumstances or in other jurisdictions shall be deemed valid and enforceable to the fullest extent possible and continue in force and effect. If the determination that any provision

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or provisions hereof are illegal, invalid, unlawful, void or unenforceable (even after such provision or provisions are given force and effect to the fullest extent possible) results in a significant material deviation from the Parties' original intent or economic expectations regarding this Agreement, the Parties shall negotiate to (and/or the applicable court, in its discretion, may) replace any such illegal, invalid, unlawful, void or unenforceable provision or provisions with valid provision(s) which result in the least deviation from the Parties' intent and economic expectations.

19.19 Agency of Southern Company Services, Inc. Seller hereby designates Southern Company Services, Inc. to serve as its agent for purposes of the implementation and administration of this Agreement. Seller may designate a new agent from time to time under this Agreement by giving Buyer sixty (60) Days written notice in which event Southern Company Services, Inc.'s role, as agent, shall cease and the newly-designated agent shall be substituted for the sole purpose of serving and acting as agent for Seller hereunder.

19.20 Include. As used herein, the words "include" or "including" shall be deemed to be followed by the words "without limitation."

19.21 Examples. Examples of calculations pursuant to the provisions of this Agreement are set forth in Appendix G. Such calculations are for example purposes only and are not intended to, and shall not, modify any of the terms of this Agreement. To the extent there is a conflict between any of these examples and the other terms of this Agreement, such other terms shall govern. Moreover, such examples shall be given no weight in interpreting or construing the provisions of this Agreement.

[The Next Page is the Signature Page.]

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IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed in duplicate by their respective duly authorized officers as of the Effective Date.

SOUTHERN COMPANY SERVICES, INC.

As Agent for
Georgia Power Company and
Gulf Power Company

BY: _____

NAME: William N. McKenzie

TITLE: Vice President

FLORIDA POWER & LIGHT COMPANY

BY: _____

NAME: Terry L. Morrison

TITLE: Vice President

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APPENDIX A

MONTHLY CAPACITY PAYMENT CALCULATION

A. Monthly Capacity Price

The Monthly Capacity Price for each Month of the Service Term shall be [REDACTED] kW-month.

B. Monthly Capacity Payment

For each Month, the Monthly Capacity Payment ("MCP") shall be calculated as follows:

MCP = [REDACTED]

Where:

[REDACTED]

In the event that Buyer's obligation to purchase Contract Capacity begins on a Day other than the first Day of a Month, or if Buyer's obligation to purchase Contract Capacity ends on a Day other than the last Day of a Month, the calculation of the Monthly Capacity Payment and/or Capacity Availability Performance Adjustment will be determined on a pro rata basis.

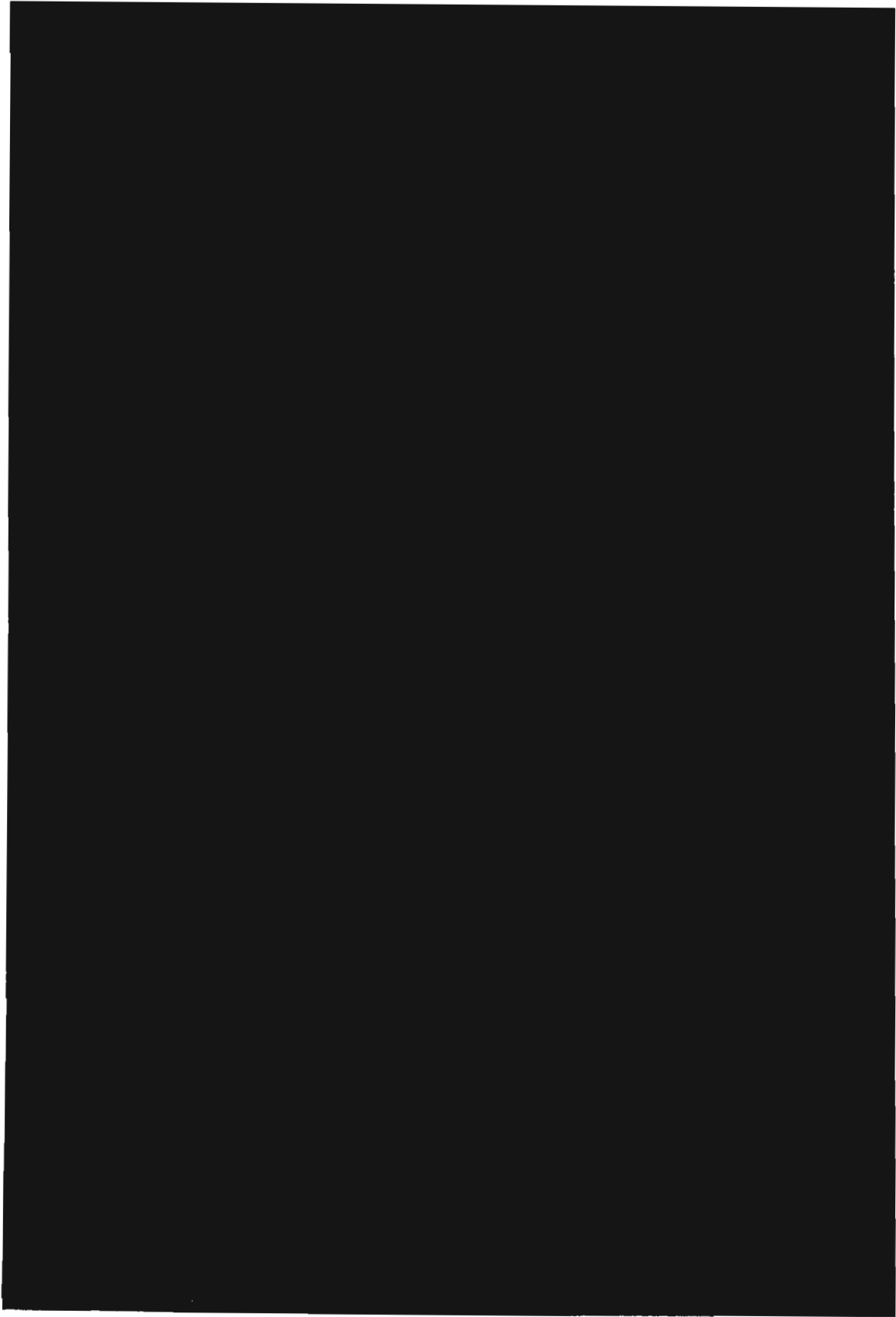
C. Capacity Availability Performance Adjustment

Within 30 Days after the conclusion of a Contract Year, Seller shall calculate a Capacity Availability Performance Adjustment ("CAPA") for the most recently completed Contract Year. For each Contract Year, the CAPA shall be determined as follows:

CAPA = CAF * ACP

Where:

[REDACTED]



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APPENDIX B

ENERGY PAYMENT CALCULATION AND
EMISSIONS ADJUSTMENT

A. Monthly Energy Payment.

The Monthly Energy Payment shall be determined for each Month as follows:

[REDACTED]

Where:

MEP = [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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6 B. Fuel Cost Adjustment.

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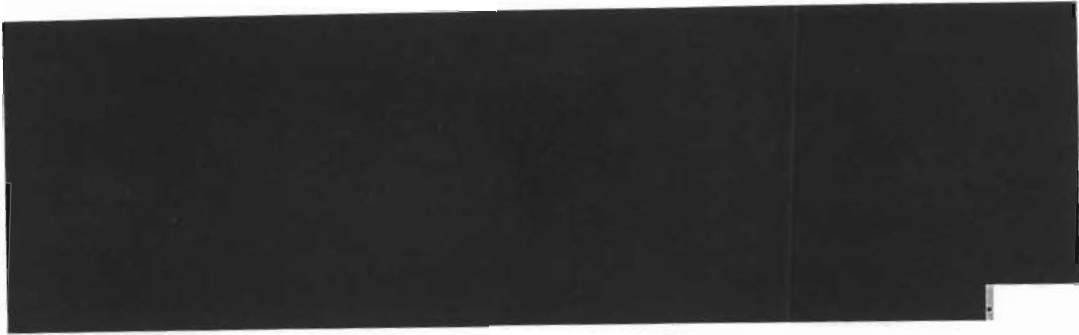
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31 C. VOM Adjustment.

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10 D. Fuel Handling Expenses Adjustment.

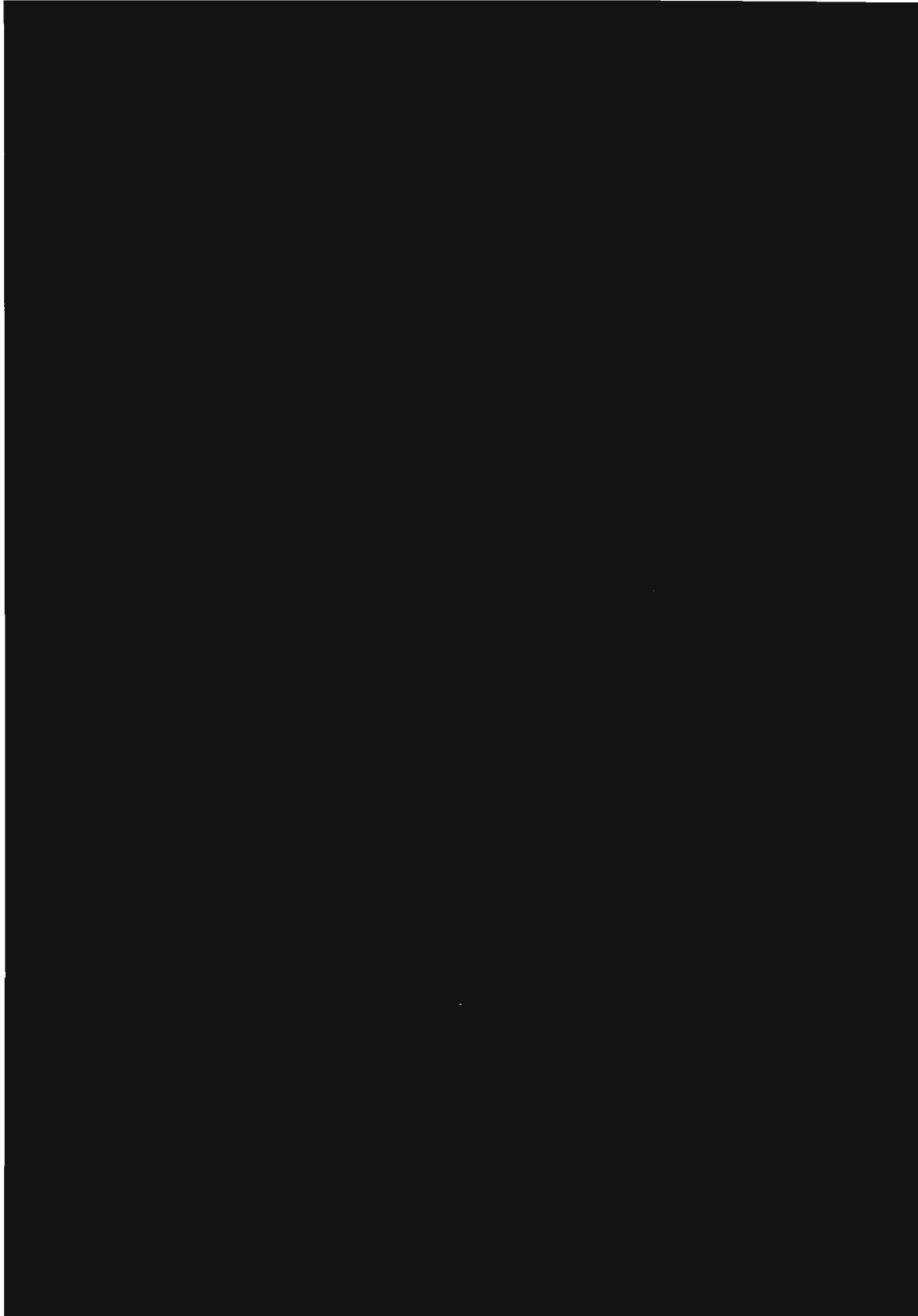
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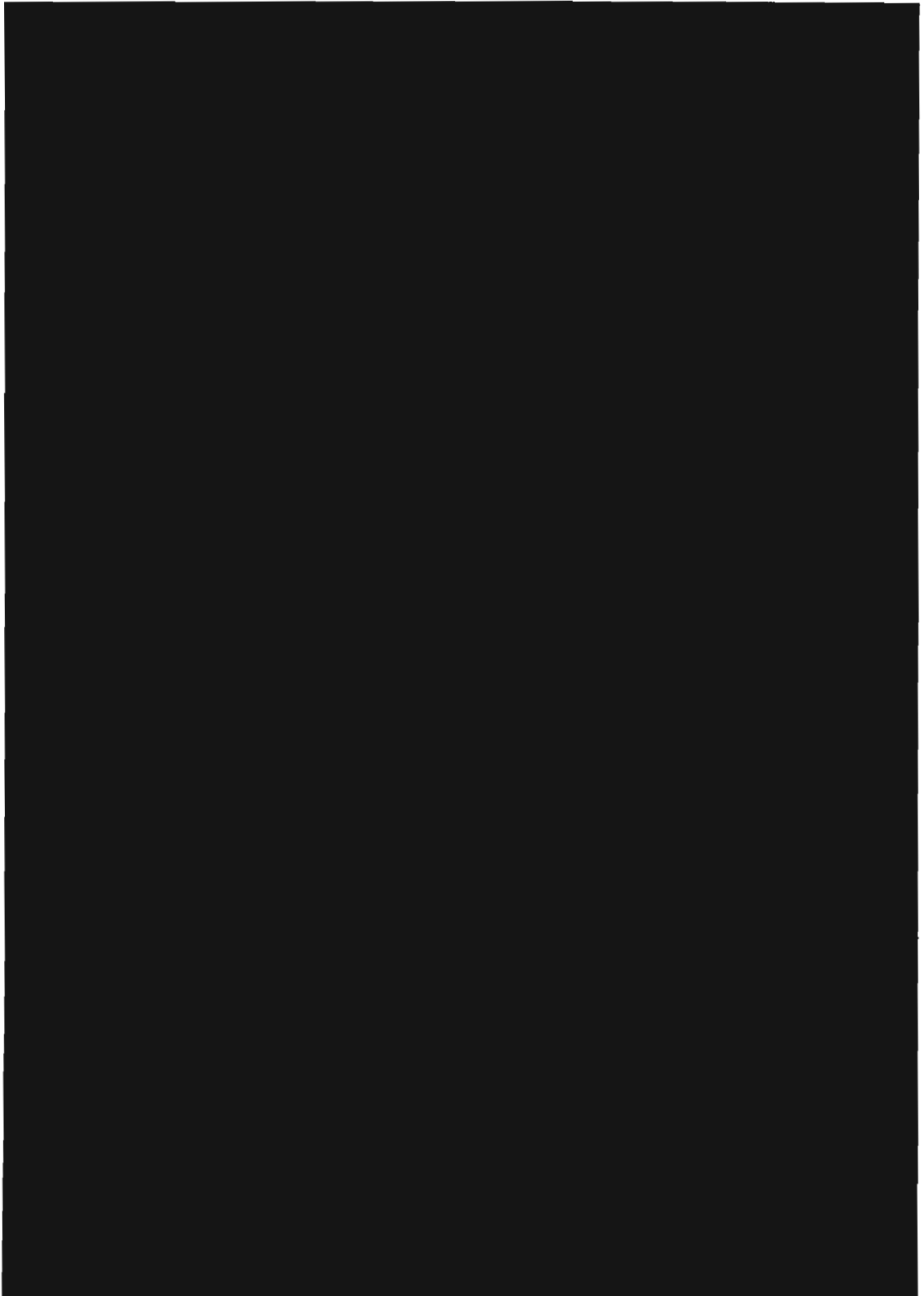


23 E. Emissions Adjustment.

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APPENDIX C

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CALCULATION OF START PAYMENT

3 The Monthly Start Payment (“MSP”) for each Month shall be calculated as follows:

4 MSP = [REDACTED]

5 Where:

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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APPENDIX D

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SCHEDULING PARAMETERS

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The Scheduling Parameters are as follows:

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Minimum Amount of Scheduled Energy for any hour (“Minimum Schedule Amount”):

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[REDACTED]

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Minimum Duration of Schedule:

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[REDACTED]

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Minimum Time between a Schedule Shut-Down and a Schedule Start:

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[REDACTED]

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APPENDIX E
LETTER OF CREDIT

Beneficiary

Attn: _____

Applicant

We hereby issue our Irrevocable Standby Letter of Credit No. _____ in your favor for \$ _____ U.S. Dollars available for payment at sight in immediately available funds against your drafts drawn on us and accompanied by a Certificate signed by a purported Authorized Officer of _____, containing one or more of the following statements:

- (a) "An Event of Default by or attributable to _____ or any of its direct or indirect successors or assignees has occurred under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Georgia Power Company and Gulf Power Company, and Florida Power & Light Company entered into as of _____, 2004 (as amended, replaced or assigned, the "Agreement"), and the amount of the draft provided herewith does not exceed the amount owed or reasonably expected to be owed to the Beneficiary under the Agreement."
- (b) "Beneficiary has determined or been notified that the expiration date of Letter of Credit No. _____ will not be extended and _____ is required to but has not provided Beneficiary with an acceptable substitute letter of credit or guaranty and it is less than thirty days until the expiration date of such Letter of Credit No. _____."
- (c) "Beneficiary has designated an Early Termination Date resulting from an Event of Default by or attributable to _____ or any of its direct or indirect successors or assignees under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Georgia Power Company and Gulf Power Company, and Florida Power & Light Company entered into as of _____, 2004 (as amended, replaced or assigned, the "Agreement"), and the amount of the draft provided herewith does not exceed the amount owed or reasonably expected to be owed to the Beneficiary under the Agreement."

Special Conditions

- 1. Multiple and partial drawings are permitted.

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2. Any drafts drawn under this Letter of Credit must bear the clause "Drawn under _____ Letter of Credit No. ____ Dated _____, _____."

3. This Letter of Credit expires at the counters of _____ at the close of business on _____, 20__ [insert date which is at least one year after the date of issuance of the letter of credit] (which date as may be extended in the manner provided herein is referred to as the "expiration date"). The expiration date shall be deemed automatically extended without amendments for one year from the initial expiration date and thereafter for one year from each anniversary of the initial expiration date unless at least sixty (60) days prior to the then applicable expiration date we notify Beneficiary in writing by facsimile at _____, Attention: _____, and by overnight courier to _____, Attention: _____ with a copy to _____ that we are not going to extend the expiration date.

4. We hereby engage with the Beneficiary that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored by us upon presentation to ourselves by payment in accordance with the Beneficiary's payment instructions. If requested by the Beneficiary, payment under this Letter of Credit will be made by wire transfer of immediately available funds to Beneficiary's account at any financial institution located in the continental United States. All payments under this Letter of Credit will be made in our own funds.

5. This Letter of Credit is subject to and governed by the ICC Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication Number 500 (the "UCP"), and, to the extent not inconsistent therewith, the laws of the State of [_____]. Anything to the contrary in Article 41 of the UCP notwithstanding, this Letter of Credit is intended to remain in full force and effect until it expires in accordance with its terms. Any failure by you to draw upon this Letter of Credit shall not cause this Letter of Credit to be unavailable for any future drawing. If this Letter of Credit expires during an interruption of business as described in Article 17 of the UCP, we hereby specifically agree to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

6. Anything to the contrary in Article 48 of the UCP notwithstanding, this Letter of Credit is transferable any number of times, but only in the full unutilized balance hereof and not in part. Transfer shall be effective upon execution and delivery by Beneficiary to us of our standard transfer form together with the original of this Letter of Credit and payment of our standard transfer fee. Transfer may be made only to any person or entity which is a direct or indirect permissible assignee of you or successor to you under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Georgia Power Company and Gulf Power Company, and Florida Power & Light Company entered into as of _____, 2004, as amended, replaced or assigned.

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7. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto, or upon our ability to perfect any lien, security interest or any other reimbursement.

As used herein, "Authorized Officer" shall mean the President or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer, Officer or Assistant Officer of the relevant signing person.

(Signed)

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APPENDIX F

GUARANTY AGREEMENT

This Guaranty Agreement (“Guaranty Agreement”) is made and entered into as of the _____ day of _____, 200____ by _____, a _____ (together with its successors, “Guarantor”), in favor of _____, a _____ (collectively with its successors and permitted assigns, “Beneficiary”).

RECITALS:

A. _____, a _____ (collectively with its successors and permitted assigns, “Contractor”), and Beneficiary directly and/or through their respective agents have entered into that certain Contract for the Purchase of Capacity and Energy, dated as of _____, 200____ (as the same may be amended, restated, replaced and/or assigned, the “PPA”).

B. Guarantor has agreed to execute, deliver and perform this Guaranty Agreement in order to satisfy the terms and conditions of the PPA.

NOW, THEREFORE, with reference to the above recitals and in reliance thereon, in consideration of Beneficiary entering into and performing the PPA and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor agrees in favor of Beneficiary as follows:

1. General. Capitalized terms not otherwise defined in this Guaranty Agreement shall have the same meaning as ascribed to such terms in the PPA. Subject to the provisions of Sections 2, 3 and 11 below, Guarantor hereby absolutely, irrevocably and unconditionally guarantees and promises to pay to Beneficiary, its successors and permitted assigns, when due all of Contractor’s present and future obligations, debts and liabilities of all kinds to Beneficiary under the PPA (as the same may be extended, amended, restated or replaced, the “Obligations”). Any payments made by Guarantor to Beneficiary hereunder shall be made in the lawful money of the United States in the amount(s) required under the PPA no later than four (4) Business Days following Beneficiary’s delivery to Guarantor of written notice of an Event of Default by or attributable to Contractor under the PPA and demand for payment under this Guaranty Agreement. The foregoing demand for payment shall include, at a minimum, sufficient information to allow Guarantor to evaluate the request for payment and determine the nature of any non-payment by Contractor under the PPA. This Guaranty Agreement is a guaranty of payment and not of collection.

2. Nature of Guaranty. The Guarantor’s obligations hereunder shall not be affected by any circumstances relating to the Obligations that might otherwise constitute a legal or equitable discharge of or defense to the Guarantor not available to Contractor. The Guarantor agrees that Beneficiary may resort to the Guarantor for payment of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against

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Contractor or any other obligor principally or secondarily obligated with respect to any Obligations. Beneficiary shall not be obligated to file any claim relating to the Obligations in the event that Contractor or Guarantor becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Beneficiary to so file and any bankruptcy or insolvency of Contractor or Guarantor shall not affect the Guarantor's obligations hereunder. In the event that any payment by Contractor or Guarantor in respect of any Obligations is voided, rescinded or recovered from Beneficiary as a preference or fraudulent transfer under the United States Bankruptcy Code or any applicable state law, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made and/or this Guaranty Agreement shall be reinstated as necessary. This Guaranty Agreement shall continue to be effective if Contractor or Guarantor merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

3. Maximum Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED OR IMPLIED ELSEWHERE IN THIS GUARANTY AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF GUARANTOR HEREUNDER IS \$ _____, TOGETHER WITH ANY AMOUNTS PAYABLE BY GUARANTOR PURSUANT TO SECTION 8.

4. Termination. This is a continuing guaranty of all present and future Obligations. If and only if (i) the PPA has expired or been properly terminated and all Obligations are indefeasibly paid or (ii) this Guaranty Agreement is no longer required to be maintained in effect pursuant to the terms of the PPA, then and only then, Guarantor may terminate this Guaranty Agreement effective thirty (30) days after written notice by the Guarantor to the Beneficiary of Guarantor's intention to terminate this Guaranty Agreement; provided further, that this Guaranty Agreement, if not sooner terminated or discharged, shall terminate at such time that Contractor otherwise satisfies the requirements of Section ____ of the PPA without giving effect to this Guaranty Agreement. If this Guaranty Agreement is so terminated or discharged, then Beneficiary shall return this original Guaranty Agreement to Guarantor within five (5) Business Days of Guarantor's written request. This Guaranty Agreement may not otherwise be terminated or revoked without Beneficiary's prior written consent. Notwithstanding the provisions of this Section 4, and despite any termination of this Guaranty Agreement (except to the extent that this Guaranty is required to be returned pursuant to the terms of this Section 4, this Guaranty Agreement shall remain in full force and effect and shall continue to apply to (i) all Obligations outstanding or due before the effective date of termination, and (ii) any extensions or renewals of, interest accruing on, or fees, costs or expenses (including attorney's fees) incurred with respect to, such Obligations.

5. No Conditions. This Guaranty Agreement is direct, continuing, unconditional, and absolute and is subject only to the defenses that may be expressly reserved by Guarantor under this Guaranty Agreement. Without limiting the generality of the foregoing, Guarantor agrees that this Guaranty Agreement is not conditioned upon its receipt of any type of notice except as set forth in Section 1 (including, but not limited to, notice of acceptance of this Guaranty Agreement), and Guarantor hereby waives any right it may otherwise have to same.

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6. No Discharge. Without limiting the foregoing, to the extent permitted by applicable law, but subject to the provisions of Section 11, none of the following or any similar event or occurrence shall operate to discharge Guarantor hereunder:

- 6.1 Any modification of any contract between Beneficiary and Contractor;
- 6.2 Beneficiary's acceptance of any instrument in substitution for any claim or debt;
- 6.3 Any renewal, extension, modification or substitution of or for any instrument;
- 6.4 Any leniency or failure to pursue collection by Beneficiary with respect to Contractor or Guarantor;
- 6.5 Any release or impairment of collateral, if any, which secures payment of Contractor's obligations to Beneficiary; or
- 6.6 The inclusion by any subsequent separate agreement or by any amendment of this Guaranty Agreement at a later date of additional guarantors of the Obligations guaranteed hereunder, or the subsequent release of any one or more of such guarantors.

7. Consents, Waivers and Renewals. Guarantor agrees that Beneficiary may, at any time and from time to time, without notice to or consent of Guarantor and without impairing, reducing or releasing this Guaranty Agreement or the obligations of Guarantor hereunder: (1) extend the time of payment of any Obligations or take, exchange or surrender any collateral or security for any Obligations or renew or make any change in the terms of any Obligations or any other liability of Contractor or Guarantor to Beneficiary, (2) take or fail to take any action of any kind in respect of any security for any Obligations or other liability of Contractor or Guarantor to Beneficiary, (3) waive or release or exercise or refrain from exercising any rights against Contractor or Guarantor or others, (4) assign, create, renew, modify, replace, discharge, release, compromise or subordinate the PPA, any Obligations or any other liability of Contractor or Guarantor or any other person to Beneficiary or any security therefor, or (5) enter into, amend, replace or release any agreement effecting or modifying any of the foregoing.

8. Costs of Collection. The Guarantor will pay for all of Beneficiary's reasonable costs incurred in enforcing its rights under this Guaranty Agreement, by legal process or otherwise, including, but not limited to, Beneficiary's reasonable attorneys' fees; provided, however, if Beneficiary is unsuccessful in enforcing its rights under this Guaranty Agreement in the event of a dispute over amounts owing, Beneficiary shall be responsible for Beneficiary's costs and attorneys' fees arising in connection with such attempted enforcement of this Guaranty Agreement.

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9. Subrogation. Guarantor waives and will not exercise any rights which it may acquire by way of subrogation until all the Obligations of Contractor under the PPA shall have been paid in full and this Guaranty Agreement shall have been terminated. Subject to the foregoing, upon payment of all the Obligations of Contractor under the PPA and termination of this Guaranty Agreement (but not before), Guarantor shall be subrogated to the rights of Beneficiary against Contractor in respect of payments made by Guarantor under this Guaranty Agreement.

10. Assignment. This Guaranty Agreement is assignable by Beneficiary to any Eligible Assignee to whom the PPA has been assigned by Beneficiary in accordance with the provisions of Section ___ thereof and shall inure to the benefit of Beneficiary, and its successors and permitted assigns. This Guaranty Agreement is not otherwise assignable by Beneficiary without the prior written consent of Guarantor. This Guaranty Agreement is not assignable or delegable by Guarantor without the prior written consent of Beneficiary which will not be unreasonably withheld or delayed.

11. Validity and Defenses. Guarantor represents and warrants to Beneficiary that this Guaranty Agreement has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guaranty Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity. The Guarantor hereby reserves to itself all rights, counterclaims and other defenses which Contractor may have to payment of any amounts arising under or in respect of the PPA, except for defenses waived elsewhere in this Guaranty Agreement and except for defenses arising from the bankruptcy or insolvency of Contractor, Beneficiary (but subject to such rights with respect to Beneficiary's bankruptcy or insolvency as expressly reserved to Contractor in the PPA), Guarantor or any other party, or the power or authority of Contractor to enter into the PPA or to perform its obligations thereunder.

12. Governing Law. Legal rights and obligations hereunder shall be determined in accordance with the laws of the State of Beneficiary's principal place of business, without regard to the principles of conflicts of laws thereunder.

13. Severability. Every provision of this Guaranty Agreement is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

14. Notices. All notices, requests, demands and other communications required or permitted to be made or given under this Guaranty Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery, (ii) five (5) days after the date of deposit in the U.S. Mail, by registered or certified mail, postage prepaid, or (iii) the day after the date of delivery to a reputable overnight courier service for overnight delivery, in each case addressed to the parties as follows:

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If to Beneficiary, to: _____

Attn: _____

If to Guarantor, to: _____

Attn: _____

Any party may change its address for receiving notice by written notice given to the other as set forth above.

15. Entire Agreement/No Amendment. This Guaranty Agreement constitutes the entire agreement and understanding of the parties hereto respecting its subject matter and supersedes all prior written and contemporaneous oral agreements, representations and understandings relating to its subject matter. No term hereof may be changed, waived, discharged or terminated unless by an instrument signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

16. No Waiver; Cumulative Rights. No failure or delay on the part of Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed Beneficiary by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary at any time or from time to time. Without limiting the foregoing: (i) this Guaranty Agreement shall not release, modify, revoke or terminate any other guaranty heretofore executed by Guarantor; nor shall any other guaranty hereafter executed by Guarantor release, modify, revoke or terminate this Guaranty Agreement except to the extent such subsequent guaranty makes specific reference to this Guaranty Agreement is agreed to in writing by Beneficiary and expressly so provides, and (ii) all of Guarantor's liabilities and obligations and Beneficiary's rights and remedies are cumulative.

17. Waivers. Guarantor waives notice of the PPA and the Obligations, any acceptance of this Guaranty Agreement, presentment, all rights of exemption, demand (except as set forth in Section 1), notice of dishonor, protest, notice of protest, notice of any sale of collateral security, notice of the release or discharge of any person or collateral and, except as expressly set forth above, all other notices.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty Agreement on the date shown below.

By: _____
Its: _____
Date: _____

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APPENDIX G

EXAMPLE CALCULATIONS

A. Hourly Capacity Calculations, EFMH and EUH

Pursuant to Section 19.21 of this Agreement, Table G-1 provides the following example calculations: hourly capacity calculations, Equivalent Force Majeure Hours, Equivalent Unavailable Hours, Monthly Capacity Payment, and Capacity Availability Performance Adjustment. To facilitate clarity, some simplifying assumptions regarding data have been made. The assumptions for these examples are set forth below and in Lines 1-14 of Table G-1. Each example calculation, using line numbers, is set forth in the second column of the Table G-1.

For purposes of the calculations in Table G-1, the hourly conditions were assumed to exist in every hour of the month and the monthly conditions were assumed to exist in every month of the year.

Assumptions for the examples in Table G-1 are:

[Redacted content]

Table G-1

Assumptions

Line	Calculations (Using Line Numbers)	Units	Value
6			
7			
8			
9			
10			
11			
12			
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Example Hourly Calculations of Capacity, EFMH, and EUH

21			
22			
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Example Calculation of Monthly Capacity Payment

31			
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Example Calculation of Capacity Availability Performance Adjustment

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50a			

1 **B. Monthly Energy Payment and Adjustments**

2 Pursuant to Section 19.21 of the Agreement, Table G-2 provides the following example calculations:
3 Monthly Energy Payment, Fuel Cost Adjustment (Monthly), VOM Adjustment (Annual), Fuel
4 Handling Adjustment (Annual), and Emissions Adjustment (Compliance Period).

5 Each example calculation, using line numbers, is set forth in the second column of the example tables.

6 Assumptions for the examples in Table G-2 are:

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Table G-2

Example Calculations of Monthly Energy Payment & Adjustments

Line	Calculations (Using Line Numbers)	Monthly Energy Payment Calculation	Units	Value
6				
7				
8				
9				
10				
11				
12				
13				
14	<u>Fuel Cost Adjustment (Monthly)</u>			
15				
16				
17				
18				
19				
20	<u>VOM Adjustment (Annual)</u>			
21				
22				
23				
24				
25				
26				
27				
28				
29	<u>FH Adjustment (Annual)</u>			
30				
31				
32				
33				
34				
35				
36				
37				
38	<u>Emissions Adjustment (Compliance Period)</u>			
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				

1 C. Monthly Start Payment

2 Pursuant to Section 19.21 of the Agreement, Table G-3 provides an example calculation of the
3 Monthly Start Payment. The example calculation, using line numbers, is outlined in the second
4 column of the example table.

5 Assumptions for the example in Table G-s are:

6 [REDACTED]

7 Table G-3

8 Example Calculation of Monthly Start Payment

9

10 Line	Calculations (Using Line Numbers)	Value
11	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]

16 [REDACTED]

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**CONTRACT FOR THE
PURCHASE OF CAPACITY AND ENERGY
BETWEEN**

SOUTHERN COMPANY SERVICES, INC.

AND

FLORIDA POWER & LIGHT COMPANY

FROM

PLANT HARRIS UNIT NO. 1

DATED AS OF AUGUST 11, 2004

**CONFIDENTIALITY
DESIGNATION REVISED
11/2/2004**

**TLH-2
DOCKET NO. 040001-EI
FPL WITNESS: T. HARTMAN
EXHIBIT _____
SEPTEMBER 9, 2004**

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**CONTRACT FOR THE PURCHASE OF
CAPACITY AND ENERGY
BETWEEN
SOUTHERN COMPANY SERVICES, INC.
AND
FLORIDA POWER & LIGHT COMPANY**

This CONTRACT FOR THE PURCHASE OF CAPACITY AND ENERGY is made and entered into as of this 11th day of August, 2004 ("Effective Date"), between **SOUTHERN COMPANY SERVICES, INC.**, an Alabama corporation having its principal office and place of business at 600 North 18th Street, Birmingham, Alabama 35203, acting as agent (in such capacity hereinafter referred to as "SCS") for Southern Power Company, a Delaware corporation having its principal office and place of business at 600 North 18th Street, Birmingham, Alabama 35203 (hereinafter referred to as "Southern Power" or "Seller") and **FLORIDA POWER & LIGHT COMPANY** (hereinafter referred to as "FPL" or "Buyer"), a Florida corporation having its principal office and place of business at 700 Universe Boulevard, Juno Beach, Florida 33408. Seller and Buyer are hereafter referred to individually and collectively as a "Party" or the "Parties," respectively.

RECITALS:

Buyer desires to purchase and Seller desires to sell, capacity and energy in accordance with this Agreement.

Subject to the terms and conditions of this Agreement, Seller will provide and sell to Buyer, and Buyer will accept and purchase from Seller, capacity and energy from the Facility or from other resources as provided in this Agreement.

1 NOW THEREFORE, in consideration of the foregoing recitals and the mutual
2 covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby
3 acknowledged, the Parties agree as follows:

4 ARTICLE 1

5 DEFINITIONS

6 The following terms shall have the respective meanings set forth below.

7 "1-on-1 Operating Mode" means any time a Schedule requests energy for any hour in
8 an amount between and including [REDACTED] (whether or not such energy is
9 supplied from an Alternate Resource(s)).

10 "2-on-1 Operating Mode" means any time a Schedule requests energy for any hour in
11 an amount equal to or greater than [REDACTED] MW (whether or not such energy is supplied from an
12 Alternate Resource(s)).

13 "Affiliate" means, with respect to a corporation, partnership or other entity, each such
14 other corporation, partnership or other entity that directly or indirectly (through one or more
15 intermediaries) controls, is controlled by, or is under common control with, such corporation,
16 partnership, or other entity.

17 "After-Tax Basis" means, with respect to any payment under Section 14.2 to any
18 Person, the amount of such payment ("Base Payment") supplemented by a further payment
19 ("Additional Payment") to that Person so that the sum of the Base Payment plus the Additional
20 Payment shall, after deduction of the amount of all Federal, state and local income taxes
21 required to be paid by such Person in respect of the receipt or accrual of the Base Payment and
22 the Additional Payment (taking into account the net present value of any reduction in such
23 income taxes resulting from tax benefits realized by the recipient as a result of the payment or

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the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state and local income tax rates applicable to the Person for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for Federal income tax purposes.

“Agreement” means this Contract for the Purchase of Capacity and Energy, including, to the extent applicable, any appendices hereto and any amendments that the Parties may execute now or at any time in the future.

“Alternate Delivery Point(s)” means, when Seller designates an Alternate Resource(s) pursuant to Section 5.6 or Section 5.7 (including a Replacement Resource), the applicable point(s) of delivery designated by Seller.

“Alternate Resource(s)” means any resource or resources other than the Facility (whether such other resources are owned, purchased or otherwise controlled by Seller, or that are otherwise available to Seller) that Seller designates pursuant to Section 5.6 or Section 5.7.

“Available Capacity” means, at any given time, the Contract Capacity less the sum of: (i) the Force Majeure Capacity at such time; and (ii) the Outage Capacity at such time.

“Billing Month” means each Month during the Term beginning with the second Month of the first Contract Year and includes the Month immediately following the expiration or early termination of this Agreement.

“Btu” means British Thermal Units.

“Business Day” means any Day on which Federal Reserve Member Banks in New York, New York are open for business. A Business Day shall begin at 0800 CPT and end at 1700 CPT.

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“Buyer” has the meaning set forth in the introductory paragraph hereof.

“Buyer Delivery Point(s)” means, for any hour of any Delivery Day, the point(s) on the Southern Company Transmission System to which Buyer intends to transmit energy delivered by Seller under this Agreement.

“Central Prevailing Time” or **“CPT”** means the local time at any point in Birmingham, Alabama.

“Change in Law” means the adoption, enactment, promulgation or issuance of, a change in, or a new or changed interpretation by a Government Agency of, any Law after February 6, 2004.

“Commercially Reasonable” or **“Commercially Reasonable Efforts”** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision, or other action, including without limitation, electric system reliability and stability, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, and the commercial environment in which such purchase, sale, decision, or other action occurs.

“Contemporaneous Agreements” means: (i) this Agreement; (ii) the Contract for the Purchase of Capacity and Energy from Plant Franklin Unit No. 1 dated as of August 11, 2004 between Southern Company Services, Inc. (as agent for Seller) and Buyer; and (iii) the Contract for the Purchase of Capacity and Energy from Plant Scherer Unit No. 3 dated as of August 11, 2004 between Southern Company Services, Inc. (as agent for Georgia Power Company and Gulf Power Company) and Buyer.

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“Contest” means with respect to any Person, a contest of any Governmental Approval or Law, acts or omissions by any Government Agency, a requirement of any Government Agency, or any related matters, so long as the contesting Party could not reasonably be expected to be prevented from performing its material obligations under this Agreement pending the outcome of such contest.

“Contract Capacity” means the lesser of: (i) 600 MW; or (ii) the Total Facility Capacity, or such other amount as expressly provided in this Agreement.

“Contract Year” means: (i) for the first Contract Year, the Service Commencement Date through the next date that is May 31; and (ii) for each Contract Year thereafter, each 12 Month period beginning June 1 and ending May 31; provided, however, the last Contract Year shall end on the date that this Agreement terminates or expires.

“Day” means the period of time beginning at hour ending 0100 CPT and ending at hour ending 2400 CPT.

“Delivery Day” means any Day for which Buyer Schedules energy to be delivered in accordance with this Agreement.

“Delivered Energy” means, for any hour, the amount of energy (expressed in MWh) delivered by Seller in accordance with this Agreement and shall equal the sum of: (i) energy delivered by Seller to the Delivery Point pursuant to Buyer’s Schedule (including Ramp Energy provided at the Facility Delivery Point in connection with such Schedule); and (ii) any energy provided and/or procured by Seller to resolve energy imbalances at the Delivery Point. Delivered Energy shall not exceed Scheduled Energy for any hour.

“Delivered Energy Credit” means, for any hour, to the extent such difference is positive, the difference of: (i) Delivered Energy for such hour; less (ii) Available Capacity plus

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the portion of Delivered Energy provided from an Alternate Resource(s) designated for such hour pursuant to Section 5.6.1 in response to a Force Majeure Event.

“Delivery Excuse” means: (i) an Event of Default by Buyer; (ii) the interruption of transmission service procured by Buyer or the unavailability of transmission service to Buyer beyond the Delivery Point(s); (iii) any directive from the applicable transmission provider and/or control area operator to cease deliveries of energy from the Facility; (iv) SNG’s failure to schedule or to deliver scheduled quantities of Gas to the Facility (but only if, for the period of such failure, Seller has complied with Section 9.1 and has utilized Commercially Reasonable Efforts to utilize available transportation capacity as required by Section 9.2.1 to satisfy Buyer’s Schedule); or (v) a circumstance described in Section 9.2.6 and/or Section 9.3.2.

“Delivery Point” means the Facility Delivery Point when Seller designates the Facility as the source of Delivered Energy and/or the Alternate Delivery Point(s) (as applicable) to which Seller shall deliver energy to Buyer hereunder.

“Effective Date” has the meaning set forth in the introductory paragraph hereof.

“Electric Metering Equipment” means electric meters and associated equipment, including metering transformers and back-up meters.

“EFMH” or “Equivalent Force Majeure Hour” shall occur in any hour (or portion of an hour) in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point is occurring or is continuing. During such an hour, EFMH shall equal the ratio of: (A)(i) Force Majeure Capacity for such hour; less (ii) the amount of electric capacity associated with an Alternate Resource(s), whether available or unavailable, that has been designated for such hour pursuant to Section 5.6.1 in response to the Force Majeure Event causing the Force Majeure Capacity to exist; to (B) the Contract Capacity.

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“EUH” or “Equivalent Unavailable Hour” shall occur in any hour (or portion of an hour) in which there is Unavailable Capacity. For such an hour, EUH shall equal the ratio of: (i) Unavailable Capacity for such hour; to (ii) the Contract Capacity for such hour.

“Event of Default” has the meaning set forth in Section 16.1.

“Facility” means Seller’s Gas fired combined cycle electric generating unit known as Plant Harris Unit No. 1 (as may be modified) and all appurtenant facilities, located near Autaugaville, Alabama which directly interconnects to the Southern Company Transmission System.

“Facility Delivery Point” means the substation where the Facility interconnects to the Southern Company Transmission System (or other applicable transmission system) at the transmission system voltage.

“FERC” means the Federal Energy Regulatory Commission, or any successor to its functions.

“Florida Interface” means the transmission interface between the Southeastern Electric Reliability Council (or its successor) region and the Florida Reliability Coordinating Council (or its successor) region as such regions exist on the Effective Date.

“Force Majeure Capacity” means, for any hour in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point occurs or is continuing, the portion of the Contract Capacity that is not available from the Facility as a result of such Force Majeure Event. Force Majeure Capacity shall be calculated as follows:

Force Majeure Capacity = Contract Capacity – Unaffected Contract Capacity

Where:

Unaffected Contract Capacity = the lesser of TCUFM or 600 MW

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TCUFM = Total Capacity Unaffected by Force Majeure = Total Facility Capacity – TAC

TAC = Total Affected Capacity = the total amount of capacity that is not available from the Facility as a result of the Force Majeure Event.

“Force Majeure Event” has the meaning set forth in Section 15.1.

“Gas” means natural gas.

“Government Agency” means any federal, state, local, territorial or municipal government and any department, commission, board, court, bureau, agency, instrumentality, judicial or administrative body thereof.

“Governmental Approval” means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of or regulation of any Government Agency relating to the Facility or to the execution, delivery or performance of this Agreement.

“Guarantor” has the meaning set forth in Section 16.1.

“Guaranty” means a guaranty or other instrument guaranteeing a Party’s obligations under this Agreement as contemplated under Article 20.

“Imaged Agreement” has the meaning set forth in Section 21.17.

“Increased Generation Costs” [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
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- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]

“kW” means kilowatt(s).

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“kWh” means kilowatt hour(s).

“Law” means any act; statute; law; requirement; ordinance; order; ruling or rule; regulation; standards and/or criteria contained in any permit, license or other approval; legislative or administrative action; or a decree, judgment or order of any Government Agency imposed, whether in effect now or at any time in the future.

“Long Term Firm Transmission Service” means firm point-to-point (or other equivalent) transmission service for a term of one year or more.

“Maintenance Outage” has the meaning set forth in Section 4.2.

“Major Maintenance” means the performance of a hot gas path inspection for the combustion turbines at the Facility.

“Major Maintenance Off-Peak Performance Period” means any Off-Peak Performance Period in which Major Maintenance occurs.

“MMBtu” means one million Btu.

“Month” means a calendar month.

“Monthly Capacity Payment” means the payment for Contract Capacity to be made by Buyer to Seller pursuant to Section 6.1.

“Monthly Energy Payment” means the payment for Delivered Energy to be made by Buyer to Seller pursuant to Section 6.2.

“Monthly Fuel Transportation Payment” means the payment for fuel transportation to be made by Buyer to Seller pursuant to Section 6.4.

“Monthly Start Payment” means the payment for Successful Starts to be made by Buyer to Seller pursuant to Section 6.3.

“Moody’s” has the meaning set forth in Section 19.1.

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“MW” means megawatt(s).

“MWh” means megawatt hour(s).

“NERC” means the North American Electric Reliability Council, or any successor to its functions.

“Normal Off-Peak Performance Period” means any Off-Peak Performance Period in which Major Maintenance does not occur.

“OATT” means the Open Access Transmission Tariff of Southern Companies or a successor tariff governing transmission on the Southern Company Transmission System, as the same may be changed or amended from time to time.

“Off-Peak Performance Period” means the period of time consisting of all hours during the Months of October, November, December, January, February, March and April in succession. If this Agreement terminates or expires during such period on a Day other than the last Day of such period, such Off-Peak Performance Period shall be deemed to end on the Day of such termination or expiration. If the Service Commencement Date occurs during such period on a Day other than the first Day of such period, such Off-Peak Performance Period shall be deemed to begin on the Service Commencement Date.

“Operating Committee” has the meaning set forth in Section 4.5.

“Operating Mode” means either 1-on-1 Operating Mode or 2-on-1 Operating Mode.

“Operating Procedures” has the meaning set forth in Section 4.4.

“Outage” means any condition or circumstance in which the generating capability of the Facility is eliminated or reduced (in whole or in part) for any reason, including an actual or threatened component failure and during Scheduled Outages and Maintenance Outages. An Outage does not include those times that the Facility’s capability is reduced (in whole or in part)

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due to a Force Majeure Event or a Delivery Excuse. In addition, an Outage shall not occur solely because of Seller's ability to sell capacity and/or energy from the Facility to a third party or an Affiliate(s).

"Outage Capacity" means, for any hour in which an Outage occurs or is continuing, the portion of the Contract Capacity that is not available from the Facility as a result of such Outage. Outage Capacity shall be calculated as follows:

$$\text{Outage Capacity} = \text{Contract Capacity} - \text{Unaffected Contract Capacity}$$

Where:

Unaffected Contract Capacity = the lesser of TCUO or 600 MW

TCUO = Total Capacity Unaffected by Outage = [the sum of: (A) the lesser of: (i) Total Facility Capacity; or (ii) 600 MW; and (B) Unused Excess Capacity] – TAC

Unused Excess Capacity = to the extent it is positive, the difference of TCUFM as determined under the definition of "Force Majeure Capacity" hereunder, less 600 MW.

TAC = Total Affected Capacity = the total amount of capacity that is not available from the Facility as a result of the Outage.

"Peak Performance Period" means the period of time consisting of all hours during the Months of May, June, July, August and September in succession. If this Agreement terminates or expires during such period on a Day other than the last Day of such period, such Peak Performance Period shall be deemed to end on the Day of such termination or expiration. If the Service Commencement Date occurs during such period on a Day other than the first Day of such period, such Peak Performance Period shall be deemed to begin on the Service Commencement Date.

"Performance Period" shall mean either a Peak Performance Period or an Off-Peak Performance Period.

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“Person” means any individual, corporation, limited liability corporation, partnership, joint venture, trust, unincorporated organization, Government Agency or other entity.

“Plant” means Seller’s Plant Harris located near Autaugaville, Alabama, which currently consists of the Facility and a combined cycle electric generating unit known as Plant Harris Unit No. 2 and all appurtenant facilities, as such plant and facilities may be modified and/or expanded from time to time (including the addition of generating units).

“Prior Business Day” means the Business Day immediately prior to a Delivery Day.

“Prime Rate” means, for any Day on which the calculation of an interest amount begins under this Agreement, the “Prime Rate” specified for such Day (or, if such Day is not a Business Day, on the first Business Day following such Day) under the “Money Rate” table of the *Wall Street Journal*. In the event that the *Wall Street Journal* ceases to report a Prime Rate, the Prime Rate shall be the prime rate (or its functional equivalent) charged by the Federal Reserve Bank of Atlanta, Georgia.

“Prudent Industry Practices” means any of the practices, methods, standards and acts (including the practices, methods and acts engaged in or approved by a significant portion of the electric power industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by equipment suppliers and manufacturers, applicable design limits and applicable Governmental Approvals and Laws.

“Ramp Energy” has the meaning set forth in Section 5.2.

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“Redirect Deadline” means the deadline established by the applicable transmission provider for requesting the redirect of transmission service under the applicable transmission tariff.

“S&P” has the meaning set forth in Section 19.1.

“SNG” means Southern Natural Gas Company.

“Schedule” means the right of Buyer to request the delivery of Scheduled Energy in accordance with this Agreement. Any form of the term Schedule (e.g., “Scheduled,” “Schedules” or “Scheduling”) shall refer to the exercise of such right by Buyer.

“Schedule Shut-Down” means any time Buyer goes from having some energy Scheduled to having no energy Scheduled.

“Schedule Start” means each time that Buyer goes from not having any energy Scheduled to having some amount of energy Scheduled (in either 1-on-1 Operating Mode or 2-on-1 Operating Mode).

“Scheduled Energy” means the amounts of energy, expressed in whole MWh, Scheduled by Buyer to be delivered by Seller in accordance with this Agreement, including amounts of Ramp Energy Buyer is required to accept and receive hereunder.

“Scheduled Outage” means maintenance and/or outages conducted and/or taken by Seller pursuant to Section 4.1.

“Scheduling Parameters” has the meaning set forth in Appendix D.

“SEARUC” means the Southeastern Association of Regulatory Utility Commissioners.

“Seller” has the meaning set forth in the introductory paragraph hereof.

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“Service Commencement Date” means June 1, 2010; provided, however, that such date may be extended by Seller due to a Force Majeure Event for a period equal to the period of delay caused by said Force Majeure Event.

“Southern Company” means the Southern Company, a publicly held corporation, organized and existing under the laws of the State of Delaware and having its principal place of business in Atlanta, Georgia.

“Southern Company Transmission” means the functional transmission division of Southern Company and its affiliates, as well as any successor transmission service provider.

“Southern Company Transmission System” means the integrated transmission systems of the electric operating companies of Southern Company, as such systems may be modified or expanded from time-to-time, as well as any successor transmission system(s).

“Southern Power” has the meaning set forth in the introductory paragraph.

“Taxes” means any or all ad valorem, property, occupational, severance, emissions, generation, first use, conservation, energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments; provided, however, the term Taxes shall not include taxes based on net income or net worth.

“Term” has the meaning set forth in Section 2.1.

“Total Facility Capacity” means, for each Contract Year, the generating capability of the Facility as declared by Seller under Article 8.

“Unavailable Capacity” means, for any hour: (i) Outage Capacity for such hour; less (ii) the Delivered Energy Credit; less (iii) if positive, the difference of the available portion of capacity associated with an Alternate Resource(s) that has been designated for such hour pursuant to Section 5.6.1 in response to the Outage causing Outage Capacity to exist, less the

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Delivered Energy Credit; plus (iv) the unavailable portion of capacity associated with an Alternate Resource(s) designated for such hour pursuant to Section 5.6.1 in response to a Force Majeure Event.

ARTICLE 2

TERM OF AGREEMENT

2.1 Term. Subject to the survival provisions herein, this Agreement shall continue in full force and effect from the Effective Date until the end of the Service Term, or on such earlier date on which this Agreement is terminated in accordance with its terms ("Term").

2.2 Service Term. Subject to early termination of this Agreement as provided hereunder, Seller's obligation to provide and sell and Buyer's obligation to accept and purchase Contract Capacity and Scheduled Energy shall extend from the Service Commencement Date through December 31, 2015 ("Service Term"). Provided, however, Buyer shall be entitled to unilaterally extend the Service Term to December 31, 2017 by providing Seller with written notice on or before January 31, 2010. Upon Buyer's providing such notice, the Service Term shall be deemed to be extended through December 31, 2017.

2.3 Survival. All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

2.4 Effect of Termination. Subject to the exercise of a non-defaulting Party's rights under Section 16.2, in the event that this Agreement is terminated, the rights and obligations of the Parties hereunder shall continue unaffected until the termination is effective in accordance with the terms and conditions thereof. Any termination of this Agreement shall not relieve Buyer of its obligation to pay any unpaid invoices for any Contract Capacity made available and

1 Delivered Energy prior to the effective date of such termination, relieve Seller of its obligation
 2 to provide Contract Capacity and to deliver Scheduled Energy prior to the effective date of such
 3 termination, or relieve either Party of any of its other liabilities or obligations accruing prior to
 4 termination.

ARTICLE 3

SALE AND PURCHASE OF CAPACITY AND ENERGY

7 3.1 Sale and Purchase of Capacity. Subject to the terms and conditions of this
 8 Agreement, beginning on the Service Commencement Date and until the end of the Service
 9 Term, Seller shall make available and sell to Buyer, and Buyer shall accept and purchase, the
 10 Contract Capacity.

11 3.2 Sale and Purchase of Energy. Subject to the terms and conditions of this
 12 Agreement, beginning on the Service Commencement Date and until the end of the Service
 13 Term, Seller shall deliver and sell to Buyer, and Buyer shall accept and purchase from Seller,
 14 energy up to the Contract Capacity as and when Scheduled by Buyer.

ARTICLE 4

FACILITY MAINTENANCE

15 4.1 Scheduled Outages. Commencing in 2010 and each year thereafter, Seller shall
 16 submit to Buyer, before February 1, a schedule of Facility outages during which maintenance
 17 and/or the installation of equipment required by Law or Prudent Industry Practices will be
 18 performed for the next Contract Year ("Scheduled Outages"); [REDACTED]

19 [REDACTED]

20 [REDACTED]
 21 [REDACTED] Within 30 Days after receiving Seller's proposed schedule for Scheduled
 22 Outages, Buyer may request, in writing, that Seller reschedule any such Scheduled Outages.
 23

1 Following receipt of such request, Seller shall inform Buyer as to whether it can accommodate
2 Buyer's request and, if so, shall further advise Buyer of the good faith estimated costs that will
3 be incurred by Seller in connection with accommodating the request of Buyer to reschedule the
4 Scheduled Outages. Buyer shall then within 14 Days of the receipt of the estimated costs
5 provided by Seller determine whether Seller should reschedule the Scheduled Outages. Without
6 regard to any prior estimate, Buyer shall reimburse Seller for all Commercially Reasonable
7 costs related to such change in schedule if Seller makes such change. While Seller must use
8 Commercially Reasonable Efforts to accommodate a request of Buyer to re-schedule any
9 Scheduled Outages, Seller may elect to decline rescheduling, if, in Seller's Commercially
10 Reasonable judgment, it would cause a failure on the part of Seller to observe Prudent Industry
11 Practices, or if the proposed reschedule would cause Seller to incur costs which Buyer is
12 unwilling to reimburse. Prior to or during any Contract Year, Seller may modify a schedule of
13 Scheduled Outages to reschedule such outages with the prior written consent of Buyer, which
14 consent shall not be unreasonably withheld, conditioned or delayed.

15 **4.2 Maintenance Outages.** [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
8 [REDACTED]
9 [REDACTED]

4.3 Permits and Compliance with Laws.

4.3.1 Subject to the right of Contest, each Party shall acquire and maintain in effect all Governmental Approvals necessary for it to perform its obligations under this Agreement.

4.3.2 Subject to the right of Contest, each Party shall at all times comply with all Laws and Governmental Approvals applicable to such Party that are necessary for such Party to perform its obligations under this Agreement.

4.4 Operating Procedures. Buyer and Seller shall begin to develop written Operating Procedures no later than 6 months before the Service Commencement Date. Such Operating Procedures shall be completed no later than 30 Days before the Service Commencement Date. The Operating Procedures shall establish the protocol under which the Parties shall perform their respective responsibilities under this Agreement, including method of Day-to-Day communications, amounts of Ramp Energy to be received by Buyer under Section 5.2, key personnel lists, and logging and tracking of hours of EUH and EFMH, Scheduled Outages, Maintenance Outages, and hours of Delivery Excuse.

1 **4.5 Operating Committee.** The Parties shall form a committee to act in matters
2 relating to the performance of their respective obligations under this Agreement (“Operating
3 Committee”). Each Party shall appoint one representative and one alternate representative to
4 serve on the Operating Committee. The Parties shall notify each other in writing of such
5 appointments and any changes thereto. The Operating Committee shall have no authority to
6 modify the terms or conditions of this Agreement. Beginning in 2009, the Operating
7 Committee shall meet no less than two times per calendar year (which meetings may be by
8 telephone) and all of its decisions must be the unanimous decision of the representatives.
9 Within a reasonable time after the conclusion of each meeting of the Operating Committee, the
10 representatives of each Party shall exchange written summaries of such meeting, including a
11 description of issues discussed and decisions made.

12 **ARTICLE 5**

13 **SCHEDULING AND THE PROVISION OF CAPACITY AND ENERGY**

14 **5.1 Scheduling.**

15 [Redacted]

16 [Redacted]

17 [Redacted]

18 [Redacted]

19 [Redacted]

20 [Redacted]

21 [Redacted]

22 [Redacted]

23 [Redacted]

[REDACTED]

1 **5.2 Ramp Energy.** Buyer shall receive and accept at the Facility Delivery Point all
2 energy produced by the Facility during ramping (both starting and shutting down) in connection
3 with satisfying Buyer's Schedule ("Ramp Energy"). The Operating Procedures established
4 pursuant to Section 4.4 shall provide for a procedure whereby Seller, for transmission
5 scheduling purposes, shall provide Buyer with prior notice of the hourly Ramp Energy to be
6 provided for each Schedule. Provided, however, Buyer shall not be required to accept and
7 receive Ramp Energy in an amount greater than █████MWh while the Facility is starting or
8 greater than █████MWh while the Facility is shutting down. For purposes hereof (including
9 Appendix B), Ramp Energy shall be deemed to be Delivered Energy. The Operating
10 Procedures established pursuant to Section 4.4 shall provide for a methodology (consistent with
the Facility's manufacturer's recommendations and Prudent Industry Practices) for determining
the amounts of Ramp Energy that must be accepted and received by Buyer under this Section
5.2. Ramp Energy shall not be provided to the extent energy is supplied to Buyer from an
Alternate Resource(s).

5.3 Transmission and Scheduling Requirements. Buyer shall be responsible for
complying with all transmission reservation, scheduling and tagging requirements associated
with energy provided hereunder at and after the Delivery Point.

5.4 Costs and Expenses. Except as specifically provided hereunder, all costs and
expenses associated with Delivered Energy at and after the Delivery Point shall be the sole
responsibility of Buyer. Except as specifically provided hereunder, all costs and expenses
associated with Delivered Energy prior to the Delivery Point shall be the responsibility of
Seller. Any penalties associated with Delivered Energy shall be the responsibility of the Party
whose action or inaction caused the penalty to be assessed.

1 **5.5 Delivery of Energy.** Subject to the terms of this Agreement and the Scheduling
2 Parameters, energy provided by Seller pursuant to Buyer's Schedule shall be deemed to be
3 delivered at the Delivery Point.

4 **5.6 Alternate Resources.**

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

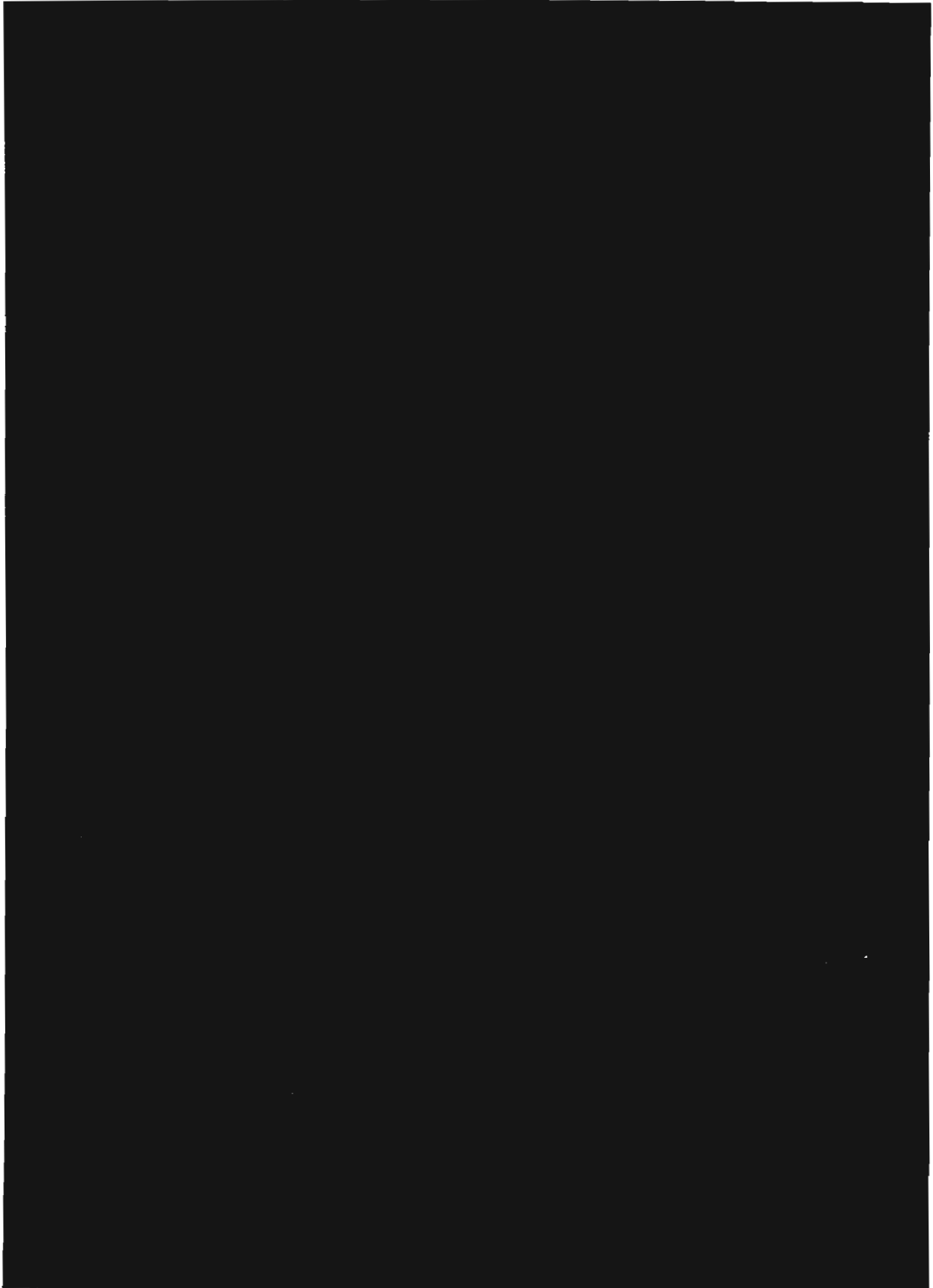
19 [REDACTED]

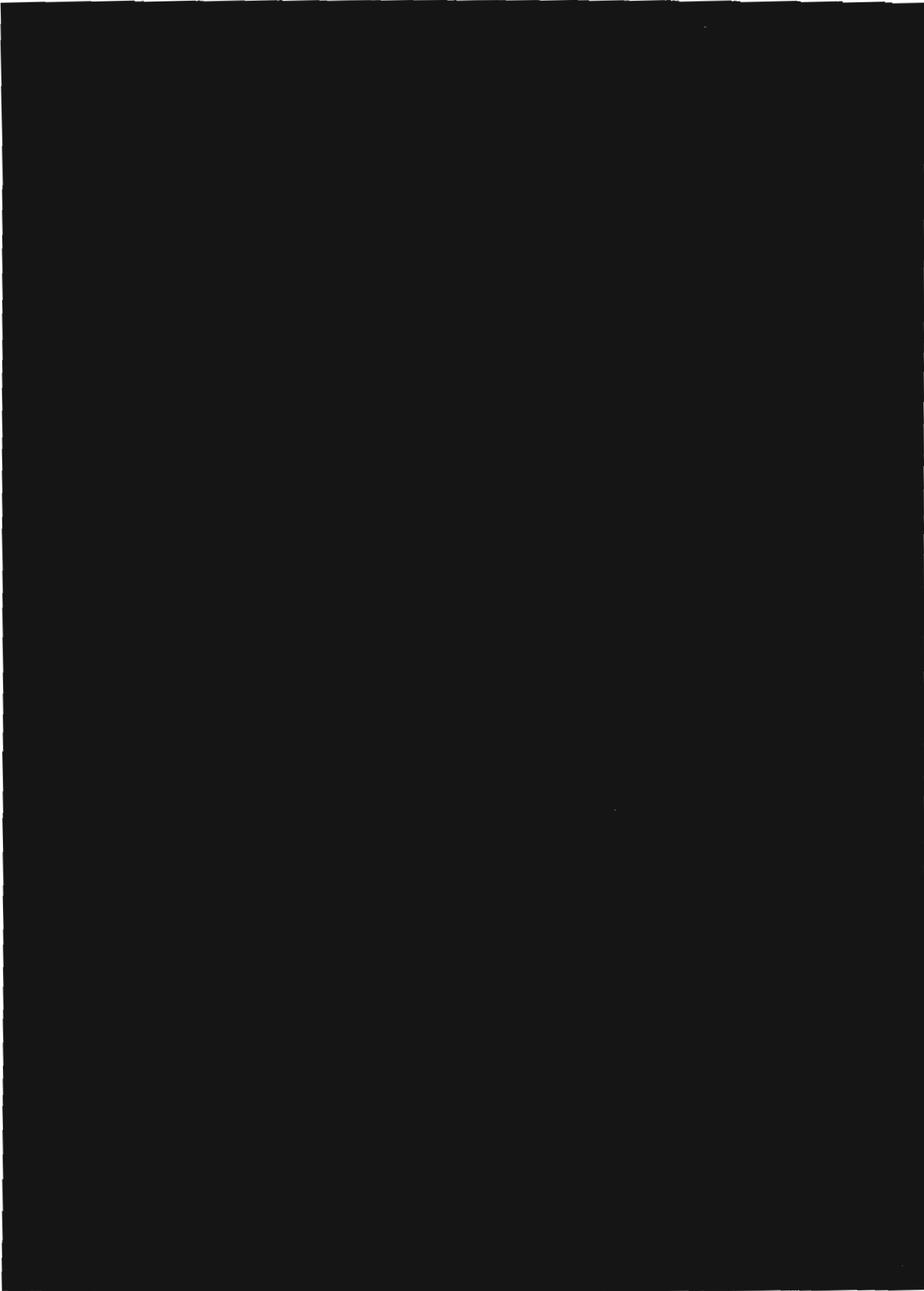
20 [REDACTED]

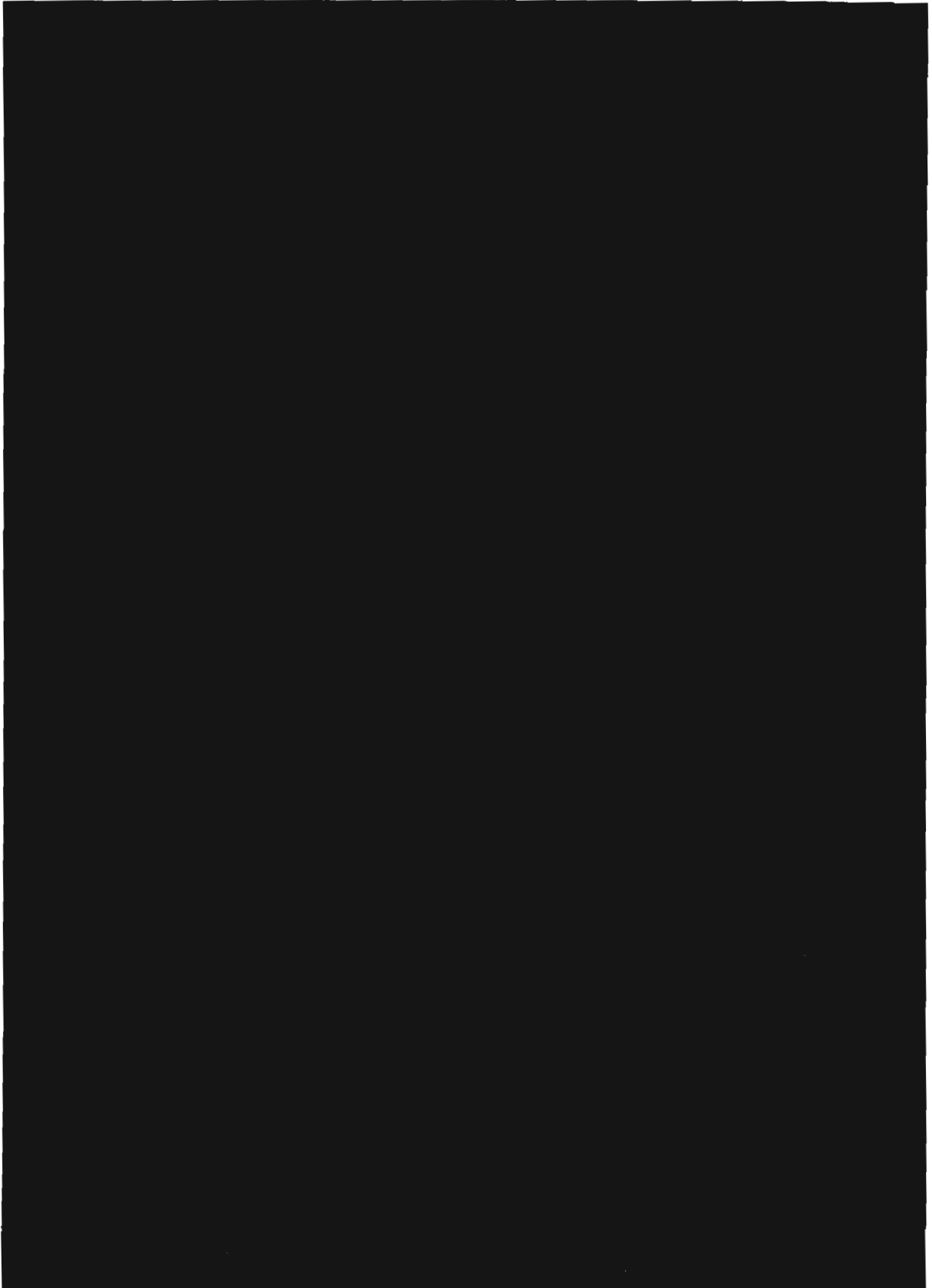
21 [REDACTED]

22 [REDACTED]

23 [REDACTED]







1 [REDACTED]
2 [REDACTED]
3 5.7 Unavailability of an Alternate Resource(s). [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
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19 [REDACTED]
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21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

5.8 Seller's Rights to the Facility. To the extent Buyer has not submitted a Schedule requesting energy associated with the full Contract Capacity, and/or to the extent Scheduled Energy is being provided from Alternate Resources, Seller shall have the right to dispatch the Facility to utilize for its own purposes energy from the Facility not Scheduled and/or replaced with Alternate Energy.

5.9 Title and Risk of Loss. Seller shall be deemed to be in exclusive control of the Delivered Energy prior to the Delivery Point. Buyer shall be deemed to be in exclusive control of the Delivered Energy at and after the Delivery Point. Custody, title and risk of loss of Contract Capacity and Delivered Energy shall transfer from Seller to Buyer at the Delivery Point.

5.10 Force Majeure Event.

5.10.1 For any hour in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point occurs or is continuing, Seller shall only be obligated to deliver to Buyer the lesser of: (i) Scheduled Energy; or (ii) energy associated with the difference of the Contract Capacity less Force Majeure Capacity. In addition, to the

1 extent of such Force Majeure Event, Seller may elect in its sole discretion pursuant to the
2 procedures under Section 5.6 (but shall not be required) to deliver Scheduled Energy from
3 Alternate Resources.

4 5.10.2 For any hour during which a Force Majeure Event affecting the Facility
5 or the electric facilities prior to the Facility Delivery Point occurs or is continuing, Seller shall
6 be required to accumulate EFMH (as applicable) for such hour [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 **5.11 Outages and Unavailable Capacity.**

14 5.11.1 Seller shall notify Buyer as soon as reasonably practicable of: (i) the
15 occurrence of any Outage that is expected to result in Outage Capacity and the estimated
16 duration of such Outage; (ii) the cessation of such Outage; and (iii) if requested by Buyer within
17 30 Days after the Outage and if known to Seller, the cause of such Outage.

18 5.11.2 For any hour during which there is Unavailable Capacity, Seller shall
19 be required to accumulate EUH (as applicable) for such hour [REDACTED]

20 [REDACTED], Seller's sole and exclusive liability and Buyer's
21 sole and exclusive remedy for Seller's failure to provide capacity and/or energy from any
22 resource under this Agreement shall [REDACTED]

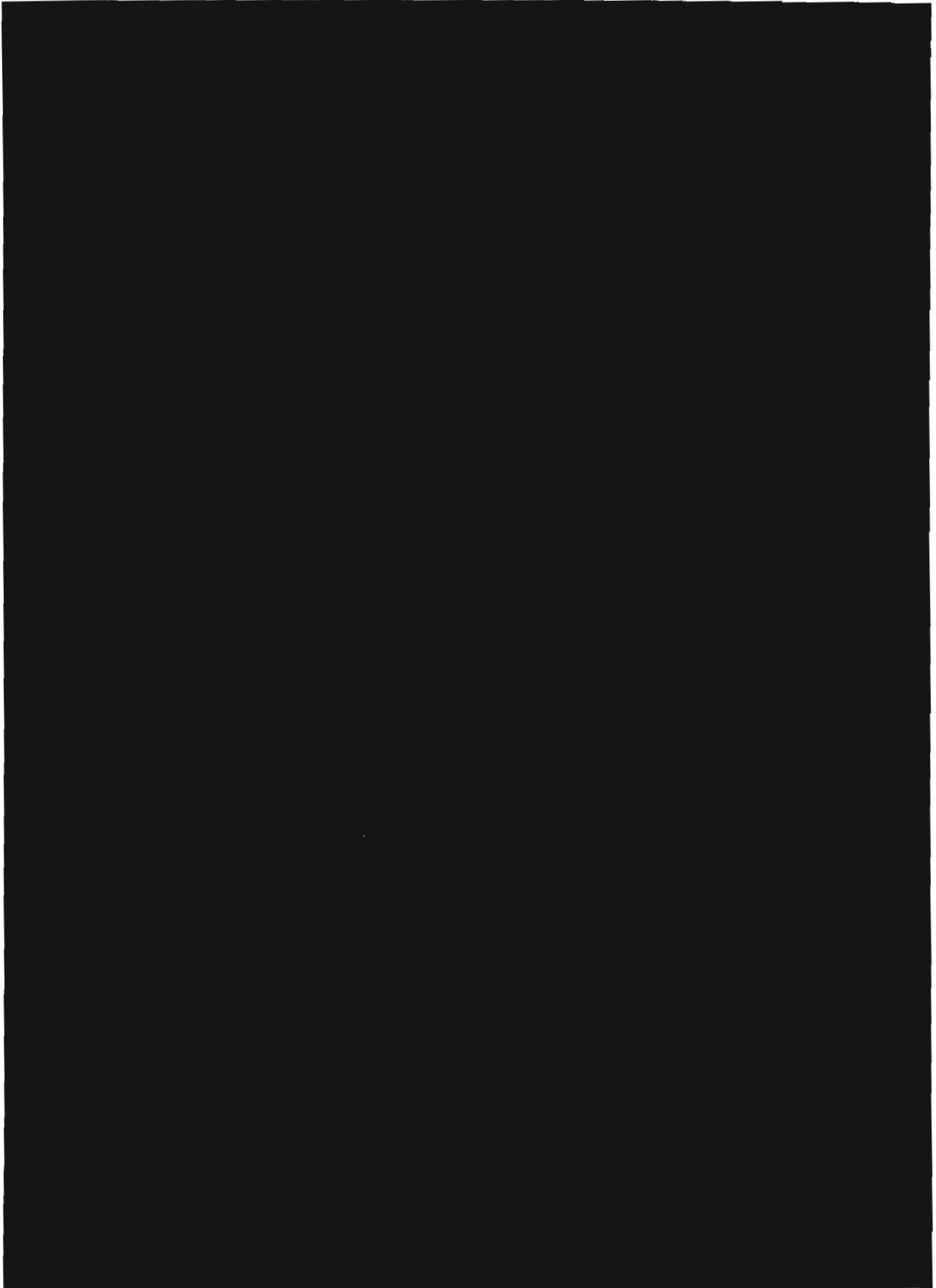
23 [REDACTED]

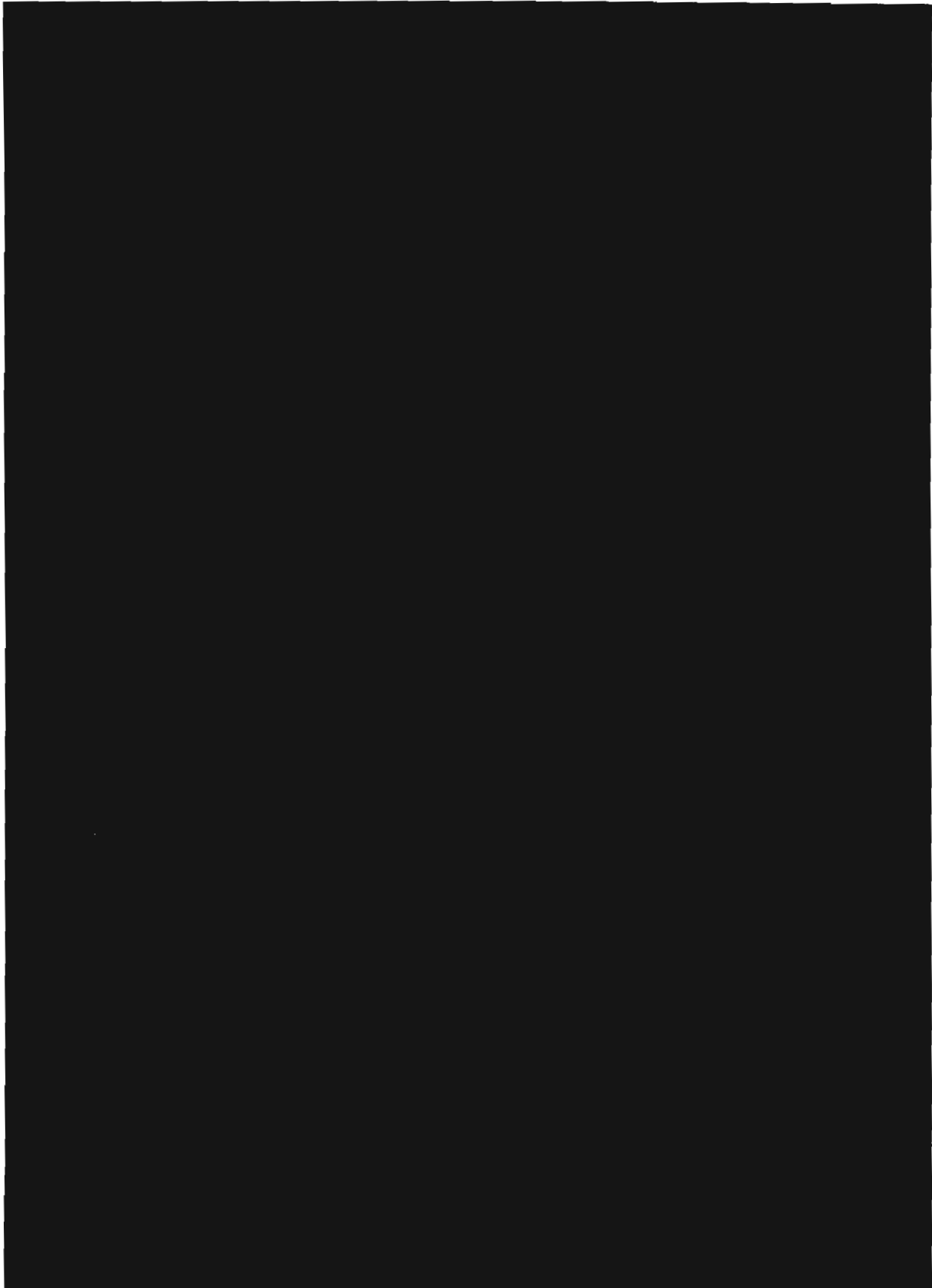
1 **5.12 Delivery Excuse.** For any hour in which a Delivery Excuse is occurring or is
2 continuing, Seller shall not be obligated to deliver, and Buyer shall not be entitled to receive or
3 submit a Schedule for, Scheduled Energy. In such event, Seller shall not be required to
4 accumulate EFMH or EUH. Buyer shall not be relieved of its performance obligations during a
5 Delivery Excuse, including its obligation to pay Seller the Monthly Capacity Payment.

6 **5.13 Scheduled and Maintenance Outages.** Buyer shall not have the right to
7 submit a Schedule for any period of time during which maintenance is being performed and/or
8 outages are taken consistent with Sections 4.1 and 4.2.

9 **5.14 Available Capacity.** [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **5.15 Early Termination.**
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]





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ARTICLE 6

PAYMENTS

6.1 Capacity Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Capacity Payment for the Contract Capacity. The calculation of the Monthly Capacity Payment is set forth in Appendix A.

6.2 Energy Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Energy Payment. The calculation of the Monthly Energy Payment is set forth in Appendix B.

6.3 Start Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Start Payment. The calculation of the Monthly Start Payment is set forth in Appendix C.

6.4 Fuel Transportation Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Fuel Transportation Payment. The calculation of the Monthly Fuel Transportation Payment is set forth in Section 9.2.2.

6.5 Additional Payments. In addition to the payments specified in this Article 6, the Parties shall pay all amounts due pursuant to the other provisions of this Agreement.

ARTICLE 7

TRANSMISSION SERVICE

7.1 Buyer Obligations. Buyer, or its designee, shall have the sole and exclusive responsibility at all times to arrange, obtain, contract and pay for any and all transmission service and ancillary services required (including service under any applicable transmission

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tariff) to deliver any energy hereunder from and beyond the Delivery Point. Buyer assumes all risk associated with the availability, adequacy and cost of such transmission service and ancillary services.

7.2 Seller Obligations. Seller, or its designee, shall have the sole and exclusive responsibility at all times to arrange, obtain, contract, and pay for any and all transmission service required to deliver energy hereunder to the Delivery Point.

7.3 Imbalances and Penalties. Upon receiving notice of any interruption of the delivery of energy under this Agreement for any reason (e.g., an Outage or a Force Majeure Event), Buyer shall promptly notify the applicable transmission provider and/or system operator in order to avoid any energy imbalances. Any penalties or imbalances (including associated costs) resulting from actions or inactions of Buyer (including the failure to provide required notice to the applicable transmission provider and/or system operator), its designee or any third party to which Buyer may be supplying the capacity and energy provided hereunder will be the responsibility of Buyer as between the Parties. Any penalties or imbalances (including associated costs) resulting from actions or inactions of Seller or its designee will be the responsibility of Seller as between the Parties. If either Party incurs any costs associated with penalties or imbalances that are the responsibility of the other Party under this Section, such other Party shall provide prompt reimbursement of such costs.

7.4 Buyer's Request for Transmission Service.

7.4.1 Within 30 Days after the Effective Date, Buyer shall request from Southern Company Transmission (including by submitting such request on Southern Company Transmission's OASIS and completing any required application(s)) 600 MW of Long Term Firm Transmission Service from the Facility Delivery Point to the Florida Interface, such

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service to commence on June 1, 2010 ("Requested Service"). As entered into Southern Company Transmission's OASIS, such request shall designate the point of delivery as "FPL." In addition, from the Effective Date, Buyer shall make and/or continue Commercially Reasonable Efforts to have Southern Company Transmission provide Buyer with an offer to provide the Requested Service no later than December 1, 2005 ("Transmission Deadline"); provided, however, the Transmission Deadline shall automatically be extended on a Month to Month basis until either Party provides timely notice to the other that it does not desire for the Transmission Deadline to be extended under this Agreement and in Section 7.4.1 of both of the other Contemporaneous Agreements. Such notice must be provided no later than 5 Days prior to the then existing Transmission Deadline (as may be extended). Notwithstanding the foregoing, the Transmission Deadline in this Agreement shall be extended only to the same extent as such deadline is also extended under Section 7.4.1 of both of the other Contemporaneous Agreements.

7.4.2 No later than 2 Business Days after the earlier of: (i) the Transmission Deadline; (ii) Southern Company Transmission's notice to Buyer that it will not be able to provide any of the Requested Service to Buyer; or (iii) Southern Company Transmission's notice to Buyer that it will be able to provide some or all of the Requested Service to Buyer, Buyer shall notify Seller ("Transmission Notice") of the total amount of the Requested Service that Southern Company Transmission is able to provide to Buyer at any price and cost ("SCT Service"). In the event that the total cost ("Total Cost") of any portion of the SCT Service is higher than the embedded rate for Long Term Firm Transmission Service under the OATT ("Tariff Rate"), the Transmission Notice shall specify the amount of SCT Service offered at a Total Cost higher than the Tariff Rate and include any and all documentation of such Total Cost

1 provided to Buyer by Southern Company Transmission. For purposes of this Section 7.4,
2 "Total Cost" shall mean those costs that would be imposed on Buyer directly by the applicable
3 transmission provider for the Requested Service.

4 7.4.3 Within 2 Business Days after its receipt of the Transmission Notice,
5 Seller may offer to sell to Buyer (including by reassignment) up to 600 MW of Long Term Firm
6 Transmission Service from the Facility Delivery Point to the Florida Interface on any applicable
7 transmission system, such service to commence on June 1, 2010 ("Seller Service"). Such offer
8 shall set forth the amount of Seller Service and the price for such service. For purposes of this
9 Agreement the sum of the Seller Service and the SCT Service shall be referred to as the
10 "Available Service."

11 7.4.4 [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 7.4.5 Once the procedures in Sections 7.4.1 through 7.4.4 have been completed
21 (as applicable), Buyer may elect to reduce the Contract Capacity for the Service Term by an
22 amount up to the sum of: [REDACTED]

23 [REDACTED]

1 Buyer shall notify Seller of such election within 3 Business Days after the later of the date of (if
2 applicable) the Reduction Notice, receipt of Seller's offer under Section 7.4.3 or the
3 Transmission Notice ("Election Deadline"). In addition, after the procedures in Sections 7.4.1
4 through 7.4.4 have been completed (as applicable), if Available Service of at least [REDACTED] MW is
5 not available to Buyer so that Buyer is in effect able to procure Long Term Firm Transmission
6 Service from the Facility at a Total Cost equal to or less than the Tariff Rate (taking into
7 account any offset of Excess Cost by Seller), Buyer may provide notice to Seller that it will
8 terminate this Agreement. Such notice must be provided no later than the Election Deadline.

9 7.4.6 If Buyer elects, pursuant to Section 7.4.5, to reduce the Contract Capacity
10 by an amount greater than [REDACTED] MW, Seller shall be entitled to either: [REDACTED]

11 [REDACTED] Seller shall provide Buyer with notice of
its election of either (i) or (ii) no later than 2 Business Days after its receipt of Buyer's notice to
reduce the Contract Capacity. If Seller accepts the reduction in Contract Capacity, the Parties
shall mutually agree on modifications to this Agreement in order to reflect such reduction.

7.4.7 In the event that either Party provides notice to the other Party under this
section 7.4 that it has elected to terminate this Agreement, this Agreement and the other
Contemporaneous Agreements shall immediately terminate. Upon such termination, no Party
shall have any further obligation under any of the Contemporaneous Agreements except for any
liabilities and/or obligations accruing prior to such termination. The Parties acknowledge that
the other Contemporaneous Agreements contain a provision similar to this Section 7.4.7 and
that this Agreement is subject to termination as provided in such similar provisions.

7.4.8 Nothing in this Section 7.4 shall be construed as requiring Buyer to
actually purchase any transmission service.

1 7.4.9 The MW amounts set forth in this Section 7.4 refer to MW amounts at the
2 Facility Delivery Point. As appropriate and/or required, such amounts shall be adjusted
3 consistent with the OATT (or other applicable transmission tariff) to reflect transmission losses
4 to the Florida Interface (e.g., including for purposes of submitting the required transmission
5 service request through Southern Company's OASIS and/or other required application(s) for
6 such service).

7 **7.5 Regional Transmission Organizations.**

8 7.5.1 In the event that a Regional Transmission Organization(s) or similar
9 organization ("RTO") is formed and such formation materially changes the scheduling
10 requirements and/or costs associated with the delivery of energy to and/or from the Delivery
11 Point, Seller shall be solely responsible for complying with all scheduling requirements and
12 paying all such costs to the Delivery Point (including but not limited to all congestion and/or
13 basis costs). In addition, Buyer shall be solely responsible for complying with all scheduling
14 requirements and paying all such costs at and beyond the Delivery Point to any other point(s) of
15 delivery (including but not limited to all congestion and/or basis costs). Seller agrees to
16 indemnify and hold harmless Buyer for any costs and expenses incurred by Buyer that are
17 Seller's responsibility under this Section 7.5.1. Buyer agrees to indemnify and hold harmless
18 Seller for any costs and expenses incurred by Seller that are Buyer's responsibility under this
19 Section 7.5.1.

20 7.5.2 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

ARTICLE 8

**TOTAL FACILITY CAPACITY
AND COMMENCEMENT OF SERVICE**

8.1 Declaration of the Total Facility Capacity. Through notice to Buyer, Seller shall declare the Total Facility Capacity for each Contract Year pursuant to the procedures set forth in Section 8.2.

8.2 Declaration Prior to Each Contract Year.

8.2.1 Except as provided in Section 8.3.1.1 and 8.3.1.2, within 90 Days prior to the beginning of each Contract Year, Seller shall declare the Total Facility Capacity for such Contract Year. Such declaration shall be based on the demonstrated generating capability of the Facility as determined in accordance with Appendix E.

8.2.2 After Seller's declaration under Section 8.2.1, Buyer shall have the right to require a test to re-demonstrate the capability of the Facility as follows:

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8.2.2.1 After Seller's declaration of the Total Facility Capacity for the first Contract Year, Buyer may by notice to Seller ("Test Notice") require Seller to conduct a test to re-demonstrate the capability of the Facility. Buyer shall provide any such Test Notice no later than 30 Days after the Service Commencement Date ("Initial Testing Deadline"). If Buyer timely provides the Test Notice, Seller shall conduct a test of the Facility in accordance with Appendix E within 30 Days after the Test Notice on a Day selected by Seller and provide Buyer with prior notice of such test. Buyer shall pay Seller all costs of testing (including Gas and operation and maintenance costs), and Buyer shall be entitled to utilize all energy produced during testing for its own purposes.

8.2.2.2 After the Initial Testing Deadline, if at any time Buyer has reasonable grounds for disputing Seller's declared amount of Total Facility Capacity (e.g., the delivery of energy by Seller in amounts less than Scheduled Energy), Buyer may provide to Seller a Test Notice to require Seller to conduct a test to re-demonstrate the capability of the Facility. Upon receipt of such notice, Seller shall conduct a test of the Facility in accordance with Appendix E within 30 Days after the Test Notice on a Day selected by Seller and provide Buyer with prior notice of such test. Buyer shall pay Seller all costs of testing (including Gas and operation and maintenance costs), and Buyer shall be entitled to utilize all energy produced during testing for its own purposes.

8.2.3 In the event that a test required by Buyer pursuant to Section 8.2.2 indicates that the generating capability of the Facility is different than the Total Facility Capacity declared pursuant to Section 8.2.1, Seller may (at its sole option) conduct additional test(s) of the Facility in accordance with Appendix E, such test(s) to be completed no later than 30 Days after the test conducted pursuant to Section 8.2.2. If Seller does not elect to conduct

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such additional test(s), the Total Facility Capacity shall be re-set pursuant to Section 8.2.4 to an amount equal to the generating capability demonstrated by the test conducted pursuant to Section 8.2.2. If Seller does elect to conduct additional testing, Seller shall provide Buyer prior notice of the Day(s) of such test(s) and the Total Facility Capacity shall be re-set pursuant to Section 8.2.4 to an amount equal to the generating capability demonstrated through such additional test(s). If such test(s) is performed coincident with Buyer's Schedule for any Day(s), Buyer shall pay Seller the costs of testing (including Gas and operation and maintenance costs) that are the responsibility of Buyer through the application of the Monthly Energy Payment for all Delivered Energy provided to Buyer. To the extent such test(s) is performed during a time period in which energy will not be delivered to Buyer pursuant to a Schedule, Seller shall be responsible for all costs of testing (including Gas and operation and maintenance costs) and shall be entitled to utilize all energy produced during testing for its own purposes.

8.2.4 If the Total Facility Capacity is set pursuant to a test conducted under Section 8.2.2 or Section 8.2.3 as a result of a Test Notice provided by Buyer on or before the Initial Testing Deadline, the Total Facility Capacity shall be adjusted retroactively to the Service Commencement Date. In all other cases when the Total Facility Capacity is set pursuant to a test conducted under Section 8.2.2 or Section 8.2.3, the Total Facility Capacity shall be adjusted retroactively to the date of the applicable Test Notice. All capacity billing under Section 6.1 shall (if necessary and as soon as practicable) be retroactively adjusted as appropriate (with interest at the Interest Rate) to reflect such adjustment of the Total Facility Capacity.

1 8.3 Commencement of Service.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

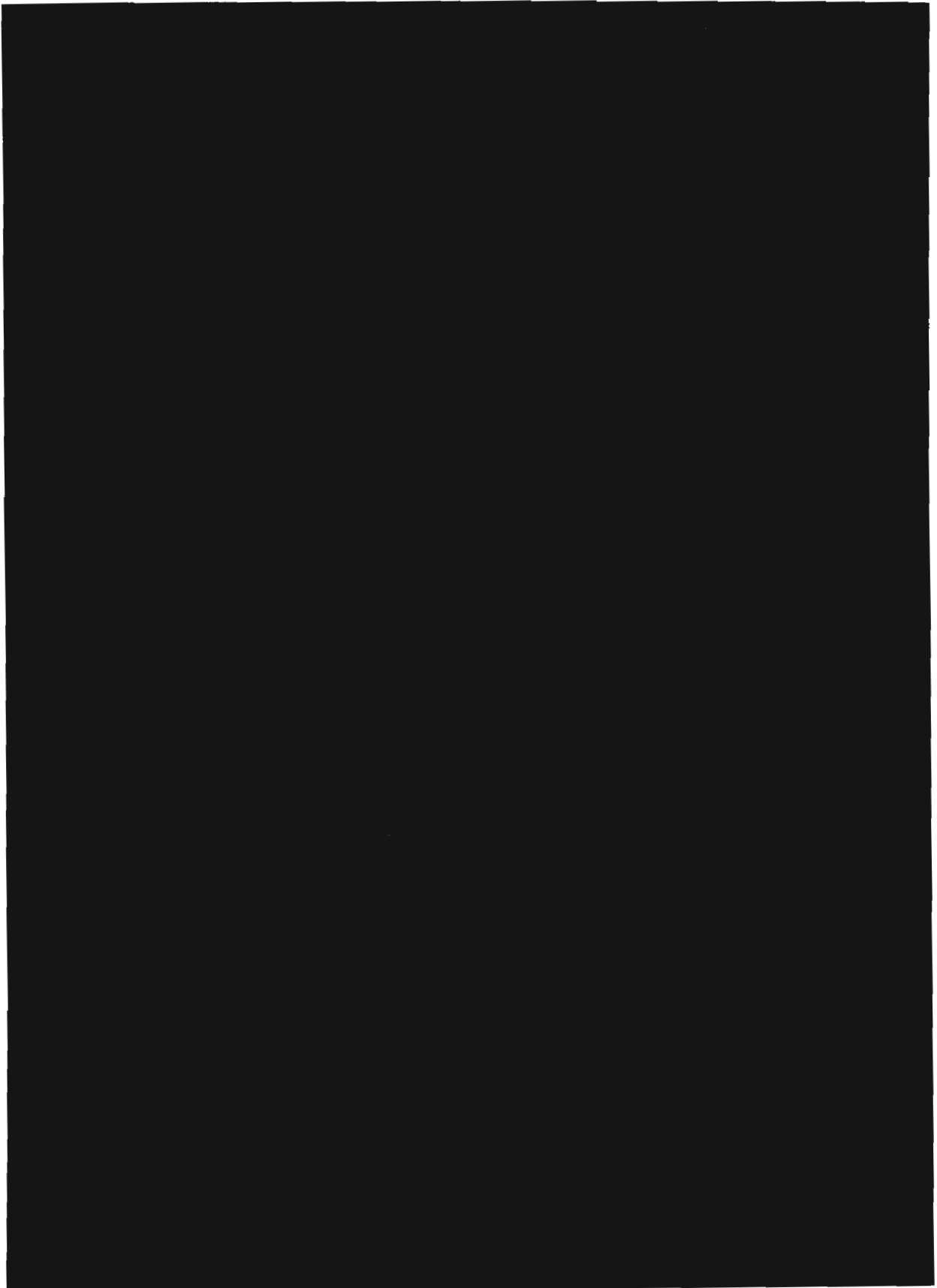
19 [REDACTED]

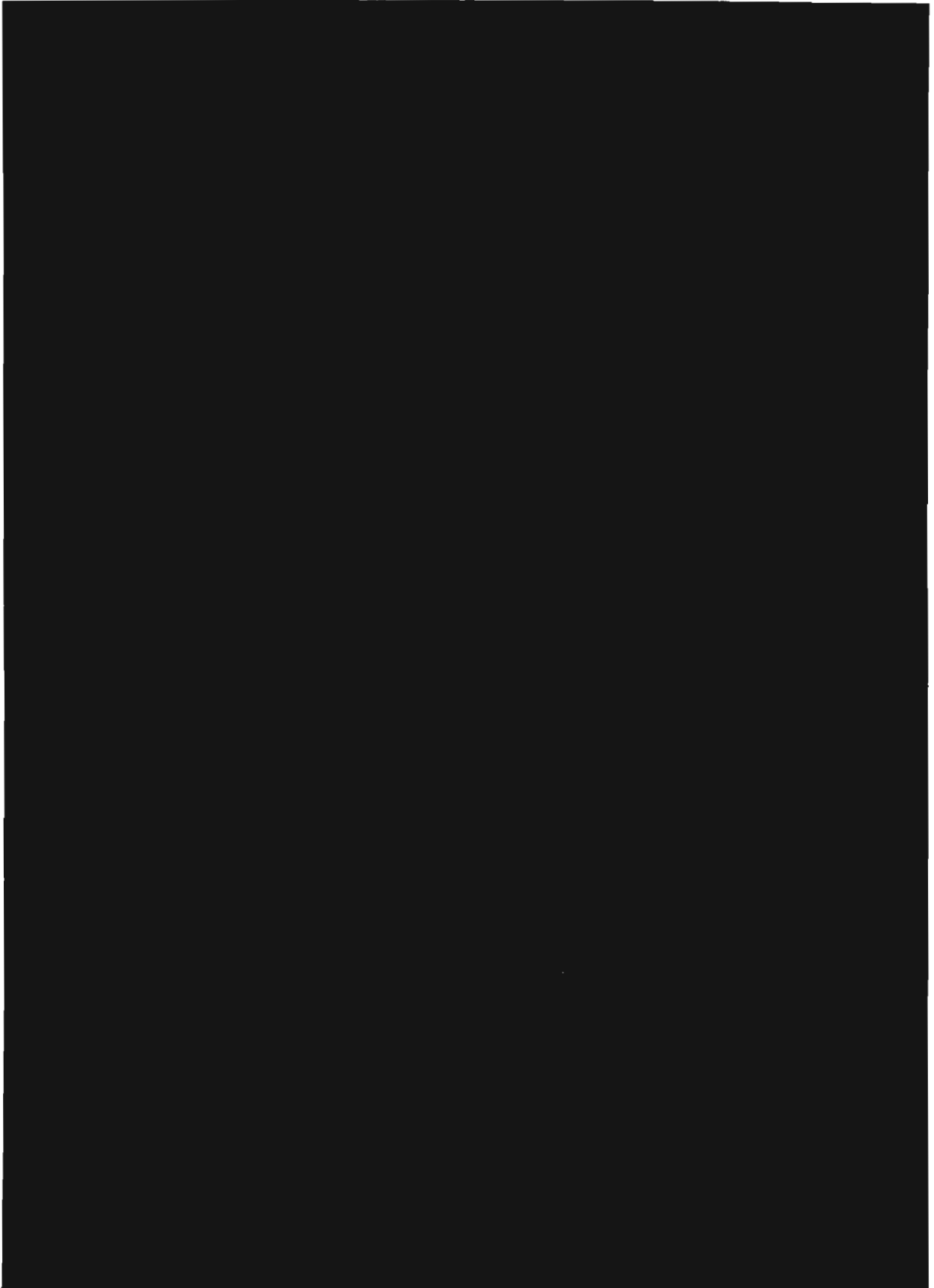
20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]





1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 **ARTICLE 9**

7 **FUEL ARRANGEMENTS**

8 **9.1 Seller's Commitment.** Subject to the provisions of this Agreement, Seller will
9 use Commercially Reasonable Efforts to provide to the Facility the volume of Gas needed to
10 provide Scheduled Energy.

11 **9.2 Gas Transportation Arrangement and Charges.**

12 **9.2.1** Subject to the provisions of this Agreement, Seller will utilize up to
13 [REDACTED] MMBtu per day of firm transportation capacity on the pipeline system of SNG from
SNG's Zone 0 to Zone 2 under SNG's Contract Number FSNG284 constructed under South
System I, Phase II expansion that was placed in service on June 1, 2003 for deliveries to Point
Code 808000, Plant Harris, as amended ("SNG Contract") as necessary to provide Scheduled
Energy under this Agreement. To the extent energy is supplied to Buyer from the Facility,
Seller shall afford Buyer's Schedule priority with regard to the use of such transportation
capacity that is available; provided, however, if a portion of the total amount of transportation
capacity procured by Seller to the Plant is unavailable for any hour(s), Seller shall be permitted
to reduce on a pro rata basis the amount of transportation capacity that it will utilize in order to
satisfy Buyer's Schedule.

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9.2.2 Buyer shall pay to Seller a Monthly Fuel Transportation Payment which shall be an amount equal to the product resulting from multiplying [REDACTED] MMBtu by the sum of:

[REDACTED]

9.2.3 [REDACTED]

9.2.4 Buyer acknowledges that Seller may have the right pursuant to Exhibit E of the SNG Contract to terminate that contract; however, Seller shall exercise that right with respect to the transportation capacity necessary to provide Scheduled Energy under this Agreement only if Buyer and Seller agree on mutually acceptable replacement transportation arrangements.

9.2.5 Buyer acknowledges that SNG may impose imbalance, cash-out and other types of charges, including penalty charges, pursuant to its FERC approved tariff under certain conditions ("Penalty Charges"). Buyer agrees to be responsible for and pay or reimburse Seller for any Penalty Charges billed to Seller by SNG that result from any action or failure to act of Buyer under this Agreement. The Parties agree to cooperate in order to attempt to minimize Penalty Charges.

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9.2.6 In the event that accommodating Buyer's Schedule would require Gas transportation capacity in addition to that set forth in Section 9.2.1, Seller shall make Commercially Reasonable Efforts to obtain (if available) additional capacity at Buyer's expense and Buyer shall reimburse Seller based on SNG's interruptible transportation rate from Zone 0 to Zone 2 in effect at the time. To the extent Seller is unable to obtain such additional capacity at or below such interruptible transportation rate and such capacity is available, Seller shall make Commercially Reasonable Efforts to provide Buyer the option of having Seller purchase such additional capacity at the higher rate. If Buyer desires to have Seller purchase such additional capacity at the higher rate, Seller shall make Commercially Reasonable Efforts to obtain such capacity to accommodate Buyer's Schedule and Buyer shall reimburse Seller for all associated costs. To the extent that Buyer does not desire to have Seller purchase such additional capacity at the higher rate or Seller is unable to obtain such capacity, Seller shall have a Delivery Excuse to that extent.

9.3 Interruption of Gas Supplies

9.3.1 In the event that Gas supplies are interrupted due to any circumstance affecting Seller's Gas suppliers that qualifies as an event of force majeure as defined in the North American Energy Standards Board's Base Contract for Sale and Purchase of Natural Gas:

A. Seller shall use Commercially Reasonable Efforts to arrange for alternate Gas supplies to overcome such an interruption. If alternate Gas supplies are available, Seller shall offer to Buyer, and Buyer shall have the option to immediately accept, such alternate Gas supplies at the price quoted by Seller.

B. If Seller is unable to arrange for alternate Gas supplies or if Buyer does not accept such alternate Gas supplies pursuant to subparagraph A above, Buyer may

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arrange to sell alternate gas supplies to Seller at the Gas Price (as defined in Appendix B) by delivering such Gas to SNG at a point on its pipeline at which Seller can schedule receipts of such Gas under the SNG Contract. Buyer shall cooperate with Seller and SNG in order to ensure that such supplies are nominated, scheduled and delivered to SNG for transportation under the SNG Contract and under the terms of SNG's FERC approved tariff. Buyer shall be responsible for any Penalty Charges resulting from any difference between the volume scheduled for delivery by Buyer to and receipt by SNG and the actual volume delivered by Buyer to and received by SNG.

9.3.2 In the event that there is no arrangement for alternate Gas supplies under Section 9.3.1, the interruption of Gas supplies described in Section 9.3.1 shall constitute a Delivery Excuse as defined in this Agreement.

9.3.3 Notwithstanding any other provision of this Agreement, Seller shall not be obligated to obtain or use any Gas storage services in order to provide Gas under this Agreement.

9.4 **Scheduling Changes.** In the event that Buyer requests a Schedule change pursuant to Section 5.1.2 after the Scheduling Deadline, Seller shall quote a price for supplying incremental Gas needed to accommodate an increase in Scheduled Energy (subject to Gas availability and the ability to schedule delivery of Gas) or for selling excess Gas resulting from a decrease in Scheduled Energy, as appropriate. Upon receipt of Seller's quote, Buyer shall immediately exercise one of the following options: (i) not changing the existing Schedule; (ii) proceeding with the requested Scheduling Change and the increase or decrease in Gas supplies based on the quoted price (to buy the incremental Gas supply, or to sell the excess Gas supply, as applicable), or (iii) proceeding with the increase (if applicable) in Scheduled Energy and

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notifying Seller that Buyer will supply the required incremental Gas supply utilizing the procedures set forth in Section 9.3.1B.

ARTICLE 10

ELECTRIC METERING

10.1 Metering. At no cost to Buyer, Seller shall be responsible for performing, or causing to be performed, the installation, maintenance, testing and calibration of the Electric Metering Equipment owned by Seller and/or its Affiliates at the Delivery Point(s).

10.2 Industry Standards. All Electric Metering Equipment owned by Seller and/or its Affiliates at the Delivery Point(s), shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Industry Practices.

10.3 Records. The Parties shall maintain accurate and detailed records relating to the metering of energy at the Delivery Point(s) for one year or for such longer period as may be required by an applicable Government Agency or Law. All records shall be available for inspection by either Party upon reasonable notice.

10.4 Meter Errors. If the Electric Metering Equipment at the Delivery Point(s) fails to register, or if the measurement made by a metering device is found upon testing to vary by more than 0.5% from the measurement made by the standard meter used in a test, an adjustment shall be made correcting all measurements of energy made by the Electric Metering Equipment during: (i) the actual period when inaccurate measurements were made, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the latter half of the period from the date of the last test of the Electric Metering Equipment to the date such failure is discovered or such test is made (each being an "Adjustment Period"). If the Parties are unable to agree on the amount

1 of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be
2 determined: (i) by correcting the error if the percentage of error is ascertainable by calibration,
3 tests or mathematical calculation; or (ii) if not so ascertainable, by estimating on the basis of
4 deliveries under similar conditions during the period since the last test.

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6 **ARTICLE 11**

7 **BILLING AND PAYMENT**

8 **11.1 Timing and Method of Payment.** Seller will submit to Buyer, as promptly as
9 practicable after the first of each Billing Month, an invoice (by mail, facsimile or electronic
10 means) for the amounts due under the terms of this Agreement for the preceding Month.
11 Amounts due pursuant to such invoice shall be due and payable on [REDACTED]
12 [REDACTED] ("Payment Due
13 Date"). If the Payment Due Date falls on a Day that is not a Business Day, the Payment Due
14 Date shall be the next Business Day. Payment shall be made, on or before the due date, to
15 Seller in accordance with the invoice in immediately available funds through wire transfer, or
16 other mutually agreeable method.

17 **11.2 Late Payment.** Amounts that are owed Seller shall, if not remitted within the
18 time period specified under Section 11.1, be subject to a late payment charge equal to the
19 interest calculated pursuant to Section 21.7, accrued and payable on a Monthly basis with
20 respect to the unpaid amount. Such late payment charge shall accrue from the due date of such
21 amount until the date on which it is paid.

22 **11.3 Disputed Billings.** In the event that either Party has a bona fide dispute with any
23 invoice submitted hereunder, such Party shall inform the other Party in writing of its grounds
for disputing such invoice. Notwithstanding such dispute, [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 **11.4 Adjustments.** If any overcharge or undercharge in any form whatsoever shall at
10 any time be found and the invoice therefor has been paid, the Party that has been paid the
11 overcharge shall refund the amount of the overcharge to the other Party, and the Party that has
12 been undercharged shall pay the amount of the undercharge to the other Party, within 30 Days
13 after final determination thereof; provided, however, that no retroactive adjustment shall be
14 made for any overcharge or undercharge unless written notice of the same is provided to the
15 other Party within a period of 12 Months from the date of the invoice in which such overcharge
16 or undercharge was first included. Any such adjustments shall be made with interest calculated
17 in accordance with Section 21.7 from the date that the undercharge or overcharge actually
18 occurred.

19 **11.5 Audit Rights.** Subject to Section 10.3, the Parties shall keep complete and
20 accurate records of their operations under this Agreement and shall maintain such data for a
21 period of at least 1 years after the completion of the relevant Billing Month hereunder;
22 provided, however, records relating to a disputed matter shall be retained until the dispute is

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resolved. Such records shall be available for inspection and audit by the other Party upon reasonable request during any regular Business Day.

ARTICLE 12

REGULATORY

12.1 Initial Approval of the Florida Public Service Commission.

12.1.1 No later than 90 Days after the Effective Date, Buyer shall make a filing with the Florida Public Service Commission (“FPSC”) seeking approval for Buyer to recover from its customers all payments required to be made to Seller under the Contemporaneous Agreements without material modification or condition with respect to such agreements (“FPSC Approval”). After making such filing, Buyer shall utilize diligent efforts to obtain the FPSC Approval for the Contemporaneous Agreements by no later than 180 Days after the Effective Date (“Approval Deadline”). Seller agrees to reasonably assist and support Buyer’s efforts to obtain the FPSC Approval. Buyer shall promptly notify Seller when it receives the FPSC Approval.

12.1.2 If FPSC Approval for the Contemporaneous Agreements is not received by the Approval Deadline, but the date of the Transmission Notice under Section 7.4.2 has not yet occurred and the FPSC has not yet issued an order denying the Buyer’s request for FPSC Approval (“FPSC Denial”), the Approval Deadline shall automatically be extended until the date of the Transmission Notice. During this extended period, Buyer shall keep Seller closely informed as to the progress of its efforts to obtain FPSC Approval and Buyer shall continue diligent efforts to obtain FPSC Approval.

12.1.3 If FPSC Approval is not received by the Approval Deadline (as extended under Section 12.1.2) or if an FPSC Denial is issued prior to the Approval Deadline,

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Buyer shall provide notice to Seller within 30 Days after the Approval Deadline or the FPSC Denial (whichever occurs first) that it desires to either: (i) terminate all (but not less than all) of the Contemporaneous Agreements, in which case all of the Contemporaneous Agreements shall immediately terminate; or (ii) continue all (but not less than all) of the Contemporaneous Agreements regardless of FPSC Approval. If Buyer elects option (ii) under the foregoing sentence, all of the Contemporaneous Agreements shall continue in full force and effect for the Term notwithstanding any subsequent action or inaction of the FPSC (including the subsequent issuance of a FPSC Denial or failure to issue an FPSC Approval).

12.1.4 The Parties acknowledge that the other Contemporaneous Agreements contain provisions that are substantially similar to Sections 12.1.1 through 12.1.3 above and that this Agreement may be subject to termination as provided in such similar provisions.

12.1.5 After the procedures in Sections 12.1.1, 12.1.2, and 12.1.3 (as applicable) have been completed, except as provided under Section 12.3, at no time shall this Agreement be subject to termination or modification due to any action or inaction of any Government Agency or Buyer's inability to recover from its customers amounts to be paid to Seller pursuant this Agreement whether such inability is due to action of any Government Agency or otherwise.

12.2 Changes in Agreement. Except for any changes pursuant to Section 12.3, absent the agreement of all Parties to the proposed change, the standard of review for changes to this contract proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. (1956) (the "Mobile-Sierra" doctrine).

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12.3 Federal Energy Regulatory Commission.

12.3.1 The Parties anticipate that this Agreement is not required to be filed and accepted by FERC because it is a market-based contract. Therefore, this Agreement shall not be contingent on FERC acceptance. Having freely negotiated and agreed upon the economic bargain among them as set forth hereunder, Seller and Buyer waive all rights under Sections 205 and 206 of the Federal Power Act to effect a change in the Agreement. Moreover, it is the Parties' mutual intent that FERC be precluded, to the fullest extent permitted by law, from altering this Agreement in any way. Notwithstanding the foregoing, if at any time FERC takes some action that reduces the economic benefit of this Agreement to either Party ("Impacted Party") as contemplated on the Effective Date ("Original Economic Benefit"), Impacted Party shall be deemed to have retained rights under Section 205 to file for changes in the Agreement, but only to the extent required to restore the Original Economic Benefit.

12.3.2 Impacted Party may exercise its Section 205 rights provided under Section 12.3.1 if at any time it reasonably determines in its sole discretion that it may be able to have some or all of the Original Economic Benefit restored. Before exercising such rights, Impacted Party shall negotiate with the other Party in an effort to reach mutual agreement regarding amendments to this Agreement (including amendments regarding those provisions addressing the determination of payments between the Parties and adjustments to capacity payments due to unavailability) that would restore some or all of the Original Economic Benefit. Impacted Party shall file any resulting amendments for acceptance by FERC, and the other Party shall actively support such filing(s). If the Parties are unable to agree upon such amendment(s), Impacted Party shall be entitled to make unilateral filing(s) at FERC to modify the Agreement in order to restore some or all of the Original Economic Benefit. In this latter

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event, the other Party shall actively support Impacted Party's right to recover the Original Economic Benefit, including by making filings at FERC (provided that the non-impacted Party shall retain the right to challenge the amount of and/or the methodology for calculating the Original Economic Benefit).

12.3.3 Any amendment(s) or unilateral filing(s) contemplated hereunder shall restore the Original Economic Benefit (or any allowed portion thereof) for the remainder of the Term, including any portion of the Original Economic Benefit associated with prior periods (with interest). Such amendment(s) or filing(s) by the Impacted Party shall not require the other Party to bear more of an economic burden than originally contemplated in this Agreement on the Effective Date. Nothing in this Agreement is intended to or shall restrict the number of times that a Party may exercise the above-described Section 205 rights during the Term or within any specific time frame.

ARTICLE 13

CHANGE IN LAW

13.1 **Increased Generation Costs.** The Parties acknowledge that during the Term of this Agreement, Changes in Law that increase Seller's cost of providing capacity and/or energy hereunder could occur. Any Increased Generation Costs will be paid by Buyer through an additional payment or surcharge each Month ("Change in Law Surcharge"). Once Seller has incurred Increased Generation Costs, Buyer shall pay for all Increased Generation Costs through the Change in Law Surcharge, as provided below.

13.2 **Determination.** If Seller determines that a Change in Law will or has resulted in Increased Generation Costs and that Buyer is responsible for such costs under this Agreement, Seller shall, within 6 Months after identifying such costs, notify Buyer of: (a) the applicable

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Change in Law giving rise to the Increased Generation Costs; and (b) the resulting Increased Generation Costs. Provided, however, the failure by Seller to provide such notice within such time period shall not under any circumstance result in an Event of Default, nor shall such failure prejudice or affect in any way Seller's right to receive reimbursement from Buyer for any Increased Generation Costs under this Agreement. Provided further, such notice by Seller shall include reasonable documentation of the applicable Change in Law and resulting Increased Generation Costs. Within 60 Days after receipt of such notice, Buyer will: (i) make a good faith determination of whether the Increased Generation Costs result from a Change in Law as specified in this Agreement; (ii) make a good faith determination of whether the Increased Generation Costs are determined in accordance with this Agreement; and (iii) provide Seller written notice of its determination. In the event that Buyer does not provide written notice of its determination within such time period, Buyer shall be deemed to have concurred that the specified Increased Generation Costs result from a Change in Law. If Buyer does not concur, the Parties shall commence discussions in an effort to address and resolve the basis for Buyer's disagreement. If the Parties are unable to resolve their disagreement within 30 Days after commencing such discussions, the Parties shall submit the issue to arbitration under the procedures set forth in Section 18.2. The arbitrators shall determine whether a Change in Law has occurred and, if so, the amount of the resulting Increased Generation Costs.

13.3 Initiation of Surcharge. In the event that Increased Generation Costs result from a Change in Law, Seller shall provide Buyer with written notice of a Change in Law Surcharge or an increase in an existing Change in Law Surcharge to recover Increased Generation Costs. No earlier than 30 Days thereafter, Seller may initiate a Change in Law Surcharge (or, if applicable, an increase in an existing Change in Law Surcharge) consistent

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with such notice. Provided, however, Seller shall reduce any Change in Law Surcharge to the extent that any costs included in such surcharge are not incurred. After the end of the Term, Seller shall not be entitled to initiate a Change in Law Surcharge, an increase in an existing Change in Law Surcharge, or any other additional charge intended to recover costs resulting from a Change in Law unless: (i) Seller has provided Buyer with notice of the applicable Change in Law, surcharge or increase prior to the expiration of the Term; and (ii) the costs Seller seeks to recover were incurred during the Service Term as a result of such Change in Law.

13.4 Timing. Any Change in Law Surcharge (or increase in an existing Change in Law Surcharge) hereunder due to Increased Generation Costs shall recognize the timing of the Increased Generation Costs (including the recovery through such payments of amounts associated with the Increased Generation Costs in prior periods, with interest) for which Buyer is responsible under this Agreement.

ARTICLE 14

LIABILITY ALLOCATION; LIMITATIONS ON LIABILITY

14.1 Costs, Taxes and Charges. Except as otherwise provided in this Agreement, in addition to all other amounts due and payable under this Agreement: (i) except for any Taxes included in the Gas Charges, Seller shall be responsible for all costs, Taxes, and charges of any kind prior to the Delivery Point relating to the delivery of energy and the provision of capacity under this Agreement, transmission, and/or related services (by way of clarification of the foregoing, Taxes prior to the Delivery Point include: ad valorem taxes); and (ii) Buyer shall be responsible for all costs, Taxes, and charges of any kind at and after the Delivery Point relating to the delivery of energy and the provision of capacity under this Agreement, transmission,

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and/or related services (by way of clarification of the foregoing, Taxes at and after the Delivery Point include: any Taxes incurred in connection with sales of the Delivered Energy). Each Party shall provide the other Party upon written request a certificate of exemption or other reasonably satisfactory evidence of exemption if any exemption from or reduction of any Tax is applicable. Each Party shall exercise Commercially Reasonable Efforts to obtain and to cooperate in obtaining any exemption from or reduction of any Tax. In addition, each Party shall be responsible for paying its own income taxes and net worth taxes on it or its property.

14.2 Indemnification. Unless otherwise agreed in writing by the Parties, Seller and Buyer shall each defend, indemnify and save harmless, on an After-Tax Basis, the other and their respective officers, directors, servants, agents, employees and representatives from and against any and all claims, demands, costs or expenses (including reasonable attorneys' fees) for loss, damage or injury to any person, property or interest arising out of or in any way related to this Agreement to the extent such loss, damage or injury occurs on its own side of the Delivery Point, irrespective of negligence, whether actual or claimed, of the other. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

14.3 Limitation of Liability.

14.3.1 THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH HEREIN. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

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14.3.2 SUBJECT TO SECTION 16.2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OF THAT PARTY, FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR CONTRACT, UNDER ANY PROVISION OF INDEMNITY OR OTHERWISE. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

14.3.3 In the event that any provision of this Section 14.3 is held to be invalid or unenforceable, this Section shall be void and of no effect solely to the extent of such invalidity or unenforceability, and no claim arising out of such invalidity or lack of enforceability shall be made by one Party against the other or its officers, agents, or employees. Notwithstanding the foregoing, this Section 14.3 shall not limit or negate the right of either Party to be fully indemnified as provided in Section 14.2 or limit the remedies set forth in this Agreement for an Event of Default.

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14.3.4 Without prejudice to the obligations and liabilities of an entity pursuant to an Eligible Guaranty, neither any Affiliate of a Party nor any stockholder, officer, director or employee of a Party or of any Affiliate of a Party (collectively, the "Nonrecourse Persons") shall have any liability to the other Party for the payment of any sums now or hereafter owing by such Party or for the performance of any of the obligations of such Party contained herein, and each of the Parties hereto agrees that all of the obligations of the other Party under this Agreement shall be obligations solely of such other Party and recourse in enforcing said obligations shall only be had against the assets of such other Party; provided that the foregoing provision shall not constitute a waiver, release or discharge of any of the terms, covenants or conditions of this Agreement or any Eligible Guaranty and the same shall continue until fully paid, discharged, observed or performed.

ARTICLE 15

FORCE MAJEURE EVENT

15.1 Force Majeure Event Defined.

15.1.1 As used herein, an Event of Force Majeure with respect to a Party means an occurrence, non-occurrence, or set of circumstances that is beyond the reasonable control of such Party and is not caused by the fault or negligence of such Party, including but not limited to acts of God, strike, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, or terrorism, which, by the exercise of due diligence, it is unable to overcome.

15.1.2 Notwithstanding anything contained in Section 15.1.1, the term Force Majeure shall not include any of the following:

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- (i) the inability of Buyer, for any reason, to obtain or maintain adequate transmission service from and after the Delivery Point;
- (ii) a change or circumstance in market conditions that affect the cost, price, or demand for capacity and/or energy from the Facility;
- (iii) a change or circumstance in market conditions or otherwise that affects the economic value of this Agreement to any Party;
- (iv) an increase in costs or expenses to any Party as a result (either directly or indirectly) of such Party's performance under this Agreement;
- (v) a change in Law, action or inaction by any Governmental Agency or the inability to comply with any Law; or
- (vi) any event or circumstance that qualifies as a Delivery Excuse.

15.2 Applicability of Force Majeure Event. Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement (except for such Party's performance of its payment obligations hereunder, which shall not be excused by any Force Majeure Event) to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

15.2.1 The non-performing Party shall give the other Party written notice within 3 Business Days of the commencement of the Force Majeure Event, with available details to be supplied within 15 Days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

15.2.2 The delay in performance shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

1 15.2.3 The Party whose performance is delayed or prevented shall proceed
2 with Commercially Reasonable Efforts to overcome the events or circumstances preventing or
3 delaying performance and shall, as requested (but not more often than weekly), provide written
4 progress reports to the other Party during the period that performance is delayed or prevented
5 describing actions taken and to be taken to remedy the consequences of the Force Majeure
6 Event, the schedule for such actions and the expected date by which performance shall no
7 longer be affected by the Force Majeure Event; and

8 15.2.4 When the performance of the Party claiming the Force Majeure Event
9 is no longer being delayed or prevented, that Party shall give the other Party written notice to
10 that effect.

11 **15.3 Effect of Force Majeure Event.**

12 15.3.1 Except for the obligation of either Party to make any required payments
13 under this Agreement, the Parties shall be excused from performing their respective obligations
14 under this Agreement and shall not be liable in damages or otherwise if and to the extent that they
15 are unable to so perform or are prevented from performing by a Force Majeure Event.

16 15.3.2 To the extent Seller is unable to provide Contract Capacity or Scheduled
17 Energy from the Facility due to a Force Majeure Event, Seller shall be excused from performance
18 hereunder and shall not be required to provide capacity and/or energy from other resources
19 (including Alternate Resources) in order to satisfy Buyer's Schedule; provided, however, to the
20 extent Seller does provide capacity and/or energy at its sole option to satisfy Buyer's Schedule
21 consistent with this Agreement. [REDACTED]

22 [REDACTED]

1 **15.4 Early Termination.** [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

ARTICLE 16

EVENT OF DEFAULT

16.1 Event of Default. The occurrence of any one or more of the following events with respect to a Party shall constitute an “Event of Default” attributable to such Party under this Agreement:

16.1.1 The failure by a Party to make payment to the other Party for amounts due under this Agreement after said amounts have become due and payable and such failure is not cured within 15 Days after receiving written notice of such failure from the Party to which such payments are due;

16.1.2 A Party or any Person guaranteeing such Party’s obligations hereunder (a “Guarantor”) shall: (i) admit in writing its inability to pay its debts as such debts become due; (ii) make a general assignment or an arrangement or composition with or for the benefit of its creditors; (iii) take any action for the purpose of effectuating any of the foregoing; or (iv) fail to comply with the terms and conditions of its Guaranty;

16.1.3 A proceeding or case shall be commenced by a Party or against a Party with the consent of such Party or by its Guarantor or against its Guarantor with the consent of such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its

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debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt;

16.1.4 A proceeding or case shall be commenced without the consent of a Party against such Party or without the consent of its Guarantor against such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, unless such proceeding or case is dismissed within 60 days of the filing thereof;

16.1.5 The failure of any Party to comply with the requirements of Article 20 regarding creditworthiness and/or security;

16.1.6 The failure of a Party to comply with the requirements of Article 19 regarding assignment;

16.1.7 Any representation or warranty made by a Party under Article 17 proves to have been false or misleading in any material respect when made and such representation or warranty is not made true within 30 Days after such Party has obtained actual knowledge thereof or has been provided notice thereof by the other Party; provided, however, that the cure must also remove any adverse effect on the Non-Defaulting Party;

1 16.1.8 A Party or its Guarantor shall fail to pay when due (subject to any
2 applicable cure or grace period), whether by acceleration or otherwise, any principal or interest
3 on indebtedness aggregating in excess of [REDACTED] in principal amount; or any
4 indebtedness aggregating in excess of [REDACTED] shall be declared due and payable or be
5 required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity
6 of such indebtedness; or

7 [REDACTED]
8 [REDACTED]

9 16.1.10 The material failure by a Party to comply with any material provision
10 of this Agreement if such failure is not the result of a Force Majeure Event or is not otherwise
11 excused in accordance with this Agreement, and such failure continues uncured for 30 Days
12 after written notice thereof from the other Party; provided, however, if such failure is not
13 capable of being cured within such period of 30 Days with the exercise of reasonable diligence,
14 then such cure period shall be extended for an additional reasonable period of time (not to
15 exceed 90 Days), so long as the Party is exercising reasonable diligence to cure such failure.
16 Provided, however, this Section 16.1.10 shall not apply to: (i) any event described in Sections
17 16.1.1 through 16.1.9; (ii) any event described in Sections 5.10, 5.11 and 8.3 for which a
18 remedy is expressly provided in those Sections; or (iii) Seller's failure to provide capacity
19 and/or energy pursuant to any provision of this Agreement.

20 The Party in default or the Party to whom an Event of Default is attributable as provided
21 in this Section 16.1 shall be referred to as the "Defaulting Party" and the other Party shall be
22 referred to as the "Non-Defaulting Party".

1 **16.2 Exclusive Remedies.**

2 16.2.1 Upon and after the occurrence of an Event of Default, the Non-
3 Defaulting Party's sole and exclusive remedy (whether arising in contract, tort or otherwise)
4 shall be to suspend its performance under this Agreement and declare an Early Termination
5 Date with the relevant remedies as provided below.

6 16.2.2 If an Event of Default has occurred, the Non-Defaulting Party shall
7 have the right, in its sole discretion, by no more than 20 Days notice to the Defaulting Party, to
8 designate a Day no earlier than the Day such notice is effective as the date on which the
9 Agreement shall terminate ("Early Termination Date"). Subject to Sections 21.3 and 21.15, this
10 Agreement shall terminate on the Early Termination Date and neither Party shall have any
11 further liability or obligation to the other hereunder, except (i) the Defaulting Party shall pay to
12 the Non-Defaulting Party on demand [REDACTED] in liquidated damages and (ii) as provided in
13 Sections 16.2.3 or 16.2.4 below. The exercise by a Party of its rights under this Section 16.2
14 shall be the sole and exclusive remedy of such Party for an Event of Default by or attributable to
15 the other Party. The Parties acknowledge and agree that in the event of termination of this
16 Agreement due to an Event of Default, all or a portion of the amount of damages arising
17 therefrom are not susceptible to an accurate determination. The Parties further acknowledge
18 and agree that the liquidated damages set forth above are not intended as a penalty and represent
19 a fair and reasonable approximation of all or a portion of the damages a Non-Defaulting Party
20 may incur in each particular case.

21 16.2.3 With respect to an Event of Default by or attributable to Buyer, within
22 15 Days after Seller's notice under Section 16.2.2, the Parties shall each select an independent
23 party to determine the Seller's Damages. Within 30 Days after such notice, the two independent

1 parties shall select a third independent party to determine the Seller's Damages. Within 60
2 Days after such notice, the three (3) independent parties shall provide the Parties with their
3 respective estimates of the Seller's Damages. The actual Seller's Damages shall equal the
4 arithmetic average of the three estimates. If one Party disputes the actual Seller's Damages,
5 within 5 Business Days of notice of the Seller's Damages determined by the independent
6 parties, such Party may submit the dispute for resolution pursuant to the arbitration procedures
7 of Article 18 and the arbitration order or finding regarding the Seller's Damages shall be
8 conclusive, provided, however, in no event shall the Seller's Damages be less than [REDACTED] nor
9 greater than [REDACTED] at any time whether or not arbitrated. Subject to such qualification,
10 the Seller's Damages will be paid by Buyer to Seller within 3 Business Days after being
11 determined by the independent parties unless disputed and arbitrated pursuant to the terms of
12 this Agreement in which event it shall be paid within 3 Business Days of the relevant arbitration
13 finding or order. As used herein, "Seller's Damages" [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 16.2.4 With respect to an Event of Default by or attributable to Seller, within
22 15 Days after Buyer's notice under Section 16.2.2, the Parties shall each select an independent
23 party to determine the Buyer's Damages. Within 30 Days after such notice, the two

1 independent parties shall select a third independent party to determine the Buyer's Damages.
2 Within 60 Days after such notice, the 3 independent parties shall provide the Parties with their
3 respective estimates of the Buyer's Damages. The actual Buyer's Damages shall equal the
4 arithmetic average of the three estimates. If one Party disputes the actual Buyer's Damages,
5 within 5 Business Days of notice of the Buyer's Damages determined by the independent
6 parties, such Party may submit the dispute for resolution pursuant to the arbitration procedures
7 of Article 18 and the arbitration order or finding regarding the Buyer's Damages shall be
8 conclusive, provided, however, in no event shall the Buyer's Damages be less than ■ nor
9 greater than ■ at any time whether or not arbitrated. Subject to such qualification,
10 the Buyer's Damages will be paid by Seller to Buyer within 3 Business Days after being
11 determined by the independent parties unless disputed and arbitrated pursuant to the terms of
12 this Agreement in which event it shall be paid within 3 Business Days of the relevant arbitration
13 finding or order. As used herein, "Buyer's Damages" means ■
14 ■
15 ■
16 ■
17 ■
18 ■
19 ■
20 ■

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ARTICLE 17

REPRESENTATIONS AND WARRANTIES

17.1 Execution. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has all the necessary corporate and legal power and authority and has been duly authorized by all necessary corporate action to enable it to lawfully execute, deliver and perform under this Agreement; and (ii) it is a valid legal entity duly organized and validly existing in good standing under the laws of the state of its formation and is, to the extent required, qualified to do business in the state where it is organized;

17.2 Permits. Each Party represents and warrants to the other Party that as of the Effective Date it has all permits, licenses or approvals necessary to lawfully perform its obligations contained herein in the manner prescribed by this Agreement.

17.3 Binding Obligations. Each Party represents and warrants to the other Party that as of the Effective Date this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principals are considered in a proceeding at law or in equity.

17.4 Execution and Consummation. Each Party represents and warrants to the other Party that as of the Effective Date the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any law applicable to it or result in a breach or default under any evidence of its indebtedness or any other agreement or instrument to

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which it is a party or by which it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the Party of any of its obligations under this Agreement.

17.5 Actions and Proceedings. Each Party represents and warrants to the other that as of the Effective Date there is no pending or, to the knowledge of such Party, threatened action or proceeding affecting such Party before any Government Agency that has a reasonable likelihood of materially adversely affecting or reasonably threatening the ability of such Party to perform its obligations under this Agreement or the validity or enforceability of this Agreement against it and that there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

17.6 Absence of Certain Events. Each Party represents and warrants to the other Party that as of the Effective Date no Event of Default attributable to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

ARTICLE 18

DISPUTE RESOLUTION

18.1 Senior Officers.

18.1.1 Each of the Parties will designate in writing to the other Parties a representative who will be authorized to resolve any dispute arising under this Agreement and, unless otherwise expressly provided herein, to exercise the authority of such Party to make decisions by mutual agreement.

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18.1.2 If such designated representatives are unable to resolve a dispute under this Agreement, such dispute will be referred by each Party's representative, respectively, to a designated senior officer.

18.1.3 The Parties hereto agree: (i) to attempt to resolve all disputes arising hereunder promptly; and (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged and non-confidential records, information and data pertaining to any such dispute. Non-privileged and non-confidential information shall be made available to a Party pursuant to a confidentiality agreement consistent with the confidentiality provisions of this Agreement.

18.2 Arbitration.

18.2.1 All disputes arising under, out of, or in relation to any provision of this Agreement that are not resolved pursuant to Section 18.1 within 30 Days after either Party's receipt of notice referring the dispute to the senior officers of the Parties (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute of limitations) will be submitted upon written request of any Party to binding arbitration. Each Party will have the right to designate an arbitrator of its choice, who need not be from the American Arbitration Association ("AAA") panel of arbitrators but who (a) will be an expert in the independent power electric generation field and (b) will not be and will not have been previously an employee or agent of or consultant, or counsel to either Party or any of its Affiliates and will not have a direct or indirect interest in either Party or any of its Affiliates or the subject matter of the arbitration. Such designation will be made by notice to the other Party and to the AAA within 10 Days or, in the case of payment disputes, 5 Days after the date of the giving of notice of the demand for arbitration. The

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arbitrators designated by the Parties will designate a third arbitrator, who will have a background in legal and judicial matters (and who will act as chairman), within 10 Days or, in the case of payment disputes, 5 Days after the date of the designation of the last of the arbitrators to be designated by the Parties, and the arbitration will be decided by the three arbitrators. If the two arbitrators cannot or do not select a third independent arbitrator within such period, either Party may apply to the AAA for the purpose of appointing any person listed with the AAA as the third independent arbitrator under the expedited rules of the AAA. Such arbitration will be held in alternating locations of the home offices of the Parties, commencing with Buyer's home office, or in any other mutually agreed upon location. The rules of the AAA will apply to the extent not inconsistent with the rules herein specified. Each Party will bear its own expenses (including attorneys' fees) with respect to the arbitration. The arbitrators will designate the Party to bear the expenses of the arbitrators or the respective amounts of such expense to be borne by each Party.

18.2.2 Subject to Section 16.2, the arbitrators conducting an arbitration proceeding under this Section shall have no authority to award to any Party consequential, incidental, punitive, exemplary or indirect damages or any lost profits or business interruption damages, whether by virtue of any Law or otherwise. Provided further, the fact that any arbitration proceeding is conducted hereunder and the decision of the arbitrators shall be deemed Confidential Information under Section 21.2; provided further, notwithstanding any provision in Article 21, Confidential Information, to the extent relevant, may be disclosed by any Party to the arbitrators conducting the arbitration and any court of competent jurisdiction enforcing the arbitrators' award.

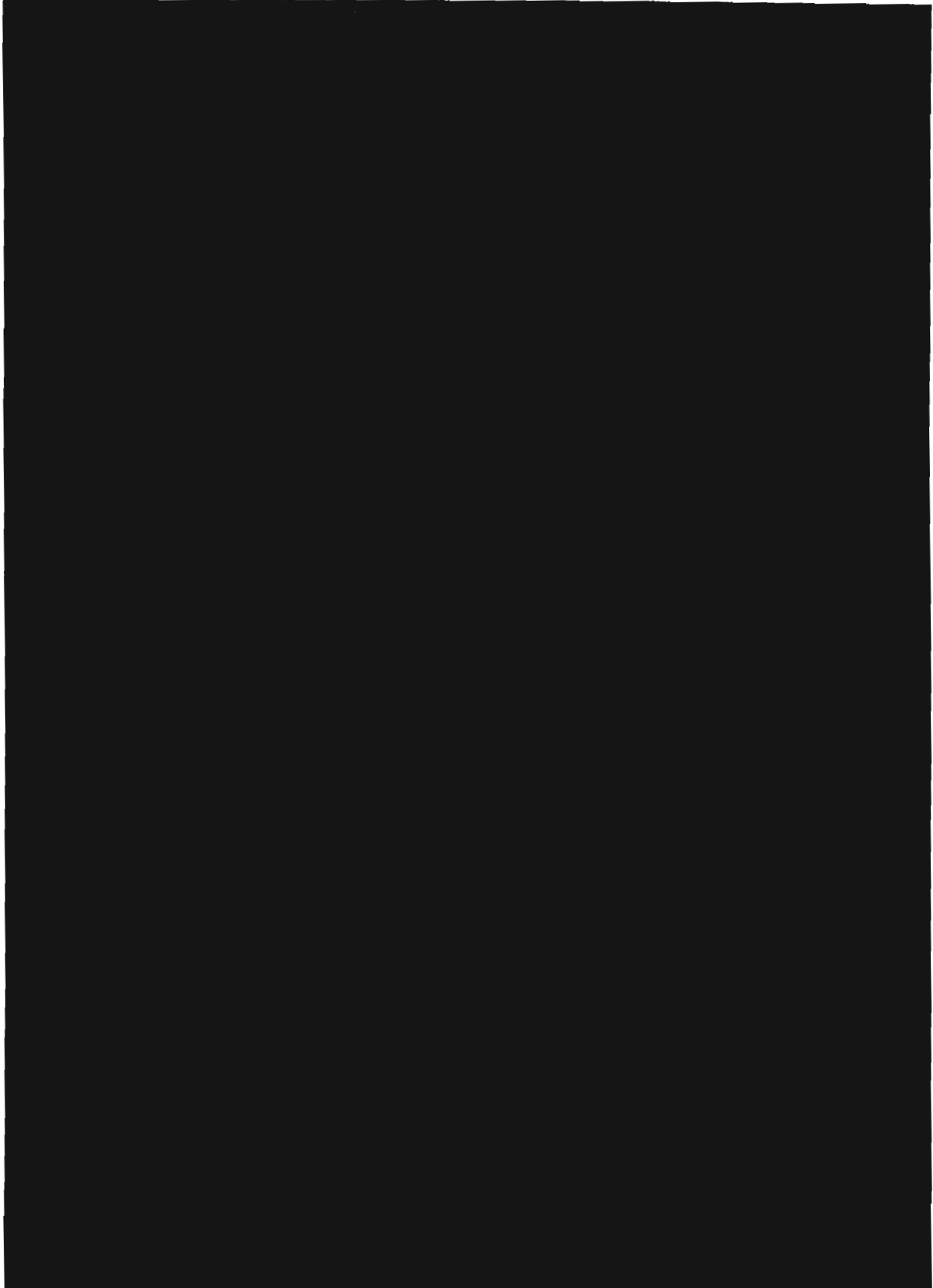
1 **18.3 Binding Nature of Proceedings.** Each Party understands that this Agreement
2 contains an agreement to arbitrate with respect to specified disputes. After signing this
3 Agreement, each Party understands that it will not be able to bring a lawsuit concerning any
4 dispute that may arise that is covered by this arbitration provision. Instead, each Party agrees to
5 submit any such dispute to arbitration pursuant to Section 18.2. Any award of the arbitrator
6 may be enforced by the Party in whose favor such award is made in any court of competent
7 jurisdiction.

8 **ARTICLE 19**

9 **ASSIGNMENT**

10 **19.1 Assignment.** Either Party may assign outright or collaterally this Agreement
11 and its rights and obligations hereunder subject to the written consent of the other Party (which
12 consent shall not be unreasonably withheld); provided that either Party may assign outright this
13 Agreement and its rights and obligations hereunder without the consent of the other Party to any
14 person with 

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21 



1 [REDACTED]

2 [REDACTED]

3 who has the legal power and authority, licenses and technical ability to perform and satisfy the
4 obligations of the assigning Party under this Agreement (an "Eligible Assignee"). The
5 assigning Party will notify the other Party in writing prior to any assignment with respect to
6 which consent is not required hereunder. No assignment by a Party of this Agreement or its
7 rights or obligations hereunder shall relieve the assigning Party of liability for its obligations
8 under this Agreement without the written release of the other Party. Such release shall not be
9 withheld if the Assignment Conditions (defined below) are satisfied.

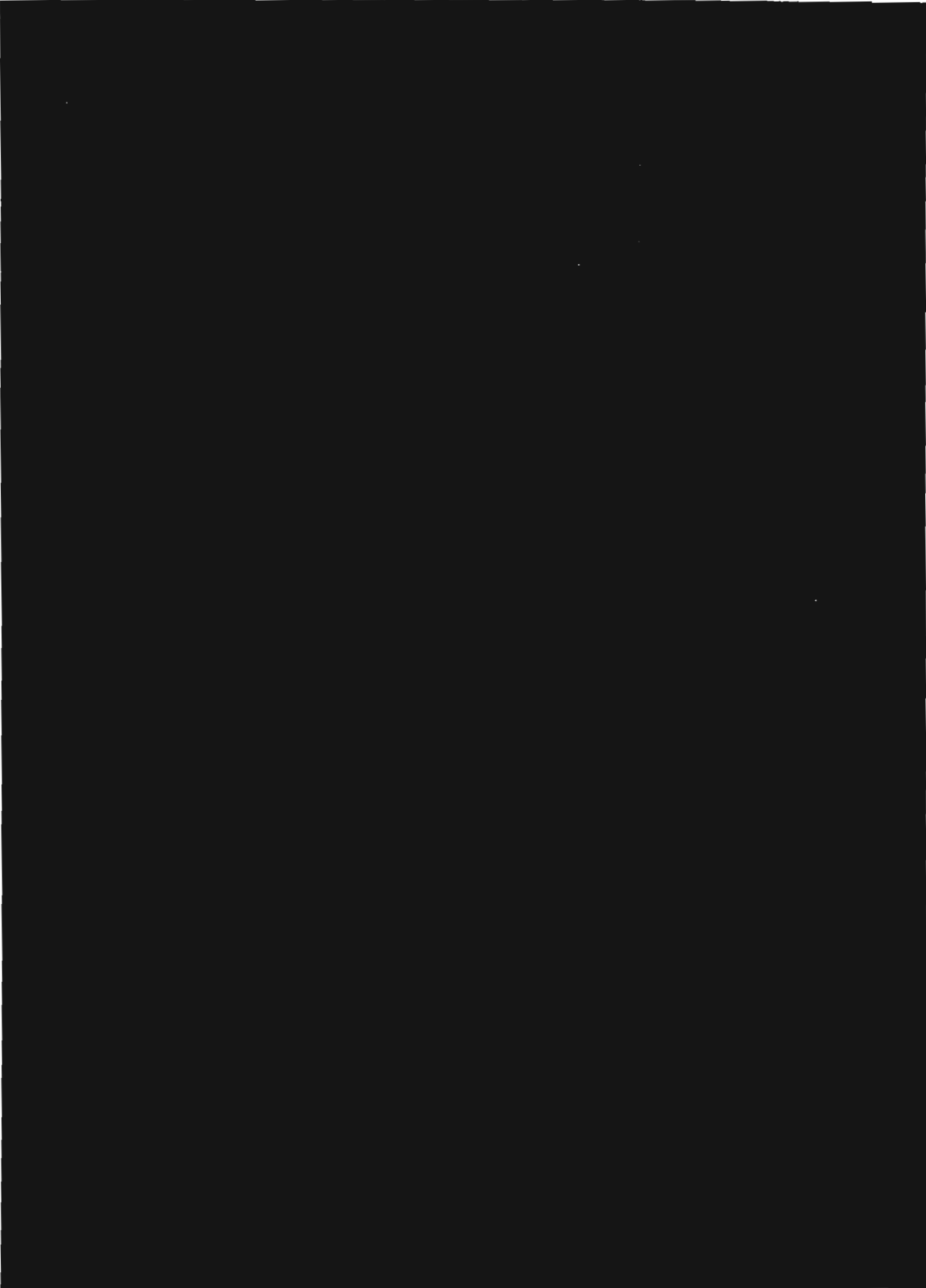
10 **19.2 Assignment Conditions.** The non-assigning Party's obligation to recognize
11 or perform for any person claiming rights in this Agreement by outright assignment or through
12 collateral assignment (an "Assignee") shall be subject to such Assignee: (i) establishing that it
13 satisfies the qualifications of an Eligible Assignee; (ii) having cured all existing Events of
14 Default under this Agreement; and (iii) having executed and delivered to the non-assigning
15 Party an assignment and assumption agreement whereby the Assignee assumes and agrees to
16 satisfy all conditions and pay and perform all obligations in favor of the non-assigning Party
17 then existing and/or thereafter arising under this Agreement (the "Assignment Conditions").
18 Any attempted assignment, directly or indirectly, by way of merger or otherwise, which is not in
19 compliance with the terms hereof shall be void and ineffective.

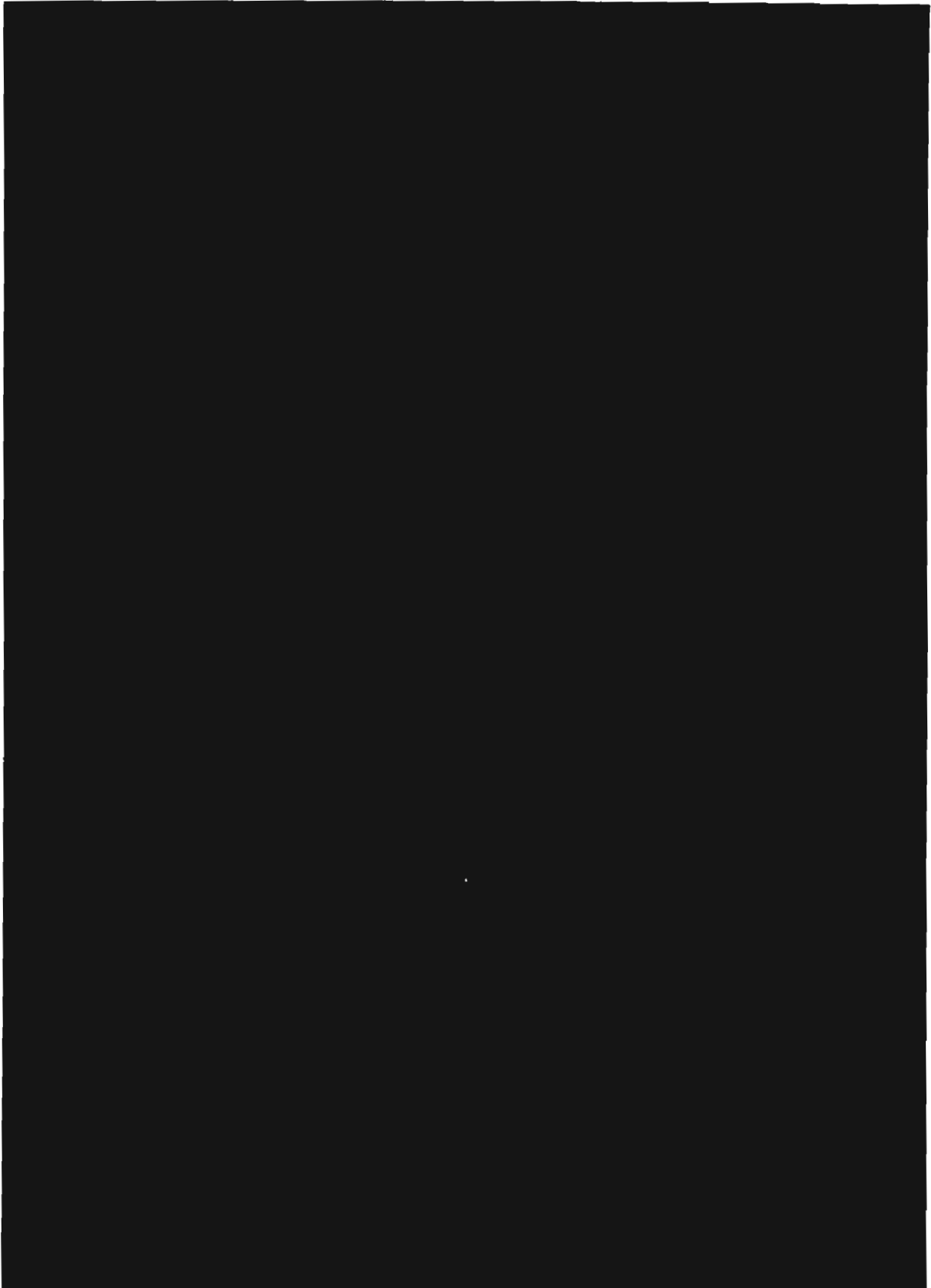
20 **ARTICLE 20**

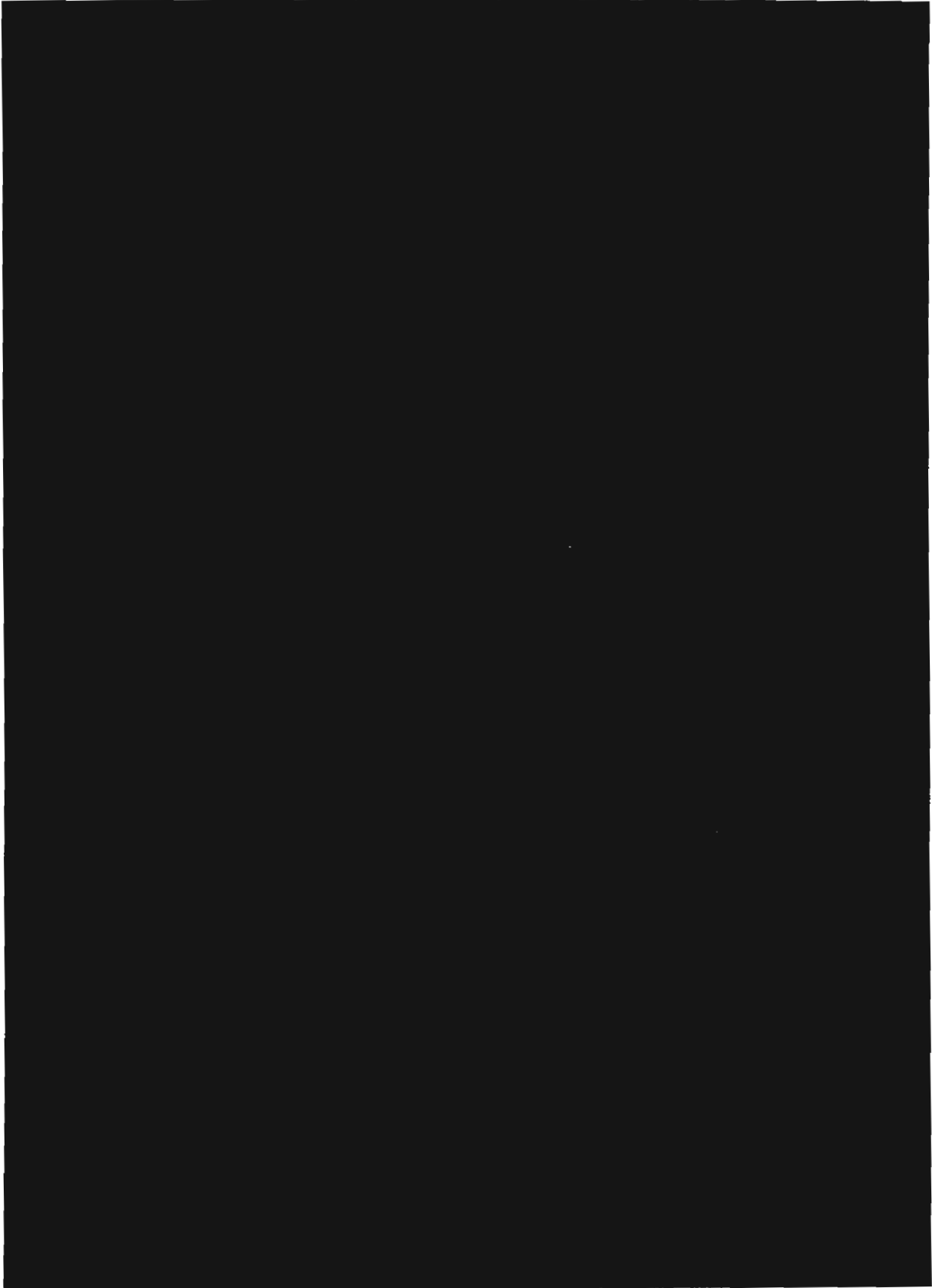
21 **CREDITWORTHINESS AND SECURITY**

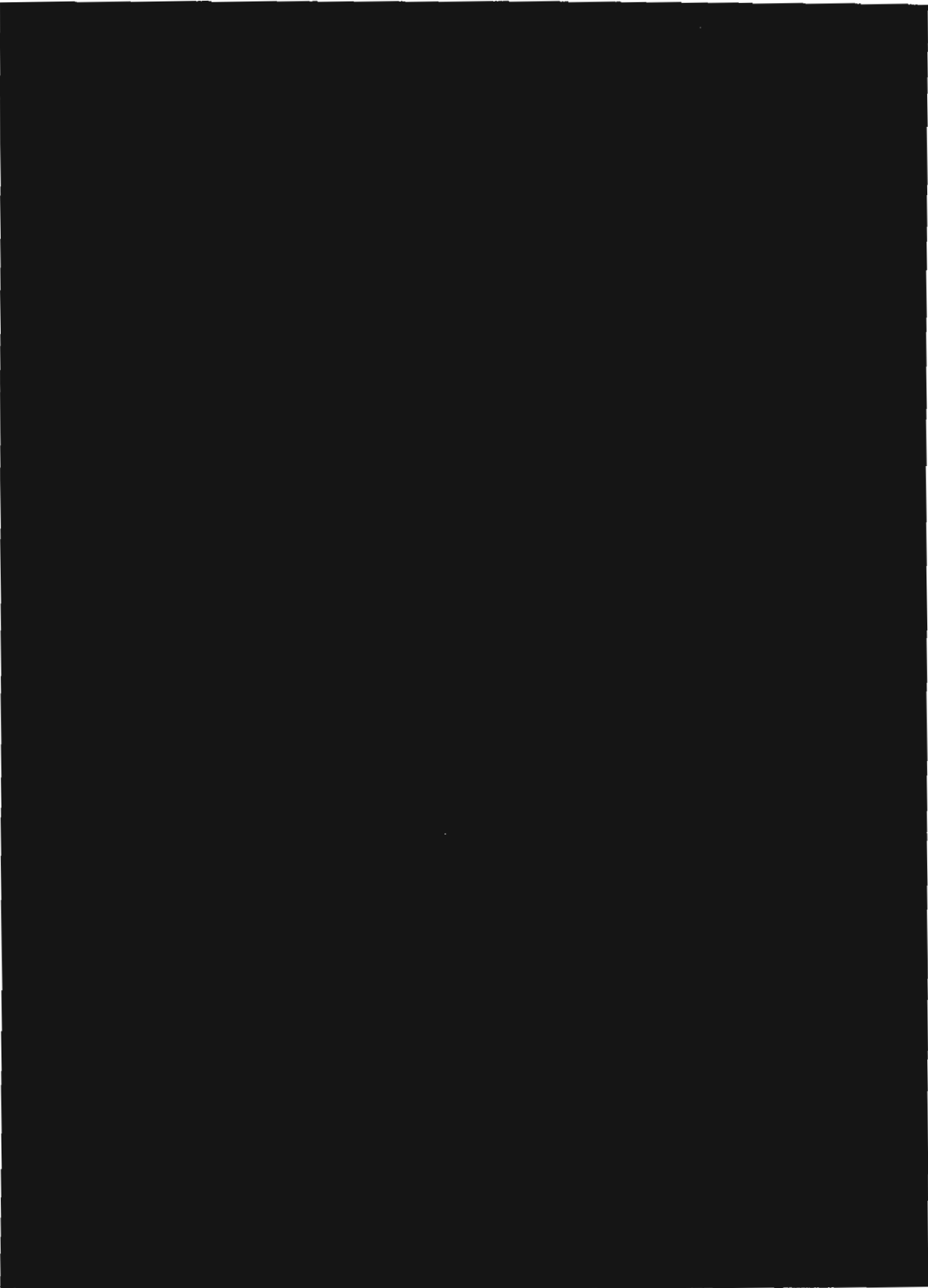
22 **20.1 Buyer's Provision of a Letter of Credit or Guaranty.** [REDACTED]

23 [REDACTED]









1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 20.2 Seller's Provision of a Letter of Credit or Guaranty. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

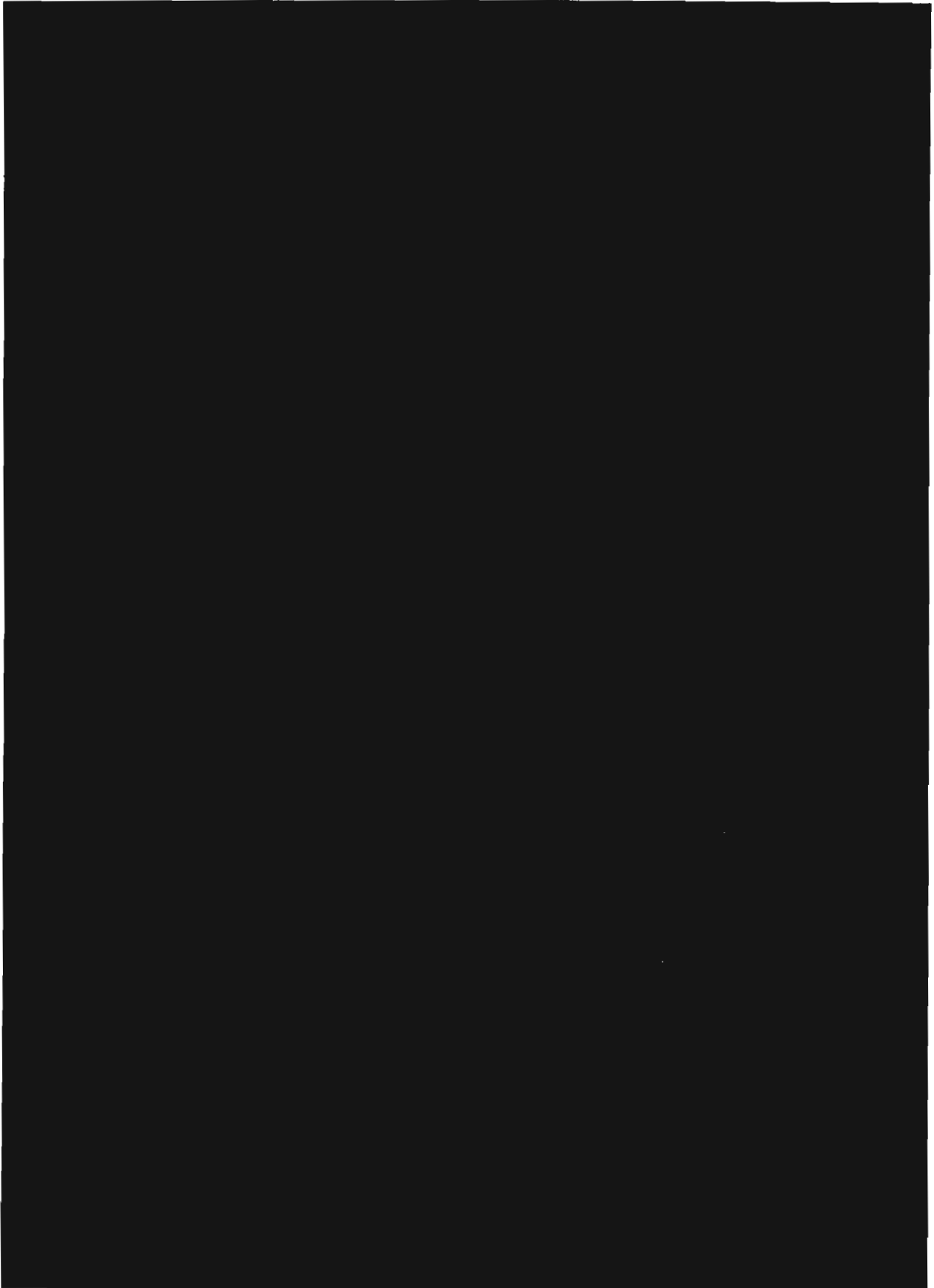
20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]





1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

ARTICLE 21

MISCELLANEOUS

21.1 Governing Law; Waiver of Jury Trial.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA, EXCLUSIVE OF ITS CONFLICTS OF LAW PROVISIONS, AND, TO THE EXTENT APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA. BY CHOOSING TO HAVE THIS AGREEMENT GOVERNED BY AND CONSTRUED UNDER THE LAW OF THE STATE OF FLORIDA, THE PARTIES ARE IN NO WAY SUBMITTING TO OR INCORPORATING INTO THIS AGREEMENT ANY FLORIDA STATUTE,

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REGULATION, OR ORDER, OR ANY OF THE SAME INVOLVING THE GENERATION, SALE, PURCHASE OR TRANSMISSION OF ELECTRIC CAPACITY OR ELECTRIC ENERGY IN, OR FOR CONSUMPTION IN, THE STATE OF FLORIDA. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

21.2 Confidentiality.

21.2.1 Scope of Protection.

(i) For purposes of this Section 21.2: (a) "Seller Confidential Information" means the terms of this Agreement and all drafts of the same, together with any documents, data or drafts labeled or otherwise expressly identified as "Confidential" by Seller when provided to Buyer; (b) "Buyer Confidential Information" means the terms of this Agreement and all drafts of the same, together with any documents, data or drafts labeled or otherwise expressly identified as "Confidential" by Buyer when provided to Seller; and (c) "Confidential Information" means collectively the Seller Confidential Information and the Buyer Confidential Information.

(ii) Seller shall not disclose to third parties any Buyer Confidential Information; provided that nothing contained herein shall prohibit Seller from providing any such Buyer Confidential Information to its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other

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Persons in connection with the acquisition of all or a significant portion of the assets or stock of Southern Power or any of its Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or other financing activities by Southern Power or any of its Affiliates who in the reasonable judgment of Seller should have access to such Buyer Confidential Information and are bound by an obligation to maintain such confidentiality provided that Seller shall be responsible for any use or disclosure of such Buyer Confidential Information by any of its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons inconsistent with this Section 21.2; provided further that nothing contained herein shall prohibit Seller from providing Buyer Confidential Information to the NERC or SEARUC solely to the extent that (i) Seller determines in its reasonable discretion that the provision of such information is required to enhance and/or maintain reliability; (ii) such entity is obligated to maintain such confidentiality; and (iii) Seller has notified Buyer of its intention to release such information no less than 5 Business Days prior to the release subject to the requirements of applicable law and regulation.

(iii) Buyer shall not disclose to third parties any Seller Confidential Information; provided that nothing contained herein shall prohibit Buyer from providing any such Seller Confidential Information to its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons in connection with the acquisition of all or a significant portion of the assets or stock of Buyer or any of its Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or other financing activities by Buyer or any of its Affiliates who in the

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reasonable judgment of Buyer should have access to such Seller Confidential Information and are bound by an obligation to maintain such confidentiality provided that Buyer shall be responsible for any use or disclosure of such Seller Confidential Information by any of its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons inconsistent with this Section 21.2; provided further that nothing contained herein shall prohibit Buyer from providing Seller Confidential Information to the NERC or SEARUC solely to the extent that (i) Buyer determines in its reasonable discretion that the provision of such information is required to enhance and/or maintain reliability, (ii) such entity is obligated to maintain such confidentiality, and (iii) Buyer has notified Seller of its intention to release such information no less than 5 Business Days prior to the release subject to the requirements of applicable law and regulation.

(iv) Notwithstanding the foregoing, either Party may disclose Confidential Information (i) to the extent relevant, to the independent parties determining Seller's Damages or Buyer's Damages (as appropriate), and (ii) to its and its Affiliates' employees, officers, directors, accountants, counsel and other advisors who need to know such information in connection with the performance of their duties or services for the disclosing Party or its Affiliates; provided, however, that such Persons shall be required to maintain the confidentiality of such information consistent with the requirements of this Agreement.

21.2.2 Required and Other Disclosure.

(i) Notwithstanding anything in this Section to the contrary, if Buyer is required by applicable law or regulation, or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Seller Confidential Information or

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otherwise intends to disclose Seller Confidential Information to FERC or its staff (other than at the request or requirement of FERC or its staff) or pursuant to the request or requirement of any appropriate state regulatory commission or body, Buyer may make disclosure of such Seller Confidential Information; provided, however, that all reasonable steps are taken by Buyer to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as Buyer learns of the disclosure request or requirement or otherwise intends to disclose any Seller Confidential Information pursuant hereto and prior to making disclosure, Buyer shall, to the extent permitted by law, notify Seller of the requirement, request or intention and the terms thereof and any Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. Buyer, at Seller's expense, shall cooperate with Seller to the maximum extent practicable to minimize the disclosure of the Seller Confidential Information consistent with applicable law. Buyer shall cooperate with Seller to obtain proprietary or confidential treatment of such Seller Confidential Information by the Person to whom such Seller Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate remedy or the receipt of a waiver by Seller, Buyer is nonetheless, in the written opinion of counsel, legally compelled to disclose Seller Confidential Information or otherwise may become subject to contempt or other censure or penalty, Buyer may, in such instance but not otherwise, without liability hereunder, disclose that portion of the Seller Confidential Information which and to whom such counsel advises Buyer is legally required to be disclosed (but none other), provided that Buyer exercises Commercially Reasonable Efforts to preserve the confidentiality of the Seller Confidential Information, including by cooperating with Seller to obtain an appropriate protective order or

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other reliable assurance that the Seller Confidential Information shall be accorded confidential treatment. Seller shall be liable for all reasonable legal costs incurred by Buyer in cooperating with Seller to obtain such an appropriate protective order or confidential treatment.

(ii) Notwithstanding anything in this Section to the contrary, if Seller is required by applicable law or regulation, or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Buyer Confidential Information or otherwise intends to disclose Buyer Confidential Information to FERC or its staff (other than at the request or requirement of FERC or its staff) or pursuant to the request or requirement of any appropriate state regulatory commission or body, Seller may make disclosure of such Buyer Confidential Information; provided, however, that all reasonable steps are taken by Seller to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as Seller learns of the disclosure request or requirement or otherwise intends to disclose any Buyer Confidential Information pursuant hereto and prior to making disclosure, Seller shall, to the extent permitted by law, notify Buyer of the requirement, request or intention and the terms thereof and any Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. Seller, at Buyer's expense, shall cooperate with Buyer to the maximum extent practicable to minimize the disclosure of the Buyer Confidential Information consistent with applicable law. Seller shall cooperate with Buyer to obtain proprietary or confidential treatment of such Buyer Confidential Information by the Person to whom such Buyer Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate protective remedy or the receipt of a waiver by Buyer, Seller is nonetheless, in the written opinion of counsel, legally

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compelled to disclose Buyer Confidential Information or otherwise may become subject to contempt or other censure or penalty, Seller may, in such instance but not otherwise, without liability hereunder, disclose that portion of the Buyer Confidential Information which and to whom such counsel advises Seller is legally required to be disclosed (but none other), provided that Seller exercises Commercially Reasonable Efforts to preserve the confidentiality of the Buyer Confidential Information, including, without limitation, by cooperating with Buyer to obtain an appropriate protective order or other reliable assurance that the Buyer Confidential Information shall be accorded confidential treatment. Buyer shall be liable for all reasonable legal costs incurred by Seller in cooperating with such Buyer to obtain an appropriate protective order or confidential treatment.

(iii) Nothing in this Section 21.2 shall prohibit or otherwise limit the use or disclosure of Confidential Information if such Confidential Information: (i) was previously known to the disclosing or using Party unrelated to this Agreement without an obligation of confidentiality; (ii) was developed by or for the disclosing or using Party unrelated to this Agreement using nonconfidential information; (iii) was acquired by the disclosing or using Party from a third party which is not, to the disclosing or using Party's knowledge, under an obligation of confidence with respect to such information; (iv) is or becomes publicly available other than through a manner inconsistent with this Section 21.2; or (v) is provided or made available for inspection by Seller or Buyer under public records or public disclosure laws but only to the extent required to be so provided or made available.

(iv) The provisions of this subsection shall supercede any contrary provisions of this Section 21.2 regarding the disclosure of information to FERC or its staff pursuant to the request or requirement of FERC or its staff. In providing Buyer Confidential

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Information to FERC or its staff pursuant to the request or requirement of FERC or its staff, Seller shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. To the extent permitted by law, Seller shall promptly notify Buyer when it is required or requested by FERC or its staff to disclose Buyer Confidential Information. Seller shall not be prohibited to make or liable for the disclosure to FERC or its staff of any Buyer Confidential Information pursuant to the request or requirement of FERC or its staff consistent with this subsection. In providing Seller Confidential Information to FERC or its staff pursuant to the request or requirement of FERC or its staff, Buyer shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. To the extent permitted by law, Buyer shall promptly notify Seller when it is required or requested by FERC or its staff to disclose Seller Confidential Information. Buyer shall not be prohibited to make or liable for the disclosure to FERC or its staff of any Seller Confidential Information pursuant to the request or requirement of FERC or its staff consistent with this subsection. Notwithstanding the foregoing, the Parties acknowledge that any request of FERC for confidential treatment of information may be denied by FERC in whole or in part.

(v) The Parties agree to seek confidential treatment of the Confidential Information from the FPSC to the maximum extent possible pursuant to Chapter 366.093, Florida Statutes, and Rule 25-22.006 of the Florida Administrative Code; however, notwithstanding the foregoing, the Parties acknowledge that a request for confidential treatment of Confidential Information may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the FPSC to such information. In the event any

1 Confidential Information will need to be disclosed in connection with the application for the
2 FPSC Approval, Buyer shall consult and cooperate with Seller prior to such disclosure,
3 including, without limitation, in determining the extent to which confidential treatment will be
4 sought for such terms, conditions and provisions.

5 (vi) Seller may file this Agreement with the Securities and Exchange
6 Commission ("Commission") as may be necessary under the Public Utility Holding Company
7 Act and the rules and regulations thereunder in connection with Seller's application to the
8 Commission for such orders and approvals as may be required for financing and/or the issuance
9 and sale of interests in or debt issued or to be issued by Seller and/or its Affiliates. Seller shall
10 request confidential treatment of the Buyer Confidential Information in this Agreement in
11 connection with such filing; however, the Parties acknowledge that such request may be denied
12 in whole or in part, and accordingly, that confidential treatment may not be afforded by the
13 Commission to such information. In addition, Seller may disclose such Buyer Confidential
14 Information as required by the Commission pursuant to the Securities and Exchange Act of
15 1934, as amended, and any rule or regulation promulgated thereunder.

16 (vii) Except for filings with the Commission or other regulatory
17 authorities, any public statement and/or press release by a Party hereto concerning this
18 Agreement (except statements or releases by the Non-Defaulting Party after an Event of
19 Default) shall be reviewed and agreed upon by the Parties before release, which agreement shall
20 not be unreasonably withheld or delayed.

21 [REDACTED]
22 [REDACTED]

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21.3 Survivorship of Obligations. Termination of this Agreement shall not discharge any Party from any obligation it owes the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense or liability occurring, accruing or arising prior to such termination. It is the intent of the Parties that any such obligation owed (whether the same shall be known or unknown as of the termination or cancellation of this Agreement) will survive the termination or cancellation of this Agreement in favor of the Party to which such obligation is owed. The Parties also intend that the indemnification and limitation of liability provisions contained in Sections 14.2 and 14.3 shall remain operative and in full force and effect and that any specific survivability provisions in any other sections be given full effect.

21.4 No Third Party Beneficiaries. This Agreement is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any Persons, corporations, associations, or entities other than the Parties and their permitted successors and assigns, and the rights and obligations of each of the Parties under this Agreement are solely for the use and benefit of, and may be enforced solely by the Parties, their permitted successors and assigns.

21.5 Section Headings Not to Affect Meaning. The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof. References to "Articles", "Sections" and "Appendices" in this Agreement shall mean the Articles, Sections and Appendices of this Agreement unless otherwise expressly noted.

21.6 Computation of Time. In computing any period of time prescribed or allowed by this Agreement, the designated period of time shall begin to run on the Day immediately following the Day of the act, event or default that precipitated the running of the designated

1 period of time. The designated period shall expire on the last Day of the period so computed
2 unless that Day is not a Business Day, in which event the period shall run until the end of the
3 next Business Day.

4 **21.7 Interest.** Whenever the provisions of this Agreement require the calculation of
5 an interest rate, such rate shall be computed at an annual rate equal to the Prime Rate as of the
6 date on which the calculation begins, but not to exceed the maximum rate which may be
7 lawfully charged. Interest on obligations arising under this Agreement shall be compounded
8 daily and be calculated based on a 360 day year.

9 **21.8 Entire Agreement.** [REDACTED]

10 [REDACTED] this Agreement constitutes the entire
agreement between the Parties relating to the subject matter hereof and supersedes any other
agreements, written or oral, between the Parties concerning such subject matter. The Parties
have entered into this Agreement in reliance upon the representations and mutual
understandings contained herein and not in reliance upon any oral or written representation or
information provided by one Party to another Party not contained or incorporated herein.

21.9 Counterparts. This Agreement may be executed simultaneously in multiple
counterparts, each of which shall be deemed an original, but all of which together shall
constitute one and the same instrument.

21.10 Amendments. This Agreement may only be amended by written agreement
signed by duly authorized representatives of the Parties.

21.11 Waivers. Waivers of the provisions of this Agreement or excuses of any
violations of this Agreement shall be valid only if in writing and signed by an authorized officer

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of the Party issuing the waiver or excuse. A waiver or excuse issued under one set of circumstances shall not extend to other occurrences under similar circumstances.

21.12 No Partnership Created. Any provision of this Agreement to the contrary notwithstanding, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. If it should appear that one or more changes to this Agreement would be required in order not to create an entity referenced in the preceding sentence, the Parties agree to negotiate promptly and in good faith with respect to such changes.

21.13 Character of Sale. The sale of capacity and energy hereunder shall not constitute a sale, lease, transfer or conveyance to Buyer or any other party of any contractual rights or ownership interests in any generating unit or other equipment comprising the Facility, nor does the sale of capacity and energy hereunder constitute a dedication of ownership of any generating unit or other equipment comprising the Facility.

21.14 Notices. Any notice, demand, request, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other, shall be in writing (unless otherwise expressly provided by this Agreement) and shall be considered duly delivered when received by hand delivery, first-class mail, facsimile, or by overnight delivery, at the address(es) and to the attention of the person(s) listed below; provided, however, if actual delivery occurs at a time other than between the hours of 0800 and 1700 CPT on a Business Day (each a "Business Hour"), delivery shall be deemed to have occurred in the next Business Hour after actual delivery.

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(i) To Seller:

Vice President, Business Development
Southern Company Generation and Energy Marketing
Bin 935
270 Peachtree Street, NW
Atlanta, Georgia 30303

Telephone: 404-506-0346
Facsimile: 404-506-0399

With a copy to:

Senior Vice President, General Counsel and Assistant Secretary
Southern Power Company
600 North 18th Street
Birmingham, Alabama 35203

Telephone: 205-257-0472
Facsimile: 205-257-2027

And

Vice President, Fleet Operations and Trading
Southern Company Services, Inc.
600 North 18th Street, GS-8259
Birmingham, Alabama 35203

Telephone: 205-257-6139
Facsimile: 205-257-4441

(ii) To Buyer:

Vice President, Energy Marketing and Trading
Florida Power & Light Company
700 Universe Boulevard
EMT/JB
Juno Beach, Florida 33408

Telephone: 561-691-7878
Facsimile: 561-691-7759

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With a copy to:

Director, Resource Assessment and Planning
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Telephone: 305-552-3622
Facsimile: 305-552-2905

Either Party may change the information set forth in this Section 21.14 by giving written notice to the other Party in the manner prescribed by this Section.

21.15 Survival. Any provision(s) of this Agreement that expressly comes into or remains in force following the termination or expiration of this Agreement shall, subject to the express terms of the relevant provision, survive the termination or expiration of this Agreement.

21.16 Construction. The language used in this Agreement is the product of both Parties' efforts. Accordingly, each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.

21.17 Imaged Agreement. Any original executed Agreement, schedule confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the schedule confirmation, if introduced as evidence in automated facsimile form, the transaction tape, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the

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transaction tape, the schedule confirmation or the Imaged Agreement (or photocopies of the transcription of the transaction tape, the schedule confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

21.18 Severability. If any provision or provisions of this Agreement or the application thereof to any Person or circumstance or in any jurisdiction is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable as written for any reason, then it is the intent of each of the Parties that any such provision or provisions shall be given force and effect to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Agreement and the application of such provision or provisions to other Persons or circumstances or in other jurisdictions shall be deemed valid and enforceable to the fullest extent possible and continue in force and effect. If the determination that any provision or provisions hereof are illegal, invalid, unlawful, void or unenforceable (even after such provision or provisions are given force and effect to the fullest extent possible) results in a significant material deviation from the Parties' original intent or economic expectations regarding this Agreement, the Parties shall negotiate to (and/or the applicable court, in its discretion, may) replace any such illegal, invalid, unlawful, void or unenforceable provision or provisions with valid provision(s) which result in the least deviation from the Parties' intent and economic expectations.

21.19 Agency of Southern Company Services, Inc. Seller hereby designates Southern Company Services, Inc. to serve as its agent for purposes of the implementation and administration of this Agreement. Seller may designate a new agent from time to time under this Agreement by giving Buyer 60 Days written notice in which event Southern Company

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Services, Inc.'s role, as agent, shall cease and the newly-designated agent shall be substituted for the sole purpose of serving and acting as agent for Seller hereunder.

21.20 Include. As used herein, the words "include" or "including" shall be deemed to be followed by the words "without limitation."

21.21 Examples. Examples of calculations pursuant to the provisions of this Agreement are set forth in Appendix H. Such calculations are for example purposes only and are not intended to, and shall not, modify any of the terms of this Agreement. To the extent there is a conflict between any of these examples and the other terms of this Agreement, such other terms shall govern. Moreover, such examples shall be given no weight in interpreting or construing the provisions of this Agreement.

[The Next Page is the Signature Page.]

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IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed in duplicate by their respective duly authorized officers as of the Effective Date.

SOUTHERN COMPANY SERVICES, INC.

As Agent for
Southern Power Company

BY: _____

NAME: William N. McKenzie

TITLE: Vice President

FLORIDA POWER & LIGHT COMPANY

BY: _____

NAME: Terry L. Morrison

TITLE: Vice President

APPENDIX A

MONTHLY CAPACITY PAYMENT CALCULATION

A. Monthly Capacity Price

The Monthly Capacity Price for each Month of the Service Term shall be [REDACTED]/kW-month.

B. Monthly Capacity Payment

For each Month, the Monthly Capacity Payment ("MCP") shall be calculated as follows:

MCP = [REDACTED]

Where:

[REDACTED]

[REDACTED]

[REDACTED]

In the event that Buyer's obligation to purchase Contract Capacity begins on a Day other than the first Day of a Month, or if Buyer's obligation to purchase Contract Capacity ends on a Day other than the last Day of a Month, the calculation of the Monthly Capacity Payment and/or Capacity Availability Performance Adjustment will be determined on a pro rata basis.

C. Capacity Availability Performance Adjustment

Within [REDACTED] after the conclusion of each Performance Period, Seller shall calculate a Capacity Availability Performance Adjustment ("CAPA") for the most recently completed Performance Period as follows:

CAPA = CAF * ACP

Where:

CAF = Capacity Adjustment Factor, which is the value determined using the either Table A-1, A-2, or A-3, as applicable [REDACTED]

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For
12 purposes of calculating CAF, the values determined pursuant to Tables A-1
13 through A-3 shall be rounded to the nearest thousandth.

14 ACP = [REDACTED]
15

16 If the CAPA is positive, then Buyer owes Seller the amount of the CAPA. If the CAPA is
17 negative, then Seller owes Buyer the absolute value of the CAPA. After CAPA is calculated by
18 Seller, Seller shall adjust the next Monthly invoice to Buyer to reflect CAPA as either a credit to
19 Buyer or an additional amount owed to Seller (as applicable).

20
21 **Table A-1**
Capacity Adjustment Factor for Peak Performance Period

22 [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED] [REDACTED]
26 [REDACTED] [REDACTED]

27
28 **Table A-2**
Capacity Adjustment Factor for Normal Off-Peak Performance Period

29 [REDACTED] [REDACTED]
30 [REDACTED] [REDACTED]
31 [REDACTED] [REDACTED]

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Table A-3
Capacity Adjustment Factor for Major Maintenance Off-Peak Performance Period

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

9 For purposes of Tables A-1, A-2 and A-3, for each Performance Period, the ADA shall
10 be determined by Seller as follows:

11 ADA = [REDACTED]

12 Where:

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

APPENDIX B

ENERGY PAYMENT CALCULATION

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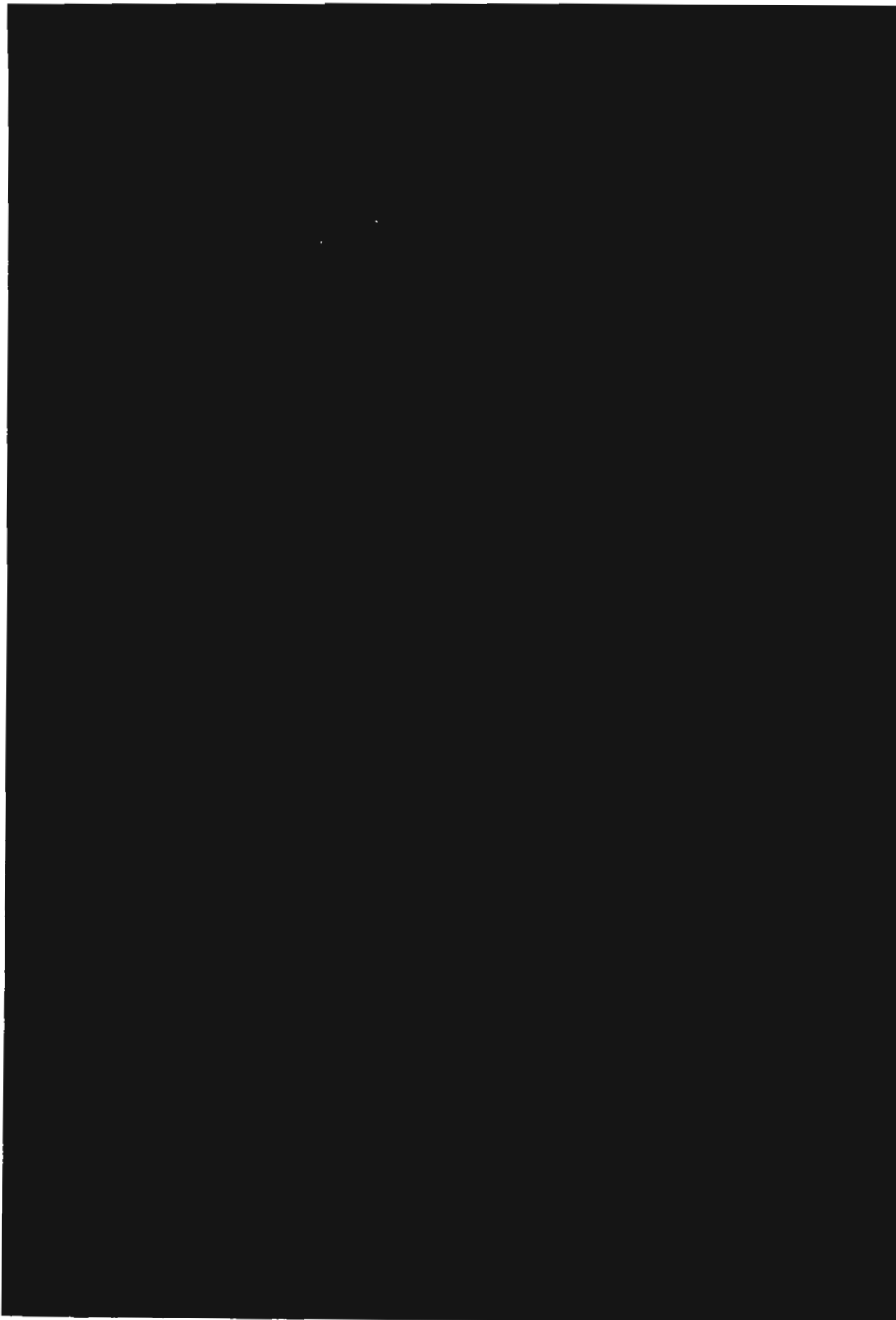
The Monthly Energy Payment for each Month shall be determined according to the following formula:

MEP = [REDACTED]

Where:

MEP = the Monthly Energy Payment, expressed in dollars.

[REDACTED]



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Table B-1

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[Redacted]

MFCA = Monthly Fuel Cost Adjustment

[Redacted]

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[Redacted]

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APPENDIX B

2



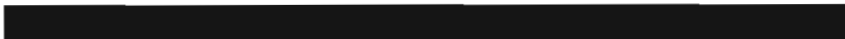
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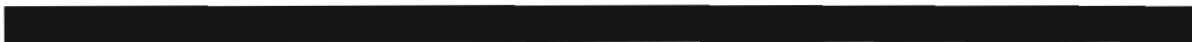
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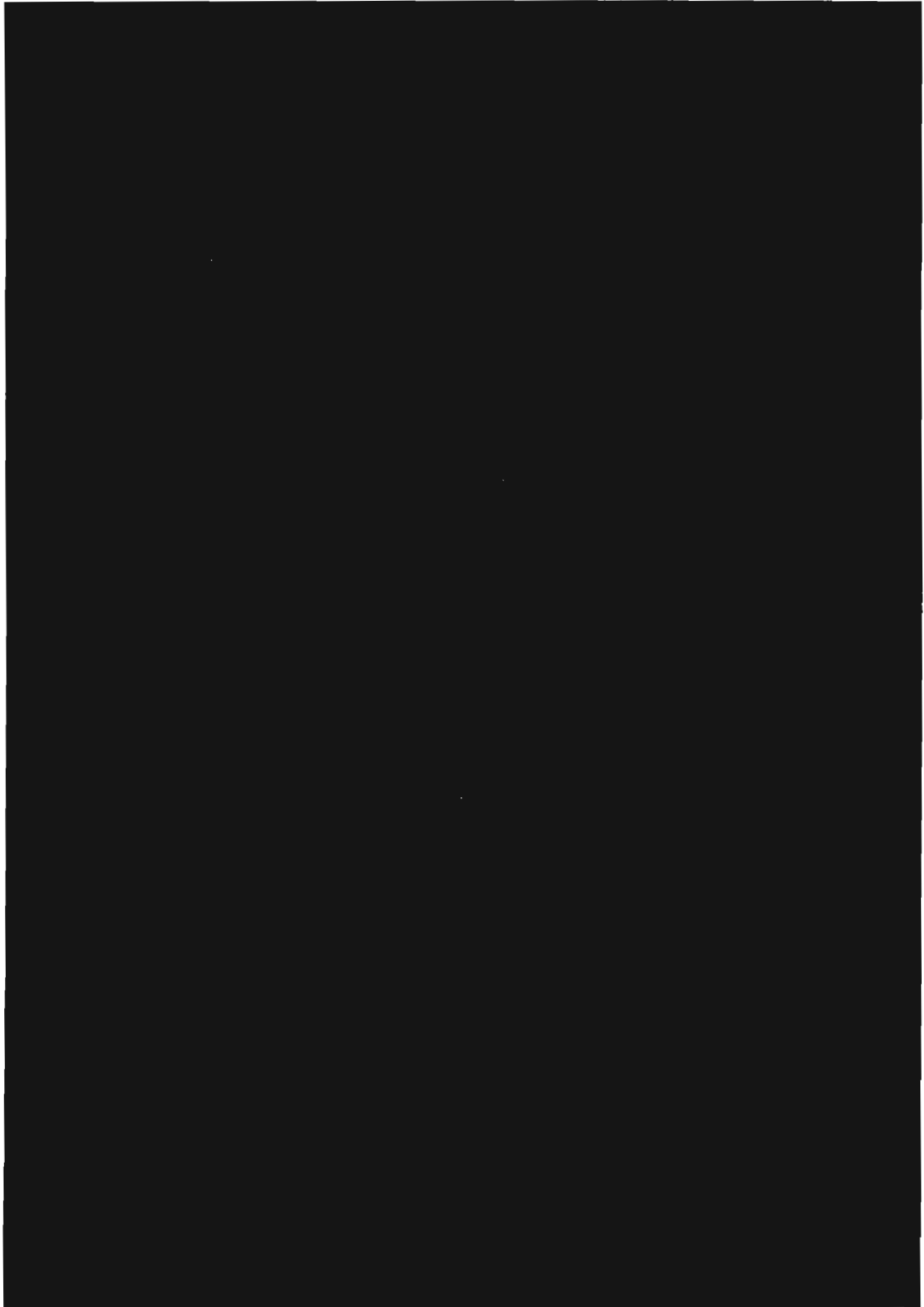


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APPENDIX C

2

CALCULATION OF START PAYMENT

3

The Monthly Start Payment ("MSP_M") shall be calculated for each Month as follows:

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MSP_M = [REDACTED]

5 Where:

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

Table C-1

17

[REDACTED]	[REDACTED]
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18

[REDACTED]	[REDACTED]
------------	------------

19

[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------

20

[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------

21

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]

26

[REDACTED]

27

[REDACTED]

28

[REDACTED]

29

[REDACTED]

1 Successful Starts shall be accumulated for each Month as follows:

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APPENDIX D

SCHEDULING PARAMETERS

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2 The Scheduling Parameters are as follows:

3 Minimum and Maximum Amounts of Scheduled Energy for Any Hour:

4 [Redacted]
5 [Redacted]
6 [Redacted]
7 [Redacted]
8 [Redacted]

9

Table A-1

10
11
12

	Minimum	Maximum
[Redacted]	[Redacted]	[Redacted]

13 Ramp Rate for Variations in Scheduled Energy:

14 [Redacted]
15 [Redacted]
16 [Redacted]

17 Minimum Duration of Schedule:

18 [Redacted]
19 [Redacted]

20 Minimum Time between a Schedule Shut-Down and a Schedule Start:

21 [Redacted]

22 Compliance with Governmental Approvals and Laws

23 [Redacted]
24 [Redacted]

1

APPENDIX E

2

DEMONSTRATION OF FACILITY GENERATING CAPABILITY AND TESTING

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A. Demonstration of Generating Capability.

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B. Testing Procedures

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APPENDIX F

LETTER OF CREDIT

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Beneficiary

Applicant

Attn: _____

8 We hereby issue our Irrevocable Standby Letter of Credit No. _____ in your
9 favor for \$ _____ U.S. Dollars available for payment at sight in immediately
10 available funds against your drafts drawn on us and accompanied by a Certificate signed by a
11 purported Authorized Officer of _____, containing one or more of the
12 following statements:

13 (a) "An _____
14 _____ under that certain
15 Contract for the Purchase of Capacity and Energy originally between Southern
16 Company Services, Inc., as agent for Southern Power Company, and Florida
17 Power & Light Company entered into as of _____, 2004 (as amended,
18 replaced or assigned, the "Agreement"), and the amount of the draft provided
19 herewith does not exceed the amount owed or reasonably expected to be owed to
20 the Beneficiary under the Agreement."

21 (b) "Beneficiary has determined or been notified that the expiration date of Letter of
22 Credit No. _____ will not be extended and _____ is
23 required to but has not provided Beneficiary with an acceptable substitute letter
24 of credit or guaranty and it is less than thirty days until the expiration date of
25 such Letter of Credit No. _____."

26 (c) "
27 _____
28 _____ under that certain Contract for the Purchase of
29 Capacity and Energy originally between Southern Company Services, Inc., as
30 agent for Southern Power Company, and Florida Power & Light Company
31 entered into as of _____, 2004 (as amended, replaced or assigned, the
32 "Agreement"), and the amount of the draft provided herewith does not exceed
33 the amount owed or reasonably expected to be owed to the Beneficiary under the
34 Agreement."

35 Special Conditions

36 1. Multiple and partial drawings are permitted.

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2. Any drafts drawn under this Letter of Credit must bear the clause "Drawn under _____ Letter of Credit No. ____ Dated _____, _____."

3. This Letter of Credit expires at the counters of _____ at the close of business on _____, 20__ [**insert date which is at least one year after the date of issuance of the letter of credit**] (which date as may be extended in the manner provided herein is referred to as the "expiration date"). The expiration date shall be deemed automatically extended without amendments for one year from the initial expiration date and thereafter for one year from each anniversary of the initial expiration date unless at least sixty (60) days prior to the then applicable expiration date we notify Beneficiary in writing by facsimile at _____, Attention: _____, and by overnight courier to _____, Attention: _____ with a copy to _____ that we are not going to extend the expiration date.

4. We hereby engage with the Beneficiary that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored by us upon presentation to ourselves by payment in accordance with the Beneficiary's payment instructions. If requested by the Beneficiary, payment under this Letter of Credit will be made by wire transfer of immediately available funds to Beneficiary's account at any financial institution located in the continental United States. All payments under this Letter of Credit will be made in our own funds.

5. This Letter of Credit is subject to and governed by the ICC Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication Number 500 (the "UCP"), and, to the extent not inconsistent therewith, the laws of the State of [_____]. Anything to the contrary in Article 41 of the UCP notwithstanding, this Letter of Credit is intended to remain in full force and effect until it expires in accordance with its terms. Any failure by you to draw upon this Letter of Credit shall not cause this Letter of Credit to be unavailable for any future drawing. If this Letter of Credit expires during an interruption of business as described in Article 17 of the UCP, we hereby specifically agree to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

6. Anything to the contrary in Article 48 of the UCP notwithstanding, this Letter of Credit is transferable any number of times, but only in the full unutilized balance hereof and not in part. Transfer shall be effective upon execution and delivery by Beneficiary to us of our standard transfer form together with the original of this Letter of Credit and payment of our standard transfer fee. Transfer may be made only to any person or entity which is a direct or indirect permissible assignee of you or successor to you under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Southern Power Company, and Florida Power & Light Company entered into as of _____, 2004, as amended, replaced or assigned.

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7. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto, or upon our ability to perfect any lien, security interest or any other reimbursement.

As used herein, "Authorized Officer" shall mean the President or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer, Officer or Assistant Officer of the relevant signing person.

(Signed)

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APPENDIX G

PARENT GUARANTY

This Parent Guaranty ("Guaranty Agreement") is made and entered into as of the _____ day of _____, 200____ by _____, a _____ (together with its successors, "Guarantor"), in favor of _____, a _____ (collectively with its successors and permitted assigns, "Beneficiary").

RECITALS:

A. _____, a _____ (collectively with its successors and permitted assigns, "Contractor"), and Beneficiary directly and/or through their respective agents have entered into that certain Contract for the Purchase of Capacity and Energy, dated as of _____, 200____ (as the same may be amended, restated, replaced and/or assigned, the "PPA").

B. Guarantor has agreed to execute, deliver and perform this Guaranty Agreement in order to satisfy the terms and conditions of the PPA.

NOW, THEREFORE, with reference to the above recitals and in reliance thereon, in consideration of Beneficiary entering into and performing the PPA and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor agrees in favor of Beneficiary as follows:

1. General. Capitalized terms not otherwise defined in this Guaranty Agreement shall have the same meaning as ascribed to such terms in the PPA. Subject to the provisions of Sections 2, 3 and 11 below, Guarantor hereby absolutely, irrevocably and unconditionally guarantees and promises to pay to Beneficiary, its successors and permitted assigns, when due all of Contractor's present and future obligations, debts and liabilities of all kinds to Beneficiary under the PPA (as the same may be extended, amended, restated or replaced, the "Obligations"). Any payments made by Guarantor to Beneficiary hereunder shall be made in the lawful money of the United States in the amount(s) required under the PPA no later than four (4) Business Days following Beneficiary's delivery to Guarantor of written notice of an Event of Default by or attributable to Contractor under the PPA and demand for payment under this Guaranty Agreement. The foregoing demand for payment shall include, at a minimum, sufficient information to allow Guarantor to evaluate the request for payment and determine the nature of any non-payment by Contractor under the PPA. This Guaranty Agreement is a guaranty of payment and not of collection.

2. Nature of Guaranty. The Guarantor's obligations hereunder shall not be affected by any circumstances relating to the Obligations that might otherwise constitute a legal or equitable discharge of or defense to the Guarantor not available to Contractor. The Guarantor agrees that Beneficiary may resort to the Guarantor for payment of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Contractor or any other obligor principally or secondarily obligated with respect to any Obligations. Beneficiary shall not be obligated to file any claim relating to the Obligations in the event that Contractor or Guarantor becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Beneficiary to so file and any

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bankruptcy or insolvency of Contractor or Guarantor shall not affect the Guarantor's obligations hereunder. In the event that any payment by Contractor or Guarantor in respect of any Obligations is voided, rescinded or recovered from Beneficiary as a preference or fraudulent transfer under the United States Bankruptcy Code or any applicable state law, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made and/or this Guaranty Agreement shall be reinstated as necessary. This Guaranty Agreement shall continue to be effective if Contractor or Guarantor merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

3. Maximum Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED OR IMPLIED ELSEWHERE IN THIS GUARANTY AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF GUARANTOR HEREUNDER IS \$ _____, TOGETHER WITH ANY AMOUNTS PAYABLE BY GUARANTOR PURSUANT TO SECTION 8.

4. Termination. This is a continuing guaranty of all present and future Obligations. If and only if (i) the PPA has expired or been properly terminated and all Obligations are indefeasibly paid or (ii) this Guaranty Agreement is no longer required to be maintained in effect pursuant to the terms of the PPA, then and only then, Guarantor may terminate this Guaranty Agreement effective thirty (30) days after written notice by the Guarantor to the Beneficiary of Guarantor's intention to terminate this Guaranty Agreement; provided further, that this Guaranty Agreement, if not sooner terminated or discharged, shall terminate at such time that Contractor otherwise satisfies the requirements of Section _____ of the PPA without giving effect to this Guaranty Agreement. If this Guaranty Agreement is so terminated or discharged, then Beneficiary shall return this original Guaranty Agreement to Guarantor within five (5) Business Days of Guarantor's written request. This Guaranty Agreement may not otherwise be terminated or revoked without Beneficiary's prior written consent. Notwithstanding the provisions of this Section 4, and despite any termination of this Guaranty Agreement (except to the extent that this Guaranty is required to be returned pursuant to the terms of this Section 4), this Guaranty Agreement shall remain in full force and effect and shall continue to apply to (i) all Obligations outstanding or due before the effective date of termination, and (ii) any extensions or renewals of, interest accruing on, or fees, costs or expenses (including attorney's fees) incurred with respect to, such Obligations.

5. No Conditions. This Guaranty Agreement is direct, continuing, unconditional, and absolute and is subject only to the defenses that may be expressly reserved by Guarantor under this Guaranty Agreement. Without limiting the generality of the foregoing, Guarantor agrees that this Guaranty Agreement is not conditioned upon its receipt of any type of notice except as set forth in Section 1 (including, but not limited to, notice of acceptance of this Guaranty Agreement), and Guarantor hereby waives any right it may otherwise have to same.

6. No Discharge. Without limiting the foregoing, to the extent permitted by applicable law, but subject to the provisions of Section 11, none of the following or any similar event or occurrence shall operate to discharge Guarantor hereunder:

- 6.1 Any modification of any contract between Beneficiary and Contractor;
- 6.2 Beneficiary's acceptance of any instrument in substitution for any claim or debt;

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- 6.3 Any renewal, extension, modification or substitution of or for any instrument;
- 6.4 Any leniency or failure to pursue collection by Beneficiary with respect to Contractor or Guarantor;
- 6.5 Any release or impairment of collateral, if any, which secures payment of Contractor's obligations to Beneficiary; or
- 6.6 The inclusion by any subsequent separate agreement or by any amendment of this Guaranty Agreement at a later date of additional guarantors of the Obligations guaranteed hereunder, or the subsequent release of any one or more of such guarantors.

7. Consents, Waivers and Renewals. Guarantor agrees that Beneficiary may, at any time and from time to time, without notice to or consent of Guarantor and without impairing, reducing or releasing this Guaranty Agreement or the obligations of Guarantor hereunder: (1) extend the time of payment of any Obligations or take, exchange or surrender any collateral or security for any Obligations or renew or make any change in the terms of any Obligations or any other liability of Contractor or Guarantor to Beneficiary, (2) take or fail to take any action of any kind in respect of any security for any Obligations or other liability of Contractor or Guarantor to Beneficiary, (3) waive or release or exercise or refrain from exercising any rights against Contractor or Guarantor or others, (4) assign, create, renew, modify, replace, discharge, release, compromise or subordinate the PPA, any Obligations or any other liability of Contractor or Guarantor or any other person to Beneficiary or any security therefor, or (5) enter into, amend, replace or release any agreement effecting or modifying any of the foregoing.

8. Costs of Collection. The Guarantor will pay for all of Beneficiary's reasonable costs incurred in enforcing its rights under this Guaranty Agreement, by legal process or otherwise, including, but not limited to, Beneficiary's reasonable attorneys' fees; provided, however, if Beneficiary is unsuccessful in enforcing its rights under this Guaranty Agreement in the event of a dispute over amounts owing, Beneficiary shall be responsible for Beneficiary's costs and attorneys' fees arising in connection with such attempted enforcement of this Guaranty Agreement.

9. Subrogation. Guarantor waives and will not exercise any rights which it may acquire by way of subrogation until all the Obligations of Contractor under the PPA shall have been paid in full and this Guaranty Agreement shall have been terminated. Subject to the foregoing, upon payment of all the Obligations of Contractor under the PPA and termination of this Guaranty Agreement (but not before), Guarantor shall be subrogated to the rights of Beneficiary against Contractor in respect of payments made by Guarantor under this Guaranty Agreement.

10. Assignment. This Guaranty Agreement is assignable by Beneficiary to any Eligible Assignee to whom the PPA has been assigned by Beneficiary in accordance with the provisions of Section _____ thereof and shall inure to the benefit of Beneficiary, and its successors and permitted assigns. This Guaranty Agreement is not otherwise assignable by Beneficiary without the prior written consent of Guarantor. This Guaranty Agreement is not assignable or delegable by Guarantor without the prior written consent of Beneficiary which will not be unreasonably withheld or delayed.

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11. Validity and Defenses. Guarantor represents and warrants to Beneficiary that this Guaranty Agreement has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guaranty Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity. The Guarantor hereby reserves to itself all rights, counterclaims and other defenses which Contractor may have to payment of any amounts arising under or in respect of the PPA, except for defenses waived elsewhere in this Guaranty Agreement and except for defenses arising from the bankruptcy or insolvency of Contractor, Beneficiary (but subject to such rights with respect to Beneficiary's bankruptcy or insolvency as expressly reserved to Contractor in the PPA), Guarantor or any other party, or the power or authority of Contractor to enter into the PPA or to perform its obligations thereunder.

12. Governing Law. Legal rights and obligations hereunder shall be determined in accordance with the laws of the State of Beneficiary's principal place of business, without regard to the principles of conflicts of laws thereunder.

13. Severability. Every provision of this Guaranty Agreement is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

14. Notices. All notices, requests, demands and other communications required or permitted to be made or given under this Guaranty Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery, (ii) five (5) days after the date of deposit in the U.S. Mail, by registered or certified mail, postage prepaid, or (iii) the day after the date of delivery to a reputable overnight courier service for overnight delivery, in each case addressed to the parties as follows:

If to Beneficiary, to: _____

Attn: _____

If to Guarantor, to: _____

Attn: _____

Any party may change its address for receiving notice by written notice given to the other as set forth above.

15. Entire Agreement/No Amendment. This Guaranty Agreement constitutes the entire agreement and understanding of the parties hereto respecting its subject matter and supersedes all prior written and contemporaneous oral agreements, representations and understandings relating to its subject matter. No term hereof may be changed, waived, discharged or terminated unless by an

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instrument signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

16. No Waiver; Cumulative Rights. No failure or delay on the part of Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed Beneficiary by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary at any time or from time to time. Without limiting the foregoing: (i) this Guaranty Agreement shall not release, modify, revoke or terminate any other guaranty heretofore executed by Guarantor; nor shall any other guaranty hereafter executed by Guarantor release, modify, revoke or terminate this Guaranty Agreement except to the extent such subsequent guaranty makes specific reference to this Guaranty Agreement is agreed to in writing by Beneficiary and expressly so provides, and (ii) all of Guarantor's liabilities and obligations and Beneficiary's rights and remedies are cumulative.

17. Waivers. Guarantor waives notice of the PPA and the Obligations, any acceptance of this Guaranty Agreement, presentment, all rights of exemption, demand (except as set forth in Section 1), notice of dishonor, protest, notice of protest, notice of any sale of collateral security, notice of the release or discharge of any person or collateral and, except as expressly set forth above, all other notices.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty Agreement on the date shown below.

By: _____
Its: _____
Date: _____

1

APPENDIX H

2

EXAMPLE CALCULATIONS

3 A. Hourly Capacity Calculations, EFMH, and EUH

4 Pursuant to Section 21.21 of this Agreement, Table H-1 provides the following example calculations:
5 hourly capacity calculations, Equivalent Force Majeure Hours, Equivalent Unavailable Hours, and
6 Monthly Capacity Payment. To facilitate clarity, some simplifying assumptions regarding data have
7 been made. The assumptions for these examples are set forth below and in Lines 1-13 of Table H-1.
8 Each example calculation, using line numbers, is set forth in the second column of the Table H-1.

9 For purposes of the calculations in Table H-1, the hourly conditions were assumed to exist in every
10 hour of the month and the monthly conditions were assumed to exist in every month of the year.

11 [Redacted]
12 [Redacted]

13 Assumptions for the examples in Table H-1 are:

14 [Redacted]
15 [Redacted]
16 [Redacted]
17 [Redacted]
18 [Redacted]
19 [Redacted]
20 [Redacted]
21 [Redacted]
22 [Redacted]
23 [Redacted]
24 [Redacted]
25 [Redacted]
26 [Redacted]
27 [Redacted]
28 [Redacted]

Table H-1

Assumptions

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Line	Calculations (Using Line Numbers)	Units	Value
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

Example Hourly Calculations of Capacity, EFMH, and EUH

18
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29
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14			
15			
16			
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18			
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31			
32			

Example Calculation of Monthly Capacity Payment

33
34
35
36
37
38
39

Assume hourly case above occurs in every hour of the month

28			
29			
30			
31			
32			

40
41

Use underlined values only if they result in values that are positive.
Numbers in *italics* are actual numbers, not line numbers.

1 **B. Capacity Availability Performance Adjustment**

2 Pursuant to Section 21.21 of the Agreement, Table H-2 provides the following example calculations:
3 Capacity Availability Performance Adjustment for a Peak Performance Period, Capacity Availability
4 Performance Adjustment for a Normal Off-Peak Performance Period, and Capacity Availability
5 Performance Adjustment for a Major Maintenance Off-Peak Performance Period.

6 Each example calculation, using line numbers, is set forth in the second column of the example tables.

7 Assumptions for the examples in Table H-2 are:

8 [Redacted]
9 [Redacted]
10 [Redacted]
11 [Redacted]

12 [Redacted]
13 [Redacted]
14 [Redacted]
15 [Redacted]

16 [Redacted]
17 [Redacted]
18 [Redacted]
19 [Redacted]

Table H-2

Example Calculations of Capacity Availability Performance Adjustment

Peak Performance Period

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
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37
38

Line Calculations
(Using Line Numbers) Inputs Units Value

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

[Redacted Section]

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Major Maintenance Off-Peak Performance Period

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Numbers in *italics* are actual numbers, not line numbers.

1 C. Monthly Energy Payment

2 Pursuant to Section 21.21 of the Agreement, Table H-3 provides the following example calculation of
3 the Monthly Energy Payment.

4 Each example calculation, using line numbers, is set forth in the second column of Table H-3.

5 Assumptions for the examples in Table H-3 are:



6
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Table H-3

Example Calculation of Monthly Energy Payment

Handwritten numbers on the left margin: 1, 3, 4, 5, 8, 10, 11, 12, 13, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 42

Line	Calculations (Using Line Numbers)	Monthly Energy Payment Calculation	Units	Value
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
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29				
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32				
33				
34				
35				
36				

Numbers in italics are actual numbers, not line numbers.

1 **D. Monthly Start Payment**

2 Pursuant to Section 21.21 of the Agreement, Table H-4 provides an example calculation of the Monthly Start Payment.

3 The example calculation, using line numbers, is set forth in the second column of Table H-4.

4 Assumptions for the examples in Table H-4 are:

5 [Redacted]

6 **Table H-4**

7 **Example Calculation of Monthly Start Payment**

8 **Calculations**

9

Line	(Using Line Numbers)	Units																
10	1																	
11	2																	
12	3																	
13	4																	
14	5																	
15	6																	
16	7																	
17	8																	

18 Use underlined values only if they result in values that are positive.
19 Numbers in *italics* are actual numbers, not line numbers.

1 E. Monthly Fuel Transportation Payment

2 Pursuant to Section 21.21 of the Agreement, Table H-5 provides an example calculation of the
3 Monthly Fuel Transportation Payment.

4 The example calculation, using line numbers, is set forth in the second column of Table H-5.

5 Assumptions for the example in Table H-5 are:

6 [Redacted]
7 [Redacted]

8 Table H-5

9 Example Calculation of Monthly Fuel Transportation Payment

Line	Calculations (Using Line Numbers)	Units
1		
2		
3		
4		
5		

10 Use underlined values only if they result in values that are positive.
11 Numbers in *italics* are actual numbers, not line
12 numbers.
13
14
15
16
17
18
19

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**CONTRACT FOR THE
PURCHASE OF CAPACITY AND ENERGY
BETWEEN**

SOUTHERN COMPANY SERVICES, INC.

AND

FLORIDA POWER & LIGHT COMPANY

FROM

PLANT FRANKLIN UNIT NO. 1

DATED AS OF AUGUST 11, 2004

**CONFIDENTIALITY
DESIGNATION REVISED
11/2/2004**

**TLH-3
DOCKET NO. 040001-EI
FPL WITNESS: T. HARTMAN
EXHIBIT _____
SEPTEMBER 9, 2004**

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**CONTRACT FOR THE PURCHASE OF
CAPACITY AND ENERGY
BETWEEN
SOUTHERN COMPANY SERVICES, INC.
AND
FLORIDA POWER & LIGHT COMPANY**

This CONTRACT FOR THE PURCHASE OF CAPACITY AND ENERGY is made and entered into as of this 11th day of August, 2004 (“Effective Date”), between SOUTHERN COMPANY SERVICES, INC., an Alabama corporation having its principal office and place of business at 600 North 18th Street, Birmingham, Alabama 35203, acting as agent (in such capacity hereinafter referred to as “SCS”) for Southern Power Company, a Delaware corporation having its principal office and place of business at 600 North 18th Street, Birmingham, Alabama 35203 (hereinafter referred to as “Southern Power” or “Seller”) and FLORIDA POWER & LIGHT COMPANY (hereinafter referred to as “FPL” or “Buyer”), a Florida corporation having its principal office and place of business at 700 Universe Boulevard, Juno Beach, Florida 33408. Seller and Buyer are hereafter referred to individually and collectively as a “Party” or the “Parties,” respectively.

RECITALS:

Buyer desires to purchase and Seller desires to sell, capacity and energy in accordance with this Agreement.

Subject to the terms and conditions of this Agreement, Seller will provide and sell to Buyer, and Buyer will accept and purchase from Seller, capacity and energy from the Facility or from other resources as provided in this Agreement.

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NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the respective meanings set forth below.

"Affiliate" means, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such corporation, partnership, or other entity.

"After-Tax Basis" means, with respect to any payment under Section 14.2 to any Person, the amount of such payment ("Base Payment") supplemented by a further payment ("Additional Payment") to that Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Federal, state and local income taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state and local income tax rates applicable to the Person for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for Federal income tax purposes.

1 **“Agreement”** means this Contract for the Purchase of Capacity and Energy, including,
2 to the extent applicable, any appendices hereto and any amendments that the Parties may
3 execute now or at any time in the future.

4 **“Alternate Delivery Point(s)”** means, when Seller designates an Alternate Resource(s)
5 pursuant to Section 5.5 or Section 5.6 (including a Replacement Resource), the applicable
6 point(s) of delivery designated by Seller.

7 **“Alternate Resource(s)”** means any resource or resources other than the Facility
8 (whether such other resources are owned, purchased or otherwise controlled by Seller, or that
9 are otherwise available to Seller) that Seller designates pursuant to Section 5.5 or Section 5.6.

10 **“Available Capacity”** means, at any given time, the Contract Capacity less the sum of:
11 (i) the Force Majeure Capacity at such time; and (ii) the Outage Capacity at such time.

12 **“Billing Month”** means each Month during the Term beginning with the second Month
13 of the first Contract Year and includes the Month immediately following the expiration or early
14 termination of this Agreement.

15 **“Block 1 Mode”** means any time a Schedule requests energy for any hour in an amount
16 equal to ■ MW or, in hours for which Seller has informed Buyer that the amount of capacity
17 Seller will make available to Buyer is less than ■ MW, any time a Schedule requests energy in
18 an amount equal to the maximum amount of capacity Seller will make available.

19 **“Block 2 Mode”** means any time a Schedule requests energy for any hour in an amount
20 equal to ■ MW or, in hours for which Seller has informed Buyer that the amount of capacity
21 Seller will make available to Buyer is less than ■ MW but greater than ■ MW, any time a
22 Schedule requests energy in an amount equal to the maximum amount of capacity Seller will
23 make available.

1 **"Block 3 Mode"** means any time a Schedule requests energy for any hour in an amount
2 equal to [REDACTED] MW or, in hours for which Seller has informed Buyer that the amount of capacity
3 Seller will make available to Buyer is less than [REDACTED] MW but greater than [REDACTED] MW, any time a
4 Schedule requests energy in an amount equal to the maximum amount of capacity Seller will
5 make available.

6 **"Block 4 Mode"** means any time a Schedule requests energy for any hour in an amount
7 equal to the full amount of Contract Capacity and such capacity is greater than [REDACTED] MW or, in
8 hours for which Seller has informed Buyer that the amount of capacity Seller will make
9 available to Buyer is less than the Contract Capacity but greater than [REDACTED] MW, any time a
10 Schedule requests energy in an amount equal to the maximum amount of capacity Seller will
11 make available.

12 **"Block Mode"** means either Block 1 Mode, Block 2 Mode, Block 3 Mode, or Block 4
13 Mode.

14 **"Btu"** means British Thermal Units.

15 **"Business Day"** means any Day on which Federal Reserve Member Banks in New
16 York, New York are open for business. A Business Day shall begin at 0800 CPT and end at
17 1700 CPT.

18 **"Buyer"** has the meaning set forth in the introductory paragraph hereof.

19 **"Buyer Delivery Point(s)"** means, for any hour of any Delivery Day, the point(s) on the
20 Southern Company Transmission System to which Buyer intends to transmit energy delivered
21 by Seller under this Agreement.

22 **"Buyer Percentage"** means 35.2 percent.

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“Central Prevailing Time” or “CPT” means the local time at any point in Birmingham, Alabama.

“Change in Law” means the adoption, enactment, promulgation or issuance of, a change in, or a new or changed interpretation by a Government Agency of, any Law after February 6, 2004.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision, or other action, including without limitation, electric system reliability and stability, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, and the commercial environment in which such purchase, sale, decision, or other action occurs.

“Contemporaneous Agreements” means: (i) this Agreement; (ii) the Contract for the Purchase of Capacity and Energy from Plant Harris Unit No. 1 dated as of August 11, 2004 between Southern Company Services, Inc. (as agent for Seller) and Buyer; and (iii) the Contract for the Purchase of Capacity and Energy from Plant Scherer Unit No. 3 dated as of August 11, 2004 between Southern Company Services, Inc. (as agent for Georgia Power Company and Gulf Power Company) and Buyer.

“Contest” means with respect to any Person, a contest of any Governmental Approval or Law, acts or omissions by any Government Agency, a requirement of any Government Agency, or any related matters, so long as the contesting Party could not reasonably be expected to be prevented from performing its material obligations under this Agreement pending the outcome of such contest.

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“Contract Capacity” means the lesser of: (i) 190 MW; or (ii) the Total Facility Capacity multiplied by the Buyer Percentage, or such other amount as expressly provided in this Agreement.

“Contract Year” means: (i) for the first Contract Year, the Service Commencement Date through the next date that is May 31; and (ii) for each Contract Year thereafter, each 12 Month period beginning June 1 and ending May 31; provided, however, the last Contract Year shall end on the date that this Agreement terminates or expires.

“Day” means the period of time beginning at hour ending 0100 CPT and ending at hour ending 2400 CPT.

“Delivery Day” means any Day for which Buyer Schedules energy to be delivered in accordance with this Agreement.

“Delivered Energy” means, for any hour, the amount of energy (expressed in MWh) delivered by Seller in accordance with this Agreement and shall equal the sum of: (i) energy delivered by Seller to the Delivery Point pursuant to Buyer’s Schedule; and (ii) any energy provided and/or procured by Seller to resolve energy imbalances at the Delivery Point. Delivered Energy shall not exceed Scheduled Energy for any hour.

“Delivered Energy Credit” means, for any hour, to the extent such difference is positive, the difference of: (i) Delivered Energy for such hour; less (ii) Available Capacity plus the portion of Delivered Energy provided from an Alternate Resource(s) designated for such hour pursuant to Section 5.5.1 in response to a Force Majeure Event.

“Delivery Excuse” means: (i) an Event of Default by Buyer; (ii) the interruption of transmission service procured by Buyer or the unavailability of transmission service to Buyer beyond the Delivery Point(s); (iii) any directive from the applicable transmission provider

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and/or control area operator to cease deliveries of energy from the Facility; (iv) SNG's failure to schedule or to deliver scheduled quantities of Gas to the Facility (but only if, for the period of such failure, Seller has complied with Section 9.1 and has utilized Commercially Reasonable Efforts to utilize available transportation capacity as required by Section 9.2.1 to satisfy Buyer's Schedule); or (v) a circumstance described in Section 9.2.7 and/or Section 9.3.2.

"Delivery Point" means the Facility Delivery Point when Seller designates the Facility as the source of Delivered Energy and/or the Alternate Delivery Point(s) (as applicable) to which Seller shall deliver energy to Buyer hereunder.

"Effective Date" has the meaning set forth in the introductory paragraph hereof.

"Electric Metering Equipment" means electric meters and associated equipment, including metering transformers and back-up meters.

"EFMH" or "Equivalent Force Majeure Hour" shall occur in any hour (or portion of an hour) in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point is occurring or is continuing. During such an hour, EFMH shall equal the ratio of: (A)(i) Force Majeure Capacity for such hour; less (ii) the amount of electric capacity associated with an Alternate Resource(s), whether available or unavailable, that has been designated for such hour pursuant to Section 5.5.1 in response to the Force Majeure Event causing the Force Majeure Capacity to exist; to (B) the Contract Capacity.

"EUH" or "Equivalent Unavailable Hour" shall occur in any hour (or portion of an hour) in which there is Unavailable Capacity. For such an hour, EUH shall equal the ratio of: (i) Unavailable Capacity for such hour; to (ii) the Contract Capacity for such hour.

"Event of Default" has the meaning set forth in Section 16.1.

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“Facility” means Seller’s Gas fired combined cycle electric generating unit known as Plant Franklin Unit No. 1 (as may be modified) and all appurtenant facilities, located near Smiths, Alabama which directly interconnects to the Georgia Integrated Transmission System, or such other resource designated as the Facility pursuant to Section 3.3.

“Facility Delivery Point” means the substation where the Facility interconnects to the Georgia Integrated Transmission System (or other applicable transmission system) at the transmission system voltage.

“FERC” means the Federal Energy Regulatory Commission, or any successor to its functions.

“Florida Interface” means the transmission interface between the Southeastern Electric Reliability Council (or its successor) region and the Florida Reliability Coordinating Council (or its successor) region as such regions exist on the Effective Date.

“Force Majeure Capacity” means, for any hour in which a Force Majeure Event affecting the Facility or the electric facilities prior to the Facility Delivery Point occurs or is continuing, the portion of the Contract Capacity that is not available from the Facility as a result of such Force Majeure Event. Force Majeure Capacity shall be calculated as follows:

$$\text{Force Majeure Capacity} = \text{Contract Capacity} - \text{Unaffected Contract Capacity}$$

Where:

$$\text{Unaffected Contract Capacity} = \text{Buyer Percentage} * \text{Adjusted Total Unaffected Capacity}$$

$$\text{Adjusted Total Unaffected Capacity} = \text{the lesser of TCUFM or 540 MW}$$

$$\text{TCUFM} = \text{Total Capacity Unaffected by Force Majeure} = \text{Total Facility Capacity} - \text{TAC}$$

$$\text{TAC} = \text{Total Affected Capacity} = \text{the total amount of capacity that is not available from the Facility as a result of the Force Majeure Event.}$$

1 "Force Majeure Event" has the meaning set forth in Section 15.1.

2 "Gas" means natural gas.

3 "Georgia Integrated Transmission System" means the electric transmission systems
4 owned individually by Georgia Power Company, Georgia Transmission Corporation, the
5 Municipal Electric Authority of Georgia and the City of Dalton, Georgia, and operated as an
6 integrated transmission system, as well as any successor transmission system.

7 "Government Agency" means any federal, state, local, territorial or municipal
8 government and any department, commission, board, court, bureau, agency, instrumentality,
9 judicial or administrative body thereof.

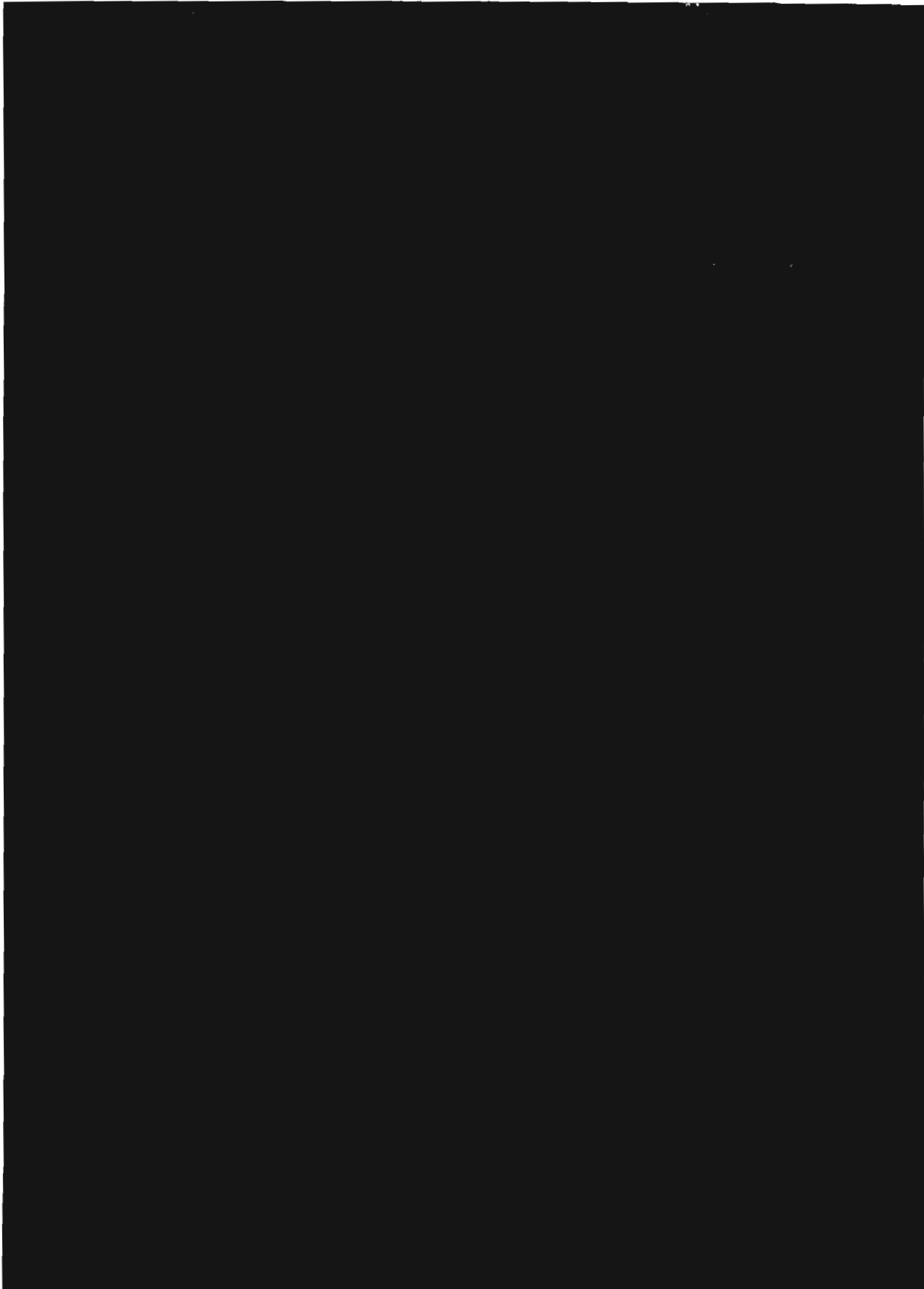
10 "Governmental Approval" means any authorization, consent, approval, license, ruling,
11 permit, exemption, variance, order, judgment, decree, declarations of or regulation of any
12 Government Agency relating to the Facility or to the execution, delivery or performance of this
13 Agreement.

14 "Guarantor" has the meaning set forth in Section 16.1.

15 "Guaranty" means a guaranty or other instrument guaranteeing a Party's obligations
16 under this Agreement as contemplated under Article 20.

17 "Imaged Agreement" has the meaning set forth in Section 21.17.

18 "Increased Generation Costs" [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]



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“kW” means kilowatt(s).

“kWh” means kilowatt hour(s).

“Law” means any act; statute; law; requirement; ordinance; order; ruling or rule; regulation; standards and/or criteria contained in any permit, license or other approval; legislative or administrative action; or a decree, judgment or order of any Government Agency imposed, whether in effect now or at any time in the future.

“Long Term Firm Transmission Service” means firm point-to-point (or other equivalent) transmission service for a term of one year or more.

“Maintenance Outage” has the meaning set forth in Section 4.2.

“Major Maintenance” means the performance of a hot gas path inspection for the combustion turbines at the Facility.

“Major Maintenance Off-Peak Performance Period” means any Off-Peak Performance Period in which Major Maintenance occurs.

“MMBtu” means one million Btu.

“Month” means a calendar month.

“Monthly Capacity Payment” means the payment for Contract Capacity to be made by Buyer to Seller pursuant to Section 6.1.

“Monthly Energy Payment” means the payment for Delivered Energy to be made by Buyer to Seller pursuant to Section 6.2.

“Monthly Fuel Transportation Payment” means the payment for fuel transportation to be made by Buyer to Seller pursuant to Section 6.4.

“Monthly Start Payment” means the payment for Successful Starts to be made by Buyer to Seller pursuant to Section 6.3.

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“Moody’s” has the meaning set forth in Section 19.1.

“MW” means megawatt(s).

“MWh” means megawatt hour(s).

“NERC” means the North American Electric Reliability Council, or any successor to its functions.

“Normal Off-Peak Performance Period” means any Off-Peak Performance Period in which Major Maintenance does not occur.

“OATT” means the Open Access Transmission Tariff of Southern Companies or a successor tariff governing transmission on the Southern Company Transmission System, as the same may be changed or amended from time to time.

“Off-Peak Performance Period” means the period of time consisting of all hours during the Months of October, November, December, January, February, March and April in succession. If this Agreement terminates or expires during such period on a Day other than the last Day of such period, such Off-Peak Performance Period shall be deemed to end on the Day of such termination or expiration. If the Service Commencement Date occurs during such period on a Day other than the first Day of such period, such Off-Peak Performance Period shall be deemed to begin on the Service Commencement Date.

“Operating Committee” has the meaning set forth in Section 4.5.

“Operating Procedures” has the meaning set forth in Section 4.4.

“Outage” means any condition or circumstance in which the generating capability of the Facility is eliminated or reduced (in whole or in part) for any reason, including an actual or threatened component failure and during Scheduled Outages and Maintenance Outages. An Outage does not include those times that the Facility’s capability is reduced (in whole or in part)

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due to a Force Majeure Event or a Delivery Excuse. In addition, an Outage shall not occur solely because of Seller's ability to sell capacity and/or energy from the Facility to a third party or an Affiliate(s).

"Outage Capacity" means, for any hour in which an Outage occurs or is continuing, the portion of the Contract Capacity that is not available from the Facility as a result of such Outage. Outage Capacity shall be calculated as follows:

$$\text{Outage Capacity} = \text{Contract Capacity} - \text{Unaffected Contract Capacity}$$

Where:

$$\text{Unaffected Contract Capacity} = \text{Buyer Percentage} * \text{Adjusted Total Unaffected Capacity}$$

$$\text{Adjusted Total Unaffected Capacity} = \text{the lesser of TCUO or 540 MW}$$

$$\text{TCUO} = \text{Total Capacity Unaffected by Outage} = [\text{the sum of: (A) the lesser of: (i) Total Facility Capacity; or (ii) 540 MW; and (B) Unused Excess Capacity}] - \text{TAC}$$

$$\text{Unused Excess Capacity} = \text{to the extent it is positive, the difference of TCUFM as determined under the definition of "Force Majeure Capacity" hereunder, less 540 MW}$$

$$\text{TAC} = \text{Total Affected Capacity} = \text{the total amount of capacity that is not available from the Facility as a result of the Outage.}$$

"Peak Performance Period" means the period of time consisting of all hours during the Months of May, June, July, August and September in succession. If this Agreement terminates or expires during such period on a Day other than the last Day of such period, such Peak Performance Period shall be deemed to end on the Day of such termination or expiration. If the Service Commencement Date occurs during such period on a Day other than the first Day of such period, such Peak Performance Period shall be deemed to begin on the Service Commencement Date.

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“Performance Period” shall mean either a Peak Performance Period or an Off-Peak Performance Period.

“Person” means any individual, corporation, limited liability corporation, partnership, joint venture, trust, unincorporated organization, Government Agency or other entity.

“Plant” means Seller’s Plant Franklin located near Smiths, Alabama, which currently consists of the Facility and a combined cycle electric generating unit known as Plant Franklin Unit No. 2 and all appurtenant facilities, as such plant and facilities may be modified and/or expanded from time to time (including the addition of generating units).

“Prior Business Day” means the Business Day immediately prior to a Delivery Day.

“Prime Rate” means, for any Day on which the calculation of an interest amount begins under this Agreement, the “Prime Rate” specified for such Day (or, if such Day is not a Business Day, on the first Business Day following such Day) under the “Money Rate” table of the *Wall Street Journal*. In the event that the *Wall Street Journal* ceases to report a Prime Rate, the Prime Rate shall be the prime rate (or its functional equivalent) charged by the Federal Reserve Bank of Atlanta, Georgia.

“Prudent Industry Practices” means any of the practices, methods, standards and acts (including the practices, methods and acts engaged in or approved by a significant portion of the electric power industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance

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standards recommended by equipment suppliers and manufacturers, applicable design limits and applicable Governmental Approvals and Laws.

“Redirect Deadline” means the deadline established by the applicable transmission provider for requesting the redirect of transmission service under the applicable transmission tariff.

“S&P” has the meaning set forth in Section 19.1.

“SNG” means Southern Natural Gas Company.

“Schedule” means the right of Buyer to request the delivery of Scheduled Energy in accordance with this Agreement. Any form of the term Schedule (e.g., “Scheduled,” “Schedules” or “Scheduling”) shall refer to the exercise of such right by Buyer.

“Schedule Shut-Down” means any time Buyer goes from having some energy Scheduled to having no energy Scheduled.

“Schedule Start” means each time that Buyer goes from not having any energy Scheduled to having some amount of energy Scheduled (in any Block Mode).

“Scheduled Energy” means the amounts of energy, expressed in whole MWh, Scheduled by Buyer to be delivered by Seller in accordance with this Agreement.

“Scheduled Outage” means maintenance and/or outages conducted and/or taken by Seller pursuant to Section 4.1.

“Scheduling Parameters” has the meaning set forth in Appendix D.

“SEARUC” means the Southeastern Association of Regulatory Utility Commissioners.

“Seller” has the meaning set forth in the introductory paragraph hereof.

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“Service Commencement Date” means June 1, 2010; provided, however, that such date may be extended by Seller due to a Force Majeure Event for a period equal to the period of delay caused by said Force Majeure Event.

“Southern Company” means the Southern Company, a publicly held corporation, organized and existing under the laws of the State of Delaware and having its principal place of business in Atlanta, Georgia.

“Southern Company Transmission” means the functional transmission division of Southern Company and its affiliates, as well as any successor transmission service provider.

“Southern Company Transmission System” means the integrated transmission systems of the electric operating companies of Southern Company, as such systems may be modified or expanded from time-to-time, as well as any successor transmission system(s).

“Southern Power” has the meaning set forth in the introductory paragraph.

“Taxes” means any or all ad valorem, property, occupational, severance, emissions, generation, first use, conservation, energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments; provided, however, the term Taxes shall not include taxes based on net income or net worth.

“Term” has the meaning set forth in Section 2.1.

“Total Facility Capacity” means, for each Contract Year, the generating capability of the Facility as declared by Seller under Article 8.

“Unavailable Capacity” means, for any hour: (i) Outage Capacity for such hour; less (ii) the Delivered Energy Credit; less (iii) if positive, the difference of the available portion of capacity associated with an Alternate Resource(s) that has been designated for such hour pursuant to Section 5.5.1 in response to the Outage causing Outage Capacity to exist, less the

1 Delivered Energy Credit; plus (iv) the unavailable portion of capacity associated with an
2 Alternate Resource(s) designated for such hour pursuant to Section 5.5.1 in response to a Force
3 Majeure Event.

4 **ARTICLE 2**

5 **TERM OF AGREEMENT**

6 **2.1 Term.** Subject to the survival provisions herein, this Agreement shall continue
7 in full force and effect from the Effective Date until the end of the Service Term, or on such
8 earlier date on which this Agreement is terminated in accordance with its terms ("Term").

9 **2.2 Service Term.** Subject to early termination of this Agreement as provided
10 hereunder, Seller's obligation to provide and sell and Buyer's obligation to accept and purchase
11 Contract Capacity and Scheduled Energy shall extend from the Service Commencement Date
12 through December 31, 2015 ("Service Term"). Provided, however, the Service Term shall be
13 extended through December 31, 2017 if: (i) Buyer provides Seller with written notice of its
14 desire to extend the Service Term in this manner on or before January 31, 2010 ("Extension
15 Notice"); and (ii) [REDACTED]

16 [REDACTED]
17 [REDACTED] If Buyer timely provides Seller the Extension Notice but the Parties are unable to
18 agree on such [REDACTED] and/or a related amendment by
19 December 31, 2010, the Service Term shall be extended through May 31, 2017.

20 **2.3 Survival.** All provisions of this Agreement that expressly or by implication
21 come into or continue in force and effect following the expiration or termination of this
22 Agreement shall remain in effect and be enforceable following such expiration or termination.

1 **2.4 Effect of Termination.** Subject to the exercise of a non-defaulting Party's rights
 2 under Section 14.2, in the event that this Agreement is terminated, the rights and obligations of
 3 the Parties hereunder shall continue unaffected until the termination is effective in accordance
 4 with the terms and conditions thereof. Any termination of this Agreement shall not relieve
 5 Buyer of its obligation to pay any unpaid invoices for any Contract Capacity made available and
 6 Delivered Energy prior to the effective date of such termination, relieve Seller of its obligation
 7 to provide Contract Capacity and to deliver Scheduled Energy prior to the effective date of such
 8 termination, or relieve either Party of any of its other liabilities or obligations accruing prior to
 9 termination.

10 **ARTICLE 3**

11 **SALE AND PURCHASE OF CAPACITY AND ENERGY**

12 **3.1 Sale and Purchase of Capacity.** Subject to the terms and conditions of this
 13 Agreement, beginning on the Service Commencement Date and until the end of the Service
 14 Term, Seller shall make available and sell to Buyer, and Buyer shall accept and purchase, the
 15 Contract Capacity.

16 **3.2 Sale and Purchase of Energy.** Subject to the terms and conditions of this
 17 Agreement, beginning on the Service Commencement Date and until the end of the Service
 18 Term, Seller shall deliver and sell to Buyer, and Buyer shall accept and purchase from Seller,
 19 energy up to the Contract Capacity as and when Scheduled by Buyer.

20 **3.3 Change of the Facility.** At any time during the Term, Seller may provide notice
 21 to Buyer that it desires to change the generating resource that constitutes the Facility under this
 22 Agreement; provided, however, such resource shall be a Gas-fired resource. Provided further,
 23 the Facility shall not be changed under this Section 3.3 more often than once every ██████████

1 With any such notice, Seller shall identify the generating resource that will be the proposed new
2 Facility, the date that Seller desires for such change to be effective (“Desired Date of Facility
3 Change”), and the anticipated time during which such resource shall provide Contract Capacity
4 and associated energy under this Agreement (“Facility Term”). Seller shall provide Buyer such
5 notice no later than [REDACTED] prior to the Desired Date of Facility Change. Within 15 Days
6 after receipt of Seller’s notice, Buyer and Seller shall confer to discuss the proposed Facility
7 change and any amendment(s) to this Agreement that may be necessary to effect such change.
8 Seller and Buyer agree that any such Facility change(s) shall be subject to the mutual consent of
9 the Parties; provided, however, Buyer shall not unreasonably withhold its consent to a proposed
Facility change(s) or reasonable amendment(s) necessary to effect such change. For purposes
hereof, it shall be unreasonable for Buyer to withhold its consent to a proposed Facility change
by Seller (or associated amendment) if such change and/or amendment would not be expected
to result in: (i) an increase in Buyer’s costs during the Facility Term as compared to the then
current Facility; or (ii) a decrease in Facility reliability during the Facility Term as compared to
the then current Facility. Any such change in the Facility shall be expressly conditioned upon
Buyer’s ability to obtain transmission service during the Facility Term that has a firmness that is
the same or greater than, and has a cost that is equal to or less than, the service Buyer has
procured from the then current Facility; provided that Buyer shall afford Seller reasonable
opportunity to offset any higher cost such that Buyer would be able to obtain such service at a
cost equal to the cost of service already procured by Buyer.

ARTICLE 4

FACILITY MAINTENANCE

1
2
3 **4.1 Scheduled Outages.** Commencing in 2010 and each year thereafter, Seller shall
4 submit to Buyer, before February 1, a schedule of Facility outages during which maintenance
5 and/or the installation of equipment required by Law or Prudent Industry Practices will be
6 performed for the next Contract Year (“Scheduled Outages”); [REDACTED]

7 [REDACTED]
8 [REDACTED]. Within 30 Days after receiving Seller’s proposed schedule for Scheduled
9 Outages, Buyer may request, in writing, that Seller reschedule any such Scheduled Outages.
10 Following receipt of such request, Seller shall attempt to coordinate among Buyer and other
11 parties purchasing capacity and energy from the Facility in order to reschedule such Scheduled
12 Outages; provided, however, Seller shall have sole discretion to decline to accommodate any
13 request to reschedule Scheduled Outages. Following receipt of Buyer’s request, Seller shall
14 inform Buyer as to whether it will accommodate Buyer’s request and, if so, shall further advise
15 Buyer of the good faith estimated costs that will be incurred by Seller in connection with
16 accommodating the request of Buyer to reschedule the Scheduled Outages. Buyer shall then
17 within 14 Days of the receipt of the estimated costs provided by Seller determine whether Seller
18 should reschedule the Scheduled Outages. Without regard to any prior estimate, Buyer shall
19 reimburse Seller for all Commercially Reasonable costs related to such change in schedule if
20 Seller makes such change. Prior to or during any Contract Year, Seller may reschedule any
21 Scheduled Outages in accordance with Prudent Industry Practices.

22 **4.2 Maintenance Outages.** [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

4.3 Permits and Compliance with Laws.

4.3.1 Subject to the right of Contest, each Party shall acquire and maintain in effect all Governmental Approvals necessary for it to perform its obligations under this Agreement.

4.3.2 Subject to the right of Contest, each Party shall at all times comply with all Laws and Governmental Approvals applicable to such Party that are necessary for such Party to perform its obligations under this Agreement.

4.4 Operating Procedures. Buyer and Seller shall begin to develop written Operating Procedures no later than 6 months before the Service Commencement Date. Such Operating Procedures shall be completed no later than 30 Days before the Service Commencement Date. The Operating Procedures shall establish the protocol under which the Parties shall perform their respective responsibilities under this Agreement, including method of Day-to-Day communications, key personnel lists, and logging and tracking of hours of EUH and EFMH, Scheduled Outages, Maintenance Outages, and hours of Delivery Excuse.

4.5 Operating Committee. The Parties shall form a committee to act in matters relating to the performance of their respective obligations under this Agreement (“Operating

1 Committee"). Each Party shall appoint one representative and one alternate representative to
2 serve on the Operating Committee. The Parties shall notify each other in writing of such
3 appointments and any changes thereto. The Operating Committee shall have no authority to
4 modify the terms or conditions of this Agreement. Beginning in 2009, the Operating
5 Committee shall meet no less than two times per calendar year (which meetings may be by
6 telephone) and all of its decisions must be the unanimous decision of the representatives.
7 Within a reasonable time after the conclusion of each meeting of the Operating Committee, the
8 representatives of each Party shall exchange written summaries of such meeting, including a
9 description of issues discussed and decisions made.

10 **ARTICLE 5**

11 **SCHEDULING AND THE PROVISION OF CAPACITY AND ENERGY**

12 **5.1 Scheduling.**

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

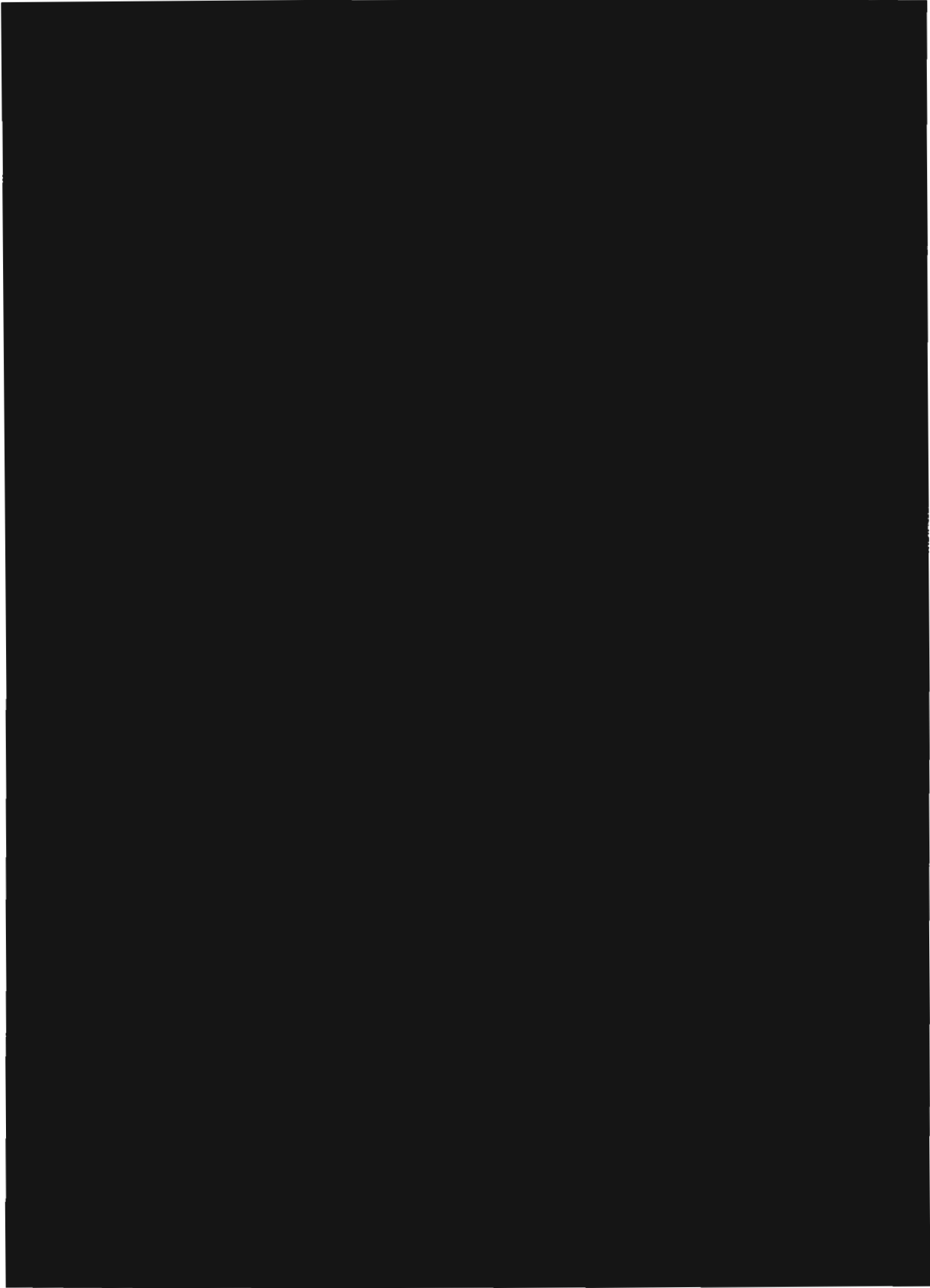
19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

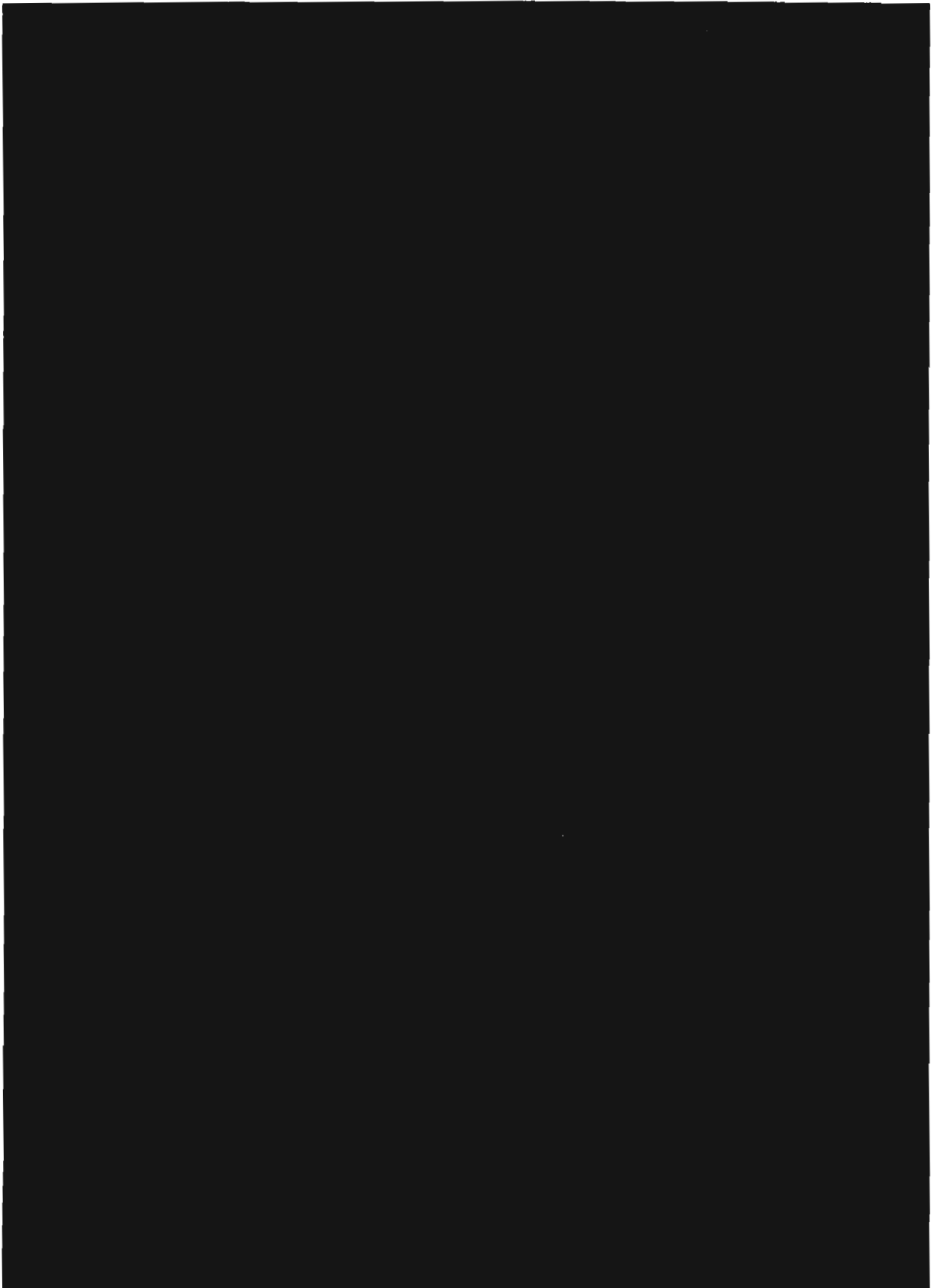


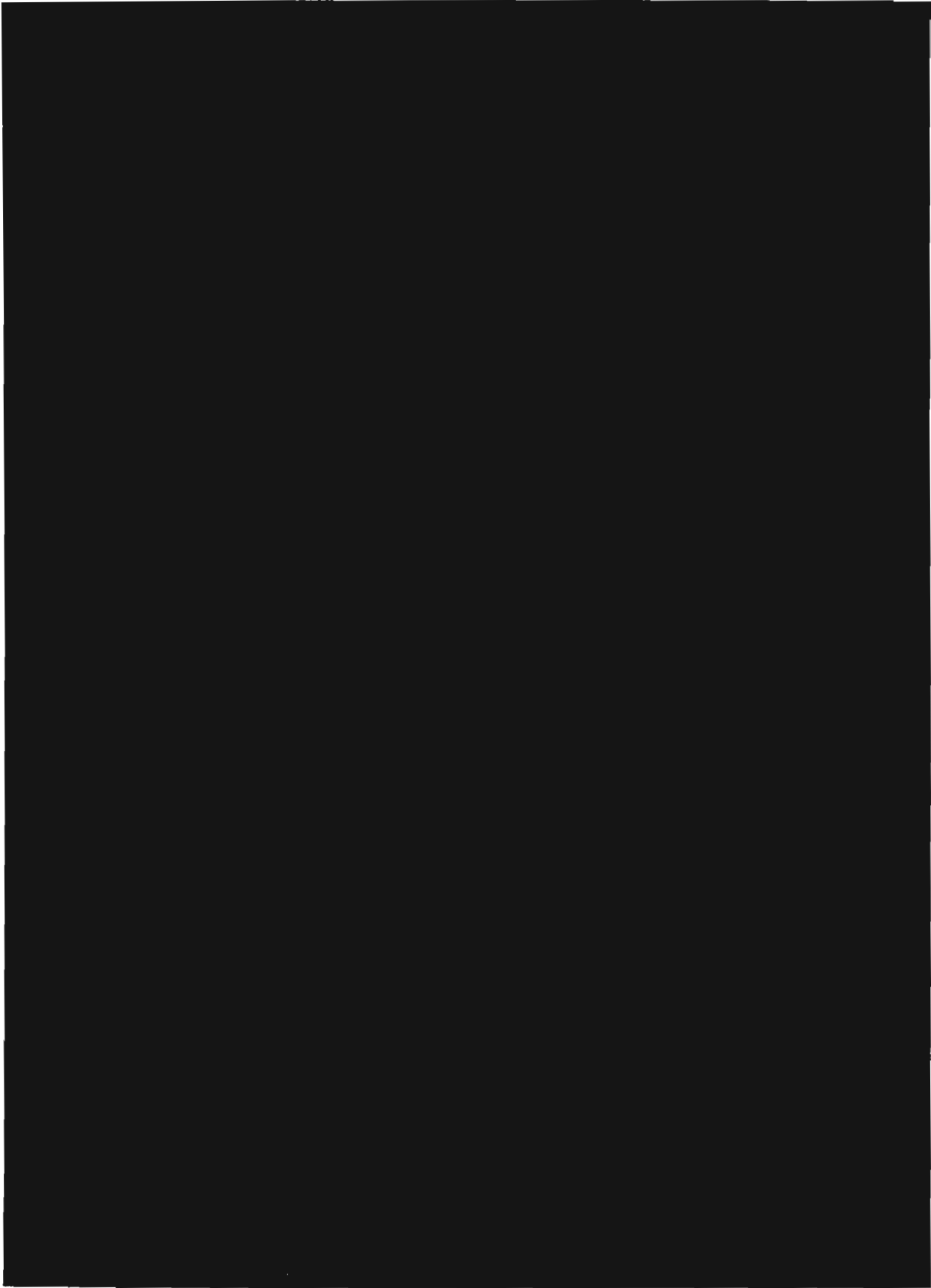
1 **5.2 Transmission and Scheduling Requirements.** Buyer shall be responsible for
2 complying with all transmission reservation, scheduling and tagging requirements associated
3 with energy provided hereunder at and after the Delivery Point.

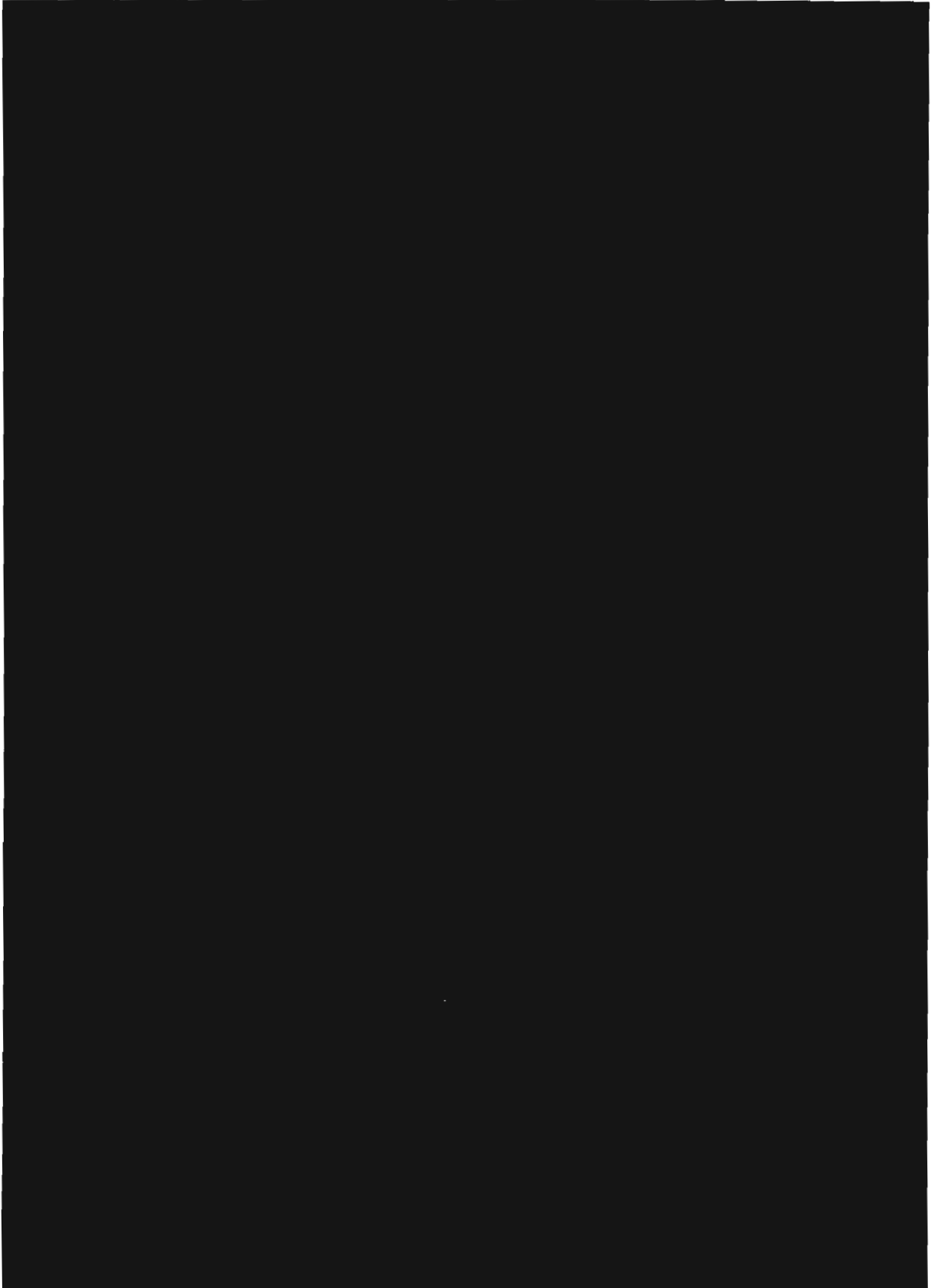
4 **5.3 Costs and Expenses.** Except as specifically provided hereunder, all costs and
5 expenses associated with Delivered Energy at and after the Delivery Point shall be the sole
6 responsibility of Buyer. Except as specifically provided hereunder, all costs and expenses
7 associated with Delivered Energy prior to the Delivery Point shall be the responsibility of
8 Seller. Any penalties associated with Delivered Energy shall be the responsibility of the Party
9 whose action or inaction caused the penalty to be assessed.

10 **5.4 Delivery of Energy.** Subject to the terms of this Agreement and the Scheduling
11 Parameters, energy provided by Seller pursuant to Buyer's Schedule shall be deemed to be
12 delivered at the Delivery Point.

13 **5.5 Alternate Resources.**
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]







1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

5.6 Unavailability of an Alternate Resource(s). [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

5.7 Seller's Rights to the Facility. To the extent Buyer has not submitted a Schedule requesting energy associated with the full Contract Capacity, and/or to the extent Scheduled Energy is being provided from Alternate Resources, Seller shall have the right to dispatch the Facility to utilize for its own purposes energy from the Facility not Scheduled and/or replaced with Alternate Energy.

1 **5.8 Title and Risk of Loss.** Seller shall be deemed to be in exclusive control of the
2 Delivered Energy prior to the Delivery Point. Buyer shall be deemed to be in exclusive control
3 of the Delivered Energy at and after the Delivery Point. Custody, title and risk of loss of
4 Contract Capacity and Delivered Energy shall transfer from Seller to Buyer at the Delivery
5 Point.

6 **5.9 Force Majeure Event.**

7 5.9.1 For any hour in which a Force Majeure Event affecting the Facility or the
8 electric facilities prior to the Facility Delivery Point occurs or is continuing, Seller shall only be
9 obligated to deliver to Buyer the lesser of: (i) Scheduled Energy; or (ii) energy associated with
10 the difference of the Contract Capacity less Force Majeure Capacity. In addition, to the extent
11 of such Force Majeure Event, Seller may elect in its sole discretion pursuant to the procedures
12 under Section 5.5 (but shall not be required) to deliver Scheduled Energy from Alternate
13 Resources.

14 5.9.2 For any hour during which a Force Majeure Event affecting the Facility
15 or the electric facilities prior to the Facility Delivery Point occurs or is continuing, Seller shall
16 be required to accumulate EFMH (as applicable) for such hour. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 **5.10 Outages and Unavailable Capacity.**

2 5.10.1 Seller shall notify Buyer as soon as reasonably practicable of: (i) the
3 occurrence of any Outage that is expected to result in Outage Capacity and the estimated
4 duration of such Outage; (ii) the cessation of such Outage; and (iii) if requested by Buyer within
5 30 Days after the Outage and if known to Seller, the cause of such Outage.

6 5.10.2 For any hour during which there is Unavailable Capacity, Seller shall
7 be required to accumulate EUH (as applicable) for such hour. [REDACTED]
8 [REDACTED], Seller's sole and exclusive liability and Buyer's
9 sole and exclusive remedy for Seller's failure to provide capacity and/or energy from any
10 resource under this Agreement shall be [REDACTED]

11 [REDACTED]
12 **5.11 Delivery Excuse.** For any hour in which a Delivery Excuse is occurring or is
13 continuing, Seller shall not be obligated to deliver, and Buyer shall not be entitled to receive, or
14 submit a Schedule for, Scheduled Energy. In such event, Seller shall not be required to
15 accumulate EFMH or EUH. Buyer shall not be relieved of its performance obligations during a
16 Delivery Excuse, including its obligation to pay Seller the Monthly Capacity Payment.

17 **5.12 Scheduled and Maintenance Outages.** Buyer shall not have the right to
18 submit a Schedule for any period of time during which maintenance is being performed and/or
19 outages are taken consistent with Sections 4.1 and 4.2.

20 **5.13 Available Capacity.** [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 **5.14 Early Termination.**

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

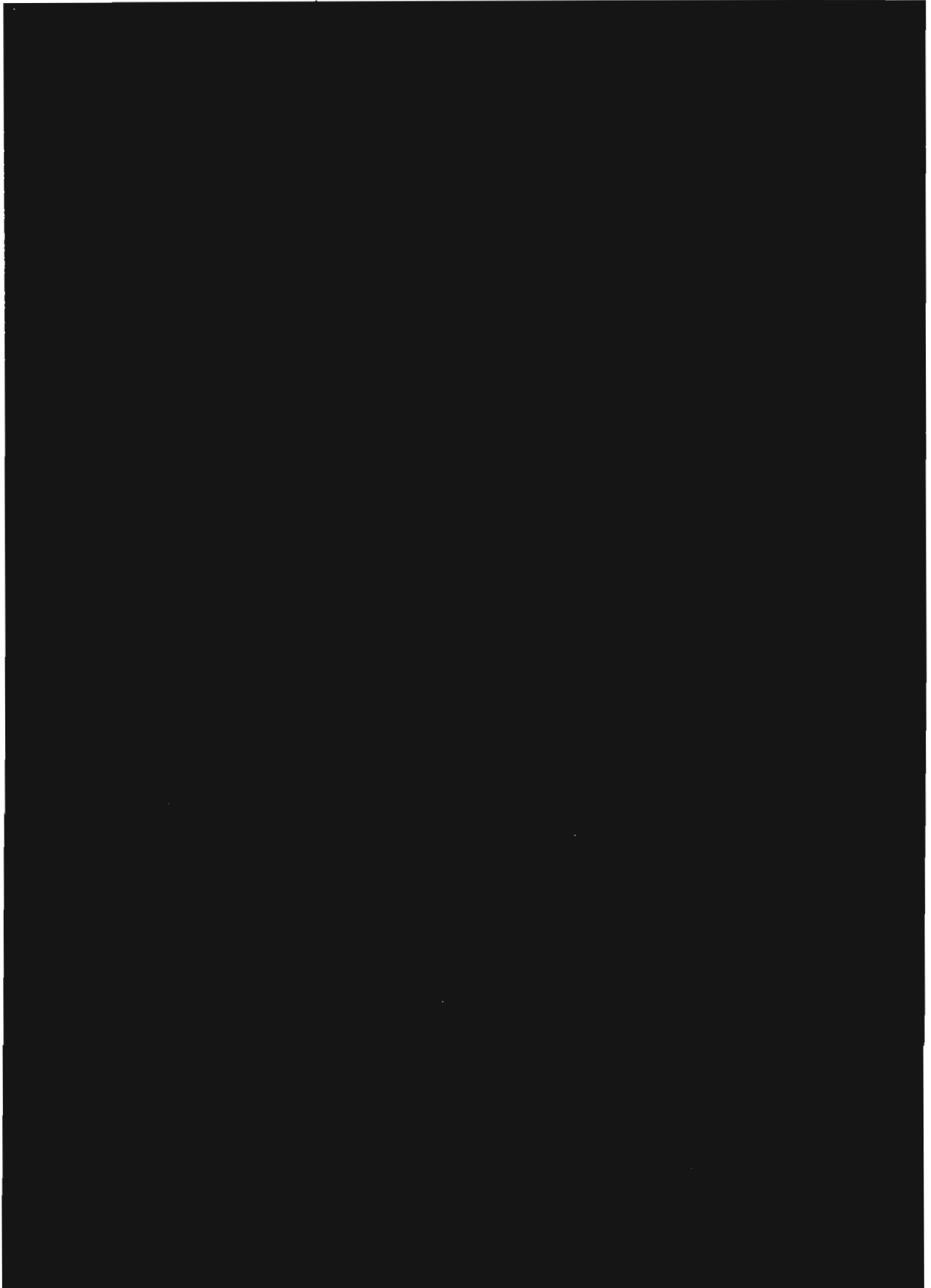
19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]



1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

ARTICLE 6

PAYMENTS

6.1 Capacity Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Capacity Payment for the Contract Capacity. The calculation of the Monthly Capacity Payment is set forth in Appendix A.

6.2 Energy Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Energy Payment. The calculation of the Monthly Energy Payment is set forth in Appendix B.

6.3 Start Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Start Payment. The calculation of the Monthly Start Payment is set forth in Appendix C.

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6.4 Fuel Transportation Payment. Commencing on the Service Commencement Date and for each Month of the Service Term, Buyer shall pay to Seller a Monthly Fuel Transportation Payment. The calculation of the Monthly Fuel Transportation Payment is set forth in Section 9.2.2.

6.5 Additional Payments. In addition to the payments specified in this Article 6, the Parties shall pay all amounts due pursuant to the other provisions of this Agreement.

ARTICLE 7

TRANSMISSION SERVICE

7.1 Buyer Obligations. Buyer, or its designee, shall have the sole and exclusive responsibility at all times to arrange, obtain, contract and pay for any and all transmission service and ancillary services required (including service under any applicable transmission tariff) to deliver any energy hereunder from and beyond the Delivery Point. Buyer assumes all risk associated with the availability, adequacy and cost of such transmission service and ancillary services.

7.2 Seller Obligations. Seller, or its designee, shall have the sole and exclusive responsibility at all times to arrange, obtain, contract, and pay for any and all transmission service required to deliver energy hereunder to the Delivery Point.

7.3 Imbalances and Penalties. Upon receiving notice of any interruption of the delivery of energy under this Agreement for any reason (e.g., an Outage or a Force Majeure Event), Buyer shall promptly notify the applicable transmission provider and/or system operator in order to avoid any energy imbalances. Any penalties or imbalances (including associated costs) resulting from actions or inactions of Buyer (including the failure to provide required notice to the applicable transmission provider and/or system operator), its designee or any third

party to which Buyer may be supplying the capacity and energy provided hereunder will be the responsibility of Buyer as between the Parties. Any penalties or imbalances (including associated costs) resulting from actions or inactions of Seller or its designee will be the responsibility of Seller as between the Parties. If either Party incurs any costs associated with penalties or imbalances that are the responsibility of the other Party under this Section, such other Party shall provide prompt reimbursement of such costs.

7.4 Buyer's Request for Transmission Service.

7.4.1 Within 30 Days after the Effective Date, Buyer shall request from Southern Company Transmission (including by submitting such request on Southern Company Transmission's OASIS and completing any required application(s)) 190 MW of Long Term Firm Transmission Service from the Facility Delivery Point to the Florida Interface, such service to commence on June 1, 2010 ("Requested Service"). As entered into Southern Company Transmission's OASIS, such request shall designate the point of delivery as "FPL." In addition, from the Effective Date, Buyer shall make and/or continue Commercially Reasonable Efforts to have Southern Company Transmission provide Buyer with an offer to provide the Requested Service no later than December 1, 2005 ("Transmission Deadline"); provided, however, the Transmission Deadline shall automatically be extended on a Month to Month basis until either Party provides timely notice to the other that it does not desire for the Transmission Deadline to be extended under this Agreement and in Section 7.4.1 of both of the other Contemporaneous Agreements. Such notice must be provided no later than 5 Days prior to the then existing Transmission Deadline (as may be extended). Notwithstanding the foregoing, the Transmission Deadline in this Agreement shall be extended only to the same

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extent as such deadline is also extended under Section 7.4.1 of both of the other Contemporaneous Agreements.

7.4.2 No later than 2 Business Days after the earlier of: (i) the Transmission Deadline; (ii) Southern Company Transmission's notice to Buyer that it will not be able to provide any of the Requested Service to Buyer; or (iii) Southern Company Transmission's notice to Buyer that it will be able to provide some or all of the Requested Service to Buyer, Buyer shall notify Seller ("Transmission Notice") of the total amount of the Requested Service that Southern Company Transmission is able to provide to Buyer at any price and cost ("SCT Service"). In the event that the total cost ("Total Cost") of any portion of the SCT Service is higher than the embedded rate for Long Term Firm Transmission Service under the OATT ("Tariff Rate"), the Transmission Notice shall specify the amount of SCT Service offered at a Total Cost higher than the Tariff Rate, and include any and all documentation of such Total Cost provided to Buyer by Southern Company Transmission. For purposes of this Section 7.4, "Total Cost" shall mean those costs that would be imposed on Buyer directly by the applicable transmission provider for the Requested Service.

7.4.3 Within 2 Business Days after its receipt of the Transmission Notice, Seller may offer to sell to Buyer (including by reassignment) up to 190 MW of Long Term Firm Transmission Service from the Facility Delivery Point to the Florida Interface on any applicable transmission system, such service to commence on June 1, 2010 ("Seller Service"). Such offer shall set forth the amount of Seller Service and the price for such service. For purposes of this Agreement the sum of the Seller Service and the SCT Service shall be referred to as the "Available Service."

1 7.4.4 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 7.4.5 Once the procedures in Sections 7.4.1 through 7.4.4 have been completed
11 (as applicable), Buyer may elect to reduce the Contract Capacity for the Service Term by an
12 amount up to the sum of: [REDACTED]
13 [REDACTED]
14 Buyer shall notify Seller of such election within 3 Business Days after the later of the date of (if
15 applicable) the Reduction Notice, receipt of Seller's offer under Section 7.4.3 or the
16 Transmission Notice ("Election Deadline"). In addition, after the procedures in Sections 7.4.1
17 through 7.4.4 have been completed (as applicable), if Available Service of at least [REDACTED] MW is
18 not available to Buyer so that Buyer is in effect able to procure Long Term Firm Transmission
19 Service from the Facility at a Total Cost equal to or less than the Tariff Rate (taking into
20 account any offset of Excess Cost by Seller), Buyer may provide notice to Seller that it will
21 terminate this Agreement. Such notice must be provided no later than the Election Deadline.

22 7.4.6 If Buyer elects, pursuant to Section 7.4.5, to reduce the Contract Capacity
23 by an amount greater than [REDACTED] MW, Seller shall be entitled to either: [REDACTED]

1 [REDACTED] Seller shall provide Buyer with notice of
2 its election of either (i) or (ii) no later than 2 Business Days after its receipt of Buyer's notice to
3 reduce the Contract Capacity. If Seller accepts the reduction in Contract Capacity, the Parties
4 shall mutually agree on modifications to this Agreement in order to reflect such reduction.

5 7.4.7 In the event that either Party provides notice to the other Party under this section 7.4 that it has elected to terminate this Agreement, this Agreement and the other Contemporaneous Agreements shall immediately terminate. Upon such termination, no Party shall have any further obligation under any of the Contemporaneous Agreements except for any liabilities and/or obligations accruing prior to such termination. The Parties acknowledge that the other Contemporaneous Agreements contain a provision similar to this Section 7.4.7 and that this Agreement is subject to termination as provided in such similar provisions.

7.4.8 Nothing in this Section 7.4 shall be construed as requiring Buyer to actually purchase any transmission service.

7.4.9 The MW amounts set forth in this Section 7.4 refer to MW amounts at the Facility Delivery Point. As appropriate and/or required, such amounts shall be adjusted consistent with the OATT (or other applicable transmission tariff) to reflect transmission losses to the Florida Interface (e.g., including for purposes of submitting the required transmission service request through Southern Company's OASIS and/or other required application(s) for such service).

7.5 Regional Transmission Organizations.

7.5.1 In the event that a Regional Transmission Organization(s) or similar organization ("RTO") is formed and such formation materially changes the scheduling requirements and/or costs associated with the delivery of energy to and/or from the Delivery

1 Point, Seller shall be solely responsible for complying with all scheduling requirements and
2 paying all such costs to the Delivery Point (including but not limited to all congestion and/or
3 basis costs). In addition, Buyer shall be solely responsible for complying with all scheduling
4 requirements and paying all such costs at and beyond the Delivery Point to any other point(s) of
5 delivery (including but not limited to all congestion and/or basis costs). Seller agrees to
6 indemnify and hold harmless Buyer for any costs and expenses incurred by Buyer that are
7 Seller's responsibility under this Section 7.5.1. Buyer agrees to indemnify and hold harmless
8 Seller for any costs and expenses incurred by Seller that are Buyer's responsibility under this
9 Section 7.5.1.

10 7.5.2 [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]
2 [REDACTED]

ARTICLE 8

**TOTAL FACILITY CAPACITY
AND COMMENCEMENT OF SERVICE**

8.1 Declaration of the Total Facility Capacity. Through notice to Buyer, Seller shall declare the Total Facility Capacity for each Contract Year pursuant to the procedures set forth in Section 8.2.

8.2 Declaration Prior to Each Contract Year.

8.2.1 Except as provided in Section 8.3.1.1 and 8.3.1.2, within 90 Days prior to the beginning of each Contract Year, Seller shall declare the Total Facility Capacity for such Contract Year. Such declaration shall be based on the demonstrated generating capability of the Facility as determined in accordance with Appendix E.

8.2.2 After Seller's declaration under Section 8.2.1, Buyer shall have the right to require a test to re-demonstrate the capability of the Facility as follows:

8.2.2.1 After Seller's declaration of the Total Facility Capacity for the first Contract Year, Buyer may by notice to Seller ("Test Notice") require Seller to conduct a test to re-demonstrate the capability of the Facility. Buyer shall provide any such Test Notice no later than 30 Days after the Service Commencement Date ("Initial Testing Deadline"). If Buyer timely provides the Test Notice, Seller shall conduct a test of the Facility in accordance with Appendix E within 30 Days after the Test Notice on a Day selected by Seller and provide Buyer with prior notice of such test. Buyer shall pay Seller all costs of testing (including Gas and operation and maintenance costs), and Buyer shall be entitled to utilize all energy produced during testing for its own purposes.

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8.2.2.2 After the Initial Testing Deadline, if at any time Buyer has reasonable grounds for disputing Seller's declared amount of Total Facility Capacity (e.g., the delivery of energy by Seller in amounts less than Scheduled Energy), Buyer may provide to Seller a Test Notice to require Seller to conduct a test to re-demonstrate the capability of the Facility. Upon receipt of such notice, Seller shall conduct a test of the Facility in accordance with Appendix E within 30 Days after the Test Notice on a Day selected by Seller and provide Buyer with prior notice of such test. Buyer shall pay Seller all costs of testing (including Gas and operation and maintenance costs), and Buyer shall be entitled to utilize all energy produced during testing for its own purposes.

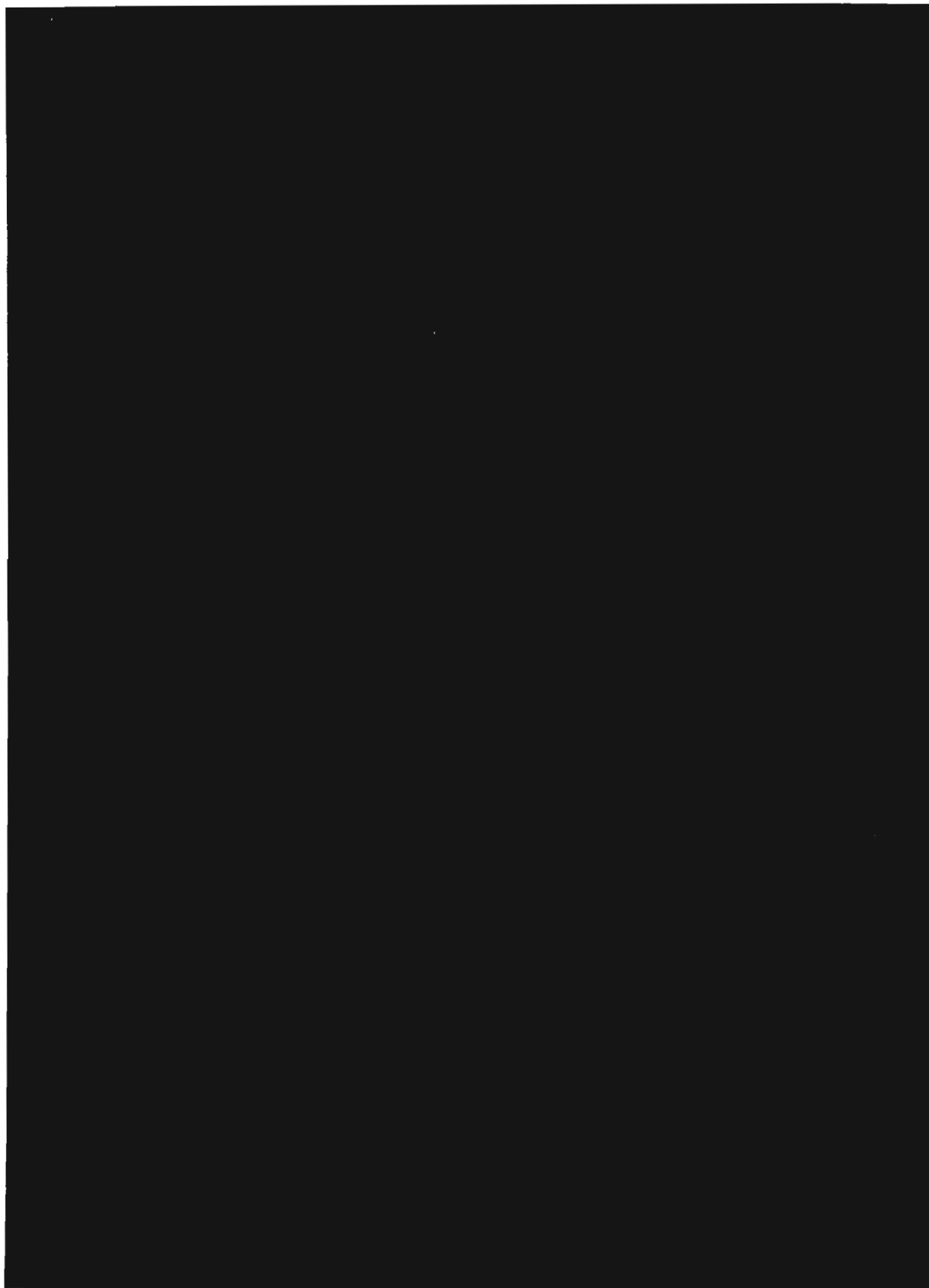
8.2.3 In the event that a test required by Buyer pursuant to Section 8.2.2 indicates that the generating capability of the Facility is different than the Total Facility Capacity declared pursuant to Section 8.2.1, Seller may (at its sole option) conduct additional test(s) of the Facility in accordance with Appendix E, such test(s) to be completed no later than 30 Days after the test conducted pursuant to Section 8.2.2. If Seller does not elect to conduct such additional test(s), the Total Facility Capacity shall be re-set pursuant to Section 8.2.4 to an amount equal to the generating capability demonstrated by the test conducted pursuant to Section 8.2.2. If Seller does elect to conduct additional testing, Seller shall provide Buyer prior notice of the Day(s) of such test(s) and the Total Facility Capacity shall be re-set pursuant to Section 8.2.4 to an amount equal to the generating capability demonstrated through such additional test(s). If such test(s) is performed coincident with Buyer's Schedule for any Day(s), Buyer shall pay Seller the costs of testing (including Gas and operation and maintenance costs) that are the responsibility of Buyer through the application of the Monthly Energy Payment for all Delivered Energy provided to Buyer. To the extent such test(s) is performed during a time

1 period in which energy will not be delivered to Buyer pursuant to a Schedule, Seller shall be
2 responsible for all costs of testing (including Gas and operation and maintenance costs) and
3 shall be entitled to utilize all energy produced during testing for its own purposes.

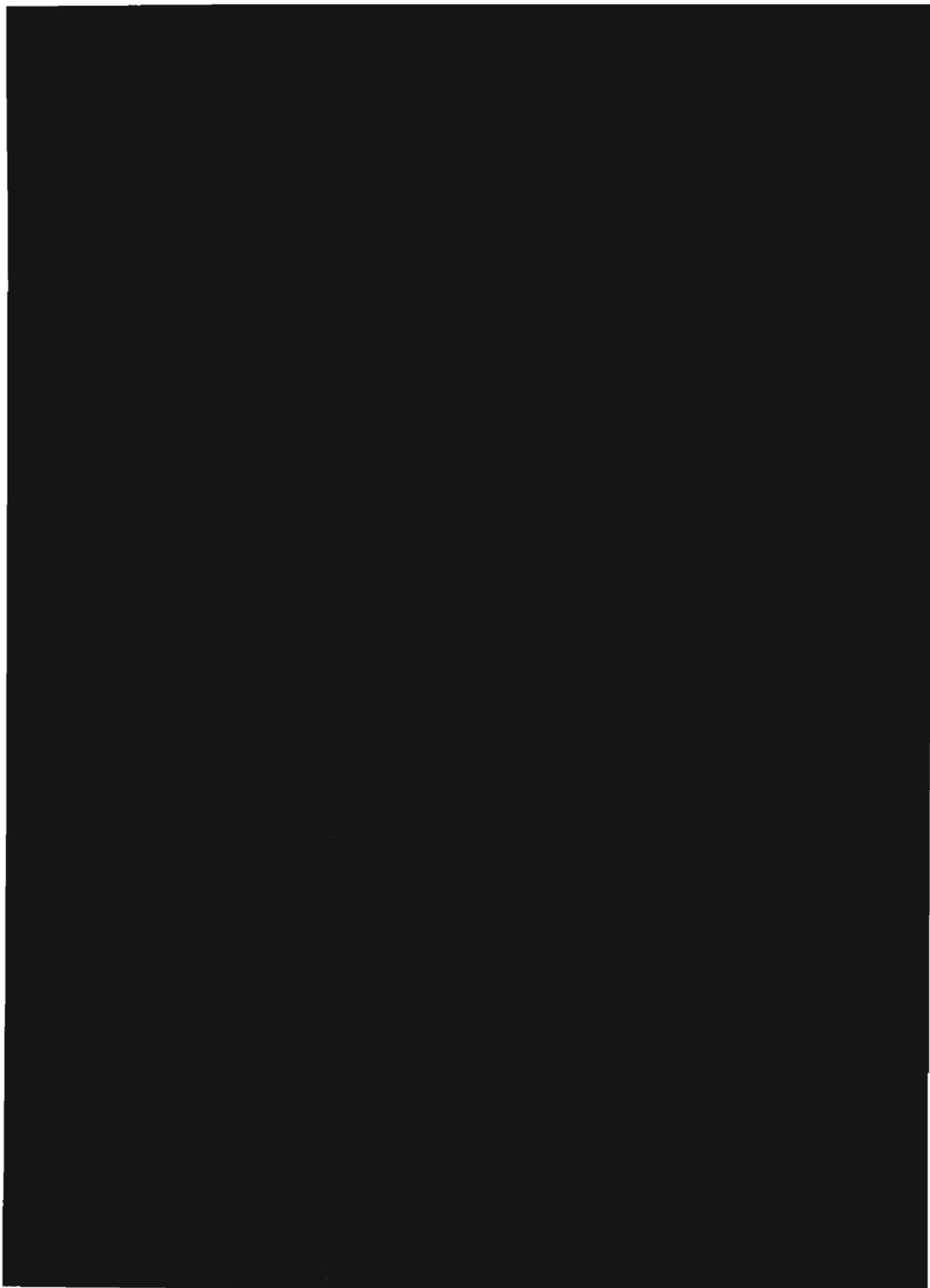
4 8.2.4 If the Total Facility Capacity is set pursuant to a test conducted under
5 Section 8.2.2 or Section 8.2.3 as a result of a Test Notice provided by Buyer on or before the
6 Initial Testing Deadline, the Total Facility Capacity shall be adjusted retroactively to the
7 Service Commencement Date. In all other cases when the Total Facility Capacity is set
8 pursuant to a test conducted under Section 8.2.2 or Section 8.2.3, the Total Facility Capacity
9 shall be adjusted retroactively to the date of the applicable Test Notice. All capacity billing
10 under Section 6.1 shall (if necessary and as soon as practicable) be retroactively adjusted as
11 appropriate (with interest at the Interest Rate) to reflect such adjustment of the Total Facility
12 Capacity.

13 **8.3 Commencement of Service.**

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]







ARTICLE 9

FUEL ARRANGEMENTS

1
2
3 **9.1 Seller's Commitment.** Subject to the provisions of this Agreement, Seller will
4 use Commercially Reasonable Efforts to provide to the Facility the volume of Gas needed to
5 provide Scheduled Energy.

6 **9.2 Gas Transportation Arrangement and Charges.**

7 9.2.1 Subject to the provisions of this Agreement, Seller will utilize up to
8 [REDACTED] MMBtu per day of firm transportation capacity on the pipeline system of SNG from
9 SNG's Zone 0 to Zone 2 under SNG's Contract Number FSNG284 constructed under South
10 System 1, Phase 1 expansion that was placed in service on June 15, 2002 for deliveries to Point
11 Code 807000, Plant Franklin, as amended ("SNG Contract") as necessary to provide Scheduled
12 Energy under this Agreement. To the extent energy is supplied to Buyer from the Facility,
13 Seller shall afford Buyer's Schedule priority with regard to the use of such transportation
14 capacity that is available; provided, however, if a portion of the total amount of transportation
15 capacity procured by Seller to the Plant is unavailable for any hour(s), Seller shall be permitted
16 to reduce on a pro rata basis the amount of transportation capacity that it will utilize in order to
17 satisfy Buyer's Schedule.

18 9.2.2 Buyer shall pay to Seller a Monthly Fuel Transportation Payment which
19 shall be an amount equal to the product resulting from multiplying [REDACTED] MMBtu by the sum
20 of: [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 9.2.3 Buyer acknowledges that charges under the SNG Contract are currently
2 discounted below SNG's maximum tariff rates and that such rates are subject to periodic
3 increases as provided in the SNG Contract and to increases pursuant to actions by FERC. Buyer
4 agrees to pay the then current rates each Month under the SNG Contract during the term of this
5 Agreement.

6 9.2.4 Buyer acknowledges that Seller may have the right pursuant to Exhibit E
7 of the SNG Contract to terminate that contract; however, Seller shall exercise that right with
8 respect to the transportation capacity necessary to provide Scheduled Energy under this
9 Agreement only if Buyer and Seller agree on mutually acceptable replacement transportation
10 arrangements.

11 9.2.5 Buyer acknowledges that SNG may impose imbalance, cash-out and
12 other types of charges, including penalty charges, pursuant to its FERC approved tariff under
13 certain conditions ("Penalty Charges"). Buyer agrees to be responsible for and pay or reimburse
14 Seller for any Penalty Charges billed to Seller by SNG that result from any action or failure to
15 act of Buyer under this Agreement. The Parties agree to cooperate in order to attempt to
16 minimize Penalty Charges.

17 9.2.6 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

9.2.7 In the event that accommodating Buyer's Schedule would require Gas transportation capacity in addition to that set forth in Section 9.2.1, Seller shall make Commercially Reasonable Efforts to obtain (if available) additional capacity at Buyer's expense and Buyer shall reimburse Seller based on SNG's interruptible transportation rate from Zone 0 to Zone 2 in effect at the time. To the extent Seller is unable to obtain such additional capacity at or below such interruptible transportation rate and such capacity is available, Seller shall make Commercially Reasonable Efforts to provide Buyer the option of having Seller purchase such additional capacity at the higher rate. If Buyer desires to have Seller purchase such additional capacity at the higher rate, Seller shall make Commercially Reasonable Efforts to obtain such capacity to accommodate Buyer's Schedule and Buyer shall reimburse Seller for all associated costs. To the extent that Buyer does not desire to have Seller purchase such additional capacity at the higher rate or Seller is unable to obtain such capacity, Seller shall have a Delivery Excuse to that extent.

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9.3 Interruption of Gas Supplies

9.3.1 In the event that Gas supplies are interrupted due to any circumstance affecting Seller's Gas suppliers that qualifies as an event of force majeure as defined in the North American Energy Standards Board's Base Contract for Sale and Purchase of Natural Gas:

A. Seller shall use Commercially Reasonable Efforts to arrange for alternate Gas supplies to overcome such an interruption. If alternate Gas supplies are available, Seller shall offer to Buyer, and Buyer shall have the option to immediately accept, such alternate Gas supplies at the price quoted by Seller.

B. If Seller is unable to arrange for alternate Gas supplies or if Buyer does not accept such alternate Gas supplies pursuant to subparagraph A above, Buyer may arrange to sell alternate gas supplies to Seller at the Gas Price (as defined in Appendix B) by delivering such Gas to SNG at a point on its pipeline at which Seller can schedule receipts of such Gas under the SNG Contract. Buyer shall cooperate with Seller and SNG in order to ensure that such supplies are nominated, scheduled and delivered to SNG for transportation under the SNG Contract and under the terms of SNG's FERC approved tariff. Buyer shall be responsible for any Penalty Charges resulting from any difference between the volume scheduled for delivery by Buyer to and receipt by SNG and the actual volume delivered by Buyer to and received by SNG.

9.3.2 In the event that there is no arrangement for alternate Gas supplies under Section 9.3.1, the interruption of Gas supplies described in Section 9.3.1 shall constitute a Delivery Excuse as defined in this Agreement.

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9.3.3 Notwithstanding any other provision of this Agreement, Seller shall not be obligated to obtain or use any Gas storage services in order to provide Gas under this Agreement.

9.4 Scheduling Changes. In the event that Buyer requests a Schedule change pursuant to Section 5.1.2 after the Scheduling Deadline, Seller shall quote a price for supplying incremental Gas needed to accommodate an increase in Scheduled Energy (subject to Gas availability and the ability to schedule delivery of Gas) or for selling excess Gas resulting from a decrease in Scheduled Energy, as appropriate. Upon receipt of Seller's quote, Buyer shall immediately exercise one of the following options: (i) not changing the existing Schedule; (ii) proceeding with the requested Scheduling Change and the increase or decrease in Gas supplies based on the quoted price (to buy the incremental Gas supply, or to sell the excess Gas supply, as applicable), or (iii) proceeding with the increase (if applicable) in Scheduled Energy and notifying Seller that Buyer will supply the required incremental Gas supply utilizing the procedures set forth in Section 9.3.1B.

ARTICLE 10

ELECTRIC METERING

10.1 Metering. At no cost to Buyer, Seller shall be responsible for performing, or causing to be performed, the installation, maintenance, testing and calibration of the Electric Metering Equipment owned by Seller and/or its Affiliates at the Delivery Point(s).

10.2 Industry Standards. All Electric Metering Equipment owned by Seller and/or its Affiliates at the Delivery Point(s), shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Industry Practices.

1 [REDACTED] ("Payment Due
2 Date"). If the Payment Due Date falls on a Day that is not a Business Day, the Payment Due
3 Date shall be the next Business Day. Payment shall be made, on or before the due date, to
4 Seller in accordance with the invoice in immediately available funds through wire transfer, or
5 other mutually agreeable method.

6 **11.2 Late Payment.** Amounts that are owed Seller shall, if not remitted within the
7 time period specified under Section 11.1, be subject to a late payment charge equal to the
8 interest calculated pursuant to Section 21.7, accrued and payable on a Monthly basis with
9 respect to the unpaid amount. Such late payment charge shall accrue from the due date of such
10 amount until the date on which it is paid.

11 **11.3 Disputed Billings.** In the event that either Party has a bona fide dispute with any
12 invoice submitted hereunder, such Party shall inform the other Party in writing of its grounds
13 for disputing such invoice. Notwithstanding such dispute, [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 **11.4 Adjustments.** If any overcharge or undercharge in any form whatsoever shall at
23 any time be found and the invoice therefor has been paid, the Party that has been paid the

1 overcharge shall refund the amount of the overcharge to the other Party, and the Party that has
2 been undercharged shall pay the amount of the undercharge to the other Party, within 30 Days
3 after final determination thereof; provided, however, that no retroactive adjustment shall be
4 made for any overcharge or undercharge unless written notice of the same is provided to the
5 other Party within a period of 12 Months from the date of the invoice in which such overcharge
6 or undercharge was first included. Any such adjustments shall be made with interest calculated
7 in accordance with Section 21.7 from the date that the undercharge or overcharge actually
8 occurred.

9 **11.5 Audit Rights.** Subject to Section 10.3, the Parties shall keep complete and
10 accurate records of their operations under this Agreement and shall maintain such data for a
11 period of at least ■ years after the completion of the relevant Billing Month hereunder;
provided, however, records relating to a disputed matter shall be retained until the dispute is
resolved. Such records shall be available for inspection and audit by the other Party upon
reasonable request during any regular Business Day.

ARTICLE 12

REGULATORY

12.1 Initial Approval of the Florida Public Service Commission.

12.1.1 No later than 90 Days after the Effective Date, Buyer shall make a
filing with the Florida Public Service Commission (“FPSC”) seeking approval for Buyer to
recover from its customers all payments required to be made to Seller under the
Contemporaneous Agreements without material modification or condition with respect to such
agreements (“FPSC Approval”). After making such filing, Buyer shall utilize diligent efforts to
obtain the FPSC Approval for the Contemporaneous Agreements by no later than 180 Days

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after the Effective Date (“Approval Deadline”). Seller agrees to reasonably assist and support Buyer’s efforts to obtain the FPSC Approval. Buyer shall promptly notify Seller when it receives the FPSC Approval.

12.1.2 If FPSC Approval for the Contemporaneous Agreements is not received by the Approval Deadline, but the date of the Transmission Notice under Section 7.4.2 has not yet occurred and the FPSC has not yet issued an order denying the Buyer’s request for FPSC Approval (“FPSC Denial”), the Approval Deadline shall automatically be extended until the date of the Transmission Notice. During this extended period, Buyer shall keep Seller closely informed as to the progress of its efforts to obtain FPSC Approval and Buyer shall continue diligent efforts to obtain FPSC Approval.

12.1.3 If FPSC Approval is not received by the Approval Deadline (as extended under Section 12.1.2) or if an FPSC Denial is issued prior to the Approval Deadline, Buyer shall provide notice to Seller within 30 Days after the Approval Deadline or the FPSC Denial (whichever occurs first) that it desires to either: (i) terminate all (but not less than all) of the Contemporaneous Agreements, in which case all of the Contemporaneous Agreements shall immediately terminate; or (ii) continue all (but not less than all) of the Contemporaneous Agreements regardless of FPSC Approval. If Buyer elects option (ii) under the foregoing sentence, all of the Contemporaneous Agreements shall continue in full force and effect for the Term notwithstanding any subsequent action or inaction of the FPSC (including the subsequent issuance of a FPSC Denial or failure to issue an FPSC Approval).

12.1.4 The Parties acknowledge that the other Contemporaneous Agreements contain provisions that are substantially similar to Sections 12.1.1 through 12.1.3 above and that this Agreement may be subject to termination as provided in such similar provisions.

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12.1.5 After the procedures in Sections 12.1.1, 12.1.2, and 12.1.3 (as applicable) have been completed, except as provided under Section 12.3, at no time shall this Agreement be subject to termination or modification due to any action or inaction of any Government Agency or Buyer's inability to recover from its customers amounts to be paid to Seller pursuant this Agreement whether such inability is due to action of any Government Agency or otherwise.

12.2 Changes in Agreement. Except for any changes pursuant to Section 12.3, absent the agreement of all Parties to the proposed change, the standard of review for changes to this contract proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. (1956) (the "Mobile-Sierra" doctrine).

12.3 Federal Energy Regulatory Commission.

12.3.1 The Parties anticipate that this Agreement is not required to be filed and accepted by FERC because it is a market-based contract. Therefore, this Agreement shall not be contingent on FERC acceptance. Having freely negotiated and agreed upon the economic bargain among them as set forth hereunder, Seller and Buyer waive all rights under Sections 205 and 206 of the Federal Power Act to effect a change in the Agreement. Moreover, it is the Parties' mutual intent that FERC be precluded, to the fullest extent permitted by law, from altering this Agreement in any way. Notwithstanding the foregoing, if at any time FERC takes some action that reduces the economic benefit of this Agreement to either Party ("Impacted Party") as contemplated on the Effective Date ("Original Economic Benefit"), Impacted Party

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shall be deemed to have retained rights under Section 205 to file for changes in the Agreement, but only to the extent required to restore the Original Economic Benefit.

12.3.2 Impacted Party may exercise its Section 205 rights provided under Section 12.3.1 if at any time it reasonably determines in its sole discretion that it may be able to have some or all of the Original Economic Benefit restored. Before exercising such rights, Impacted Party shall negotiate with the other Party in an effort to reach mutual agreement regarding amendments to this Agreement (including amendments regarding those provisions addressing the determination of payments between the Parties and adjustments to capacity payments due to unavailability) that would restore some or all of the Original Economic Benefit. Impacted Party shall file any resulting amendments for acceptance by FERC, and the other Party shall actively support such filing(s). If the Parties are unable to agree upon such amendment(s), Impacted Party shall be entitled to make unilateral filing(s) at FERC to modify the Agreement in order to restore some or all of the Original Economic Benefit. In this latter event, the other Party shall actively support Impacted Party's right to recover the Original Economic Benefit, including by making filings at FERC (provided that the non-impacted Party shall retain the right to challenge the amount of and/or the methodology for calculating the Original Economic Benefit).

12.3.3 Any amendment(s) or unilateral filing(s) contemplated hereunder shall restore the Original Economic Benefit (or any allowed portion thereof) for the remainder of the Term, including any portion of the Original Economic Benefit associated with prior periods (with interest). Such amendment(s) or filing(s) by the Impacted Party shall not require the other Party to bear more of an economic burden than originally contemplated in this Agreement on the Effective Date. Nothing in this Agreement is intended to or shall restrict the number of

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times that a Party may exercise the above-described Section 205 rights during the Term or within any specific time frame.

ARTICLE 13

CHANGE IN LAW

13.1 Increased Generation Costs. The Parties acknowledge that during the Term of this Agreement, Changes in Law that increase Seller's cost of providing capacity and/or energy hereunder could occur. Any Increased Generation Costs will be paid by Buyer through an additional payment or surcharge each Month ("Change in Law Surcharge"). Once Seller has incurred Increased Generation Costs, Buyer shall pay for all Increased Generation Costs through the Change in Law Surcharge, as provided below.

13.2 Determination. If Seller determines that a Change in Law will or has resulted in Increased Generation Costs and that Buyer is responsible for such costs under this Agreement, Seller shall, within 6 Months after identifying such costs, notify Buyer of: (a) the applicable Change in Law giving rise to the Increased Generation Costs; and (b) the resulting Increased Generation Costs. Provided, however, the failure by Seller to provide such notice within such time period shall not under any circumstance result in an Event of Default, nor shall such failure prejudice or affect in any way Seller's right to receive reimbursement from Buyer for any Increased Generation Costs under this Agreement. Provided further, such notice by Seller shall include reasonable documentation of the applicable Change in Law and resulting Increased Generation Costs. Within 60 Days after receipt of such notice, Buyer will: (i) make a good faith determination of whether the Increased Generation Costs result from a Change in Law as specified in this Agreement; (ii) make a good faith determination of whether the Increased Generation Costs are determined in accordance with this Agreement; and (iii) provide Seller

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written notice of its determination. In the event that Buyer does not provide written notice of its determination within such time period, Buyer shall be deemed to have concurred that the specified Increased Generation Costs result from a Change in Law. If Buyer does not concur, the Parties shall commence discussions in an effort to address and resolve the basis for Buyer's disagreement. If the Parties are unable to resolve their disagreement within 30 Days after commencing such discussions, the Parties shall submit the issue to arbitration under the procedures set forth in Section 18.2. The arbitrators shall determine whether a Change in Law has occurred and, if so, the amount of the resulting Increased Generation Costs.

13.3 Initiation of Surcharge. In the event that Increased Generation Costs result from a Change in Law, Seller shall provide Buyer with written notice of a Change in Law Surcharge or an increase in an existing Change in Law Surcharge to recover Increased Generation Costs. No earlier than 30 Days thereafter, Seller may initiate a Change in Law Surcharge (or, if applicable, an increase in an existing Change in Law Surcharge) consistent with such notice. Provided, however, Seller shall reduce any Change in Law Surcharge to the extent that any costs included in such surcharge are not incurred. After the end of the Term, Seller shall not be entitled to initiate a Change in Law Surcharge, an increase in an existing Change in Law Surcharge, or any other additional charge intended to recover costs resulting from a Change in Law unless: (i) Seller has provided Buyer with notice of the applicable Change in Law, surcharge or increase prior to the expiration of the Term; and (ii) the costs Seller seeks to recover were incurred during the Service Term as a result of such Change in Law.

13.4 Timing. Any Change in Law Surcharge (or increase in an existing Change in Law Surcharge) hereunder due to Increased Generation Costs shall recognize the timing of the

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Increased Generation Costs (including the recovery through such payments of amounts associated with the Increased Generation Costs in prior periods, with interest) for which Buyer is responsible under this Agreement.

ARTICLE 14

LIABILITY ALLOCATION; LIMITATIONS ON LIABILITY

14.1 Costs, Taxes and Charges. Except as otherwise provided in this Agreement, in addition to all other amounts due and payable under this Agreement: (i) except for any Taxes included in the Gas Charges, Seller shall be responsible for all costs, Taxes, and charges of any kind prior to the Delivery Point relating to the delivery of energy and the provision of capacity under this Agreement, transmission, and/or related services (by way of clarification of the foregoing, Taxes prior to the Delivery Point include: ad valorem taxes); and (ii) Buyer shall be responsible for all costs, Taxes, and charges of any kind at and after the Delivery Point relating to the delivery of energy and the provision of capacity under this Agreement, transmission, and/or related services (by way of clarification of the foregoing, Taxes at and after the Delivery Point include: any Taxes incurred in connection with sales of the Delivered Energy). Each Party shall provide the other Party upon written request a certificate of exemption or other reasonably satisfactory evidence of exemption if any exemption from or reduction of any Tax is applicable. Each Party shall exercise Commercially Reasonable Efforts to obtain and to cooperate in obtaining any exemption from or reduction of any Tax. In addition, each Party shall be responsible for paying its own income taxes and net worth taxes on it or its property.

14.2 Indemnification. Unless otherwise agreed in writing by the Parties, Seller and Buyer shall each defend, indemnify and save harmless, on an After-Tax Basis, the other and their respective officers, directors, servants, agents, employees and representatives from and

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against any and all claims, demands, costs or expenses (including reasonable attorneys' fees) for loss, damage or injury to any person, property or interest arising out of or in any way related to this Agreement to the extent such loss, damage or injury occurs on its own side of the Delivery Point, irrespective of negligence, whether actual or claimed, of the other. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

14.3 Limitation of Liability.

14.3.1 THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH HEREIN. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

14.3.2 SUBJECT TO SECTION 16.2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OF THAT PARTY, FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR CONTRACT, UNDER ANY PROVISION OF INDEMNITY OR OTHERWISE. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY

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DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

14.3.3 In the event that any provision of this Section 14.3 is held to be invalid or unenforceable, this Section shall be void and of no effect solely to the extent of such invalidity or unenforceability, and no claim arising out of such invalidity or lack of enforceability shall be made by one Party against the other or its officers, agents, or employees. Notwithstanding the foregoing, this Section 14.3 shall not limit or negate the right of either Party to be fully indemnified as provided in Section 14.2 or limit the remedies set forth in this Agreement for an Event of Default.

14.3.4 Without prejudice to the obligations and liabilities of an entity pursuant to an Eligible Guaranty, neither any Affiliate of a Party nor any stockholder, officer, director or employee of a Party or of any Affiliate of a Party (collectively, the "Nonrecourse Persons") shall have any liability to the other Party for the payment of any sums now or hereafter owing by such Party or for the performance of any of the obligations of such Party contained herein, and each of the Parties hereto agrees that all of the obligations of the other Party under this Agreement shall be obligations solely of such other Party and recourse in enforcing said obligations shall only be had against the assets of such other Party; provided that the foregoing provision shall not constitute a waiver, release or discharge of any of the terms, covenants or conditions of this Agreement or any Eligible Guaranty and the same shall continue until fully paid, discharged, observed or performed.

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ARTICLE 15

FORCE MAJEURE EVENT

15.1 Force Majeure Event Defined.

15.1.1 As used herein, an Event of Force Majeure with respect to a Party means an occurrence, non-occurrence, or set of circumstances that is beyond the reasonable control of such Party and is not caused by the fault or negligence of such Party, including but not limited to acts of God, strike, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, or terrorism, which, by the exercise of due diligence, it is unable to overcome.

15.1.2 Notwithstanding anything contained in Section 15.1.1, the term Force Majeure shall not include any of the following:

- (i) the inability of Buyer, for any reason, to obtain or maintain adequate transmission service from and after the Delivery Point;
- (ii) a change or circumstance in market conditions that affect the cost, price, or demand for capacity and/or energy from the Facility;
- (iii) a change or circumstance in market conditions or otherwise that affects the economic value of this Agreement to any Party;
- (iv) an increase in costs or expenses to any Party as a result (either directly or indirectly) of such Party's performance under this Agreement;
- (v) a change in Law, action or inaction by any Governmental Agency or the inability to comply with any Law; or
- (vi) any event or circumstance that qualifies as a Delivery Excuse.

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15.2 Applicability of Force Majeure Event. Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement (except for such Party's performance of its payment obligations hereunder, which shall not be excused by any Force Majeure Event) to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

15.2.1 The non-performing Party shall give the other Party written notice within 3 Business Days of the commencement of the Force Majeure Event, with available details to be supplied within 15 Days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

15.2.2 The delay in performance shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

15.2.3 The Party whose performance is delayed or prevented shall proceed with Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying performance and shall, as requested (but not more often than weekly), provide written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance shall no longer be affected by the Force Majeure Event; and

15.2.4 When the performance of the Party claiming the Force Majeure Event is no longer being delayed or prevented, that Party shall give the other Party written notice to that effect.

1 **15.3 Effect of Force Majeure Event.**

2 15.3.1 Except for the obligation of either Party to make any required payments
3 under this Agreement, the Parties shall be excused from performing their respective obligations
4 under this Agreement and shall not be liable in damages or otherwise if and to the extent that they
5 are unable to so perform or are prevented from performing by a Force Majeure Event.

6 15.3.2 To the extent Seller is unable to provide Contract Capacity or Scheduled
7 Energy from the Facility due to a Force Majeure Event, Seller shall be excused from performance
8 hereunder and shall not be required to provide capacity and/or energy from other resources
9 (including Alternate Resources) in order to satisfy Buyer’s Schedule; provided, however, to the
10 extent Seller does provide capacity and/or energy at its sole option to satisfy Buyer’s Schedule
11 consistent with this Agreement, [REDACTED]

12 [REDACTED]

13 **15.4 Early Termination.** [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

ARTICLE 16

EVENT OF DEFAULT

16.1 Event of Default. The occurrence of any one or more of the following events with respect to a Party shall constitute an “Event of Default” attributable to such Party under this Agreement:

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16.1.1 The failure by a Party to make payment to the other Party for amounts due under this Agreement after said amounts have become due and payable and such failure is not cured within 15 Days after receiving written notice of such failure from the Party to which such payments are due;

16.1.2 A Party or any Person guaranteeing such Party's obligations hereunder (a "Guarantor") shall: (i) admit in writing its inability to pay its debts as such debts become due; (ii) make a general assignment or an arrangement or composition with or for the benefit of its creditors; (iii) take any action for the purpose of effectuating any of the foregoing; or (iv) fail to comply with the terms and conditions of its Guaranty;

16.1.3 A proceeding or case shall be commenced by a Party or against a Party with the consent of such Party or by its Guarantor or against its Guarantor with the consent of such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt;

16.1.4 A proceeding or case shall be commenced without the consent of a Party against such Party or without the consent of its Guarantor against such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such

1 Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its
2 debts, winding-up, composition or adjustment of debt, unless such proceeding or case is
3 dismissed within 60 days of the filing thereof;

4 16.1.5 The failure of any Party to comply with the requirements of Article 20
5 regarding creditworthiness and/or security;

6 16.1.6 The failure of a Party to comply with the requirements of Article 19
7 regarding assignment;

8 16.1.7 Any representation or warranty made by a Party under Article 17
9 proves to have been false or misleading in any material respect when made and such
10 representation or warranty is not made true within 30 Days after such Party has obtained actual
11 knowledge thereof or has been provided notice thereof by the other Party; provided, however,
12 that the cure must also remove any adverse effect on the Non-Defaulting Party;

13 16.1.8 A Party or its Guarantor shall fail to pay when due (subject to any
14 applicable cure or grace period), whether by acceleration or otherwise, any principal or interest
15 on indebtedness aggregating in excess of [REDACTED] in principal amount; or any
16 indebtedness aggregating in excess of [REDACTED] shall be declared due and payable or be
17 required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity
18 of such indebtedness; or

19 16.1.9 [REDACTED]

20 [REDACTED]
21 16.1.10 The material failure by a Party to comply with any material provision of
22 this Agreement if such failure is not the result of a Force Majeure Event or is not otherwise
23 excused in accordance with this Agreement, and such failure continues uncured for 30 Days

1 after written notice thereof from the other Party; provided, however, if such failure is not
2 capable of being cured within such period of 30 Days with the exercise of reasonable diligence,
3 then such cure period shall be extended for an additional reasonable period of time (not to
4 exceed 90 Days), so long as the Party is exercising reasonable diligence to cure such failure.
5 Provided, however, this Section 16.1.10 shall not apply to: (i) any event described in Sections
6 16.1.1 through 16.1.9; (ii) any event described in Sections 5.9, 5.10, and 8.3 for which a remedy
7 is expressly provided in those Sections; or (iii) Seller's failure to provide capacity and/or energy
8 pursuant to any provision of this Agreement.

9 The Party in default or the Party to whom an Event of Default is attributable as provided
10 in this Section 16.1 shall be referred to as the "Defaulting Party" and the other Party shall be
11 referred to as the "Non-Defaulting Party".

12 16.2 Exclusive Remedies.

13 16.2.1 Upon and after the occurrence of an Event of Default, the Non-
14 Defaulting Party's sole and exclusive remedy (whether arising in contract, tort or otherwise)
15 shall be to suspend its performance under this Agreement and declare an Early Termination
16 Date with the relevant remedies as provided below.

17 16.2.2 If an Event of Default has occurred, the Non-Defaulting Party shall
18 have the right, in its sole discretion, by no more than 20 Days notice to the Defaulting Party, to
19 designate a Day no earlier than the Day such notice is effective as the date on which the
20 Agreement shall terminate ("Early Termination Date"). Subject to Sections 21.3 and 21.15, this
21 Agreement shall terminate on the Early Termination Date and neither Party shall have any
22 further liability or obligation to the other hereunder, except (i) the Defaulting Party shall pay to
23 the Non-Defaulting Party on demand [REDACTED] in liquidated damages and (ii) as provided in

1 Sections 16.2.3 or 16.2.4 below. The exercise by a Party of its rights under this Section 16.2
2 shall be the sole and exclusive remedy of such Party for an Event of Default by or attributable to
3 the other Party. The Parties acknowledge and agree that in the event of termination of this
4 Agreement due to an Event of Default, all or a portion of the amount of damages arising
5 therefrom are not susceptible to an accurate determination. The Parties further acknowledge
6 and agree that the liquidated damages set forth above are not intended as a penalty and represent
7 a fair and reasonable approximation of all or a portion of the damages a Non-Defaulting Party
8 may incur in each particular case.

9 16.2.3 With respect to an Event of Default by or attributable to Buyer, within
10 15 Days after Seller's notice under Section 16.2.2, the Parties shall each select an independent
11 party to determine the Seller's Damages. Within 30 Days after such notice, the two independent
12 parties shall select a third independent party to determine the Seller's Damages. Within 60
13 Days after such notice, the three (3) independent parties shall provide the Parties with their
14 respective estimates of the Seller's Damages. The actual Seller's Damages shall equal the
15 arithmetic average of the three estimates. If one Party disputes the actual Seller's Damages,
16 within 5 Business Days of notice of the Seller's Damages determined by the independent
17 parties, such Party may submit the dispute for resolution pursuant to the arbitration procedures
18 of Article 18 and the arbitration order or finding regarding the Seller's Damages shall be
19 conclusive, provided, however, in no event shall the Seller's Damages be less than ■ nor
20 greater than ■ at any time whether or not arbitrated. Subject to such qualification,
21 the Seller's Damages will be paid by Buyer to Seller within 3 Business Days after being
22 determined by the independent parties unless disputed and arbitrated pursuant to the terms of
23 this Agreement in which event it shall be paid within 3 Business Days of the relevant arbitration

1 finding or order. As used herein, "Seller's Damages" means [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 16.2.4 With respect to an Event of Default by or attributable to Seller, within
10 15 Days after Buyer's notice under Section 16.2.2, the Parties shall each select an independent
11 party to determine the Buyer's Damages. Within 30 Days after such notice, the two
12 independent parties shall select a third independent party to determine the Buyer's Damages.
13 Within 60 Days after such notice, the 3 independent parties shall provide the Parties with their
14 respective estimates of the Buyer's Damages. The actual Buyer's Damages shall equal the
15 arithmetic average of the three estimates. If one Party disputes the actual Buyer's Damages,
16 within 5 Business Days of notice of the Buyer's Damages determined by the independent
17 parties, such Party may submit the dispute for resolution pursuant to the arbitration procedures
18 of Article 18 and the arbitration order or finding regarding the Buyer's Damages shall be
19 conclusive, provided, however, in no event shall the Buyer's Damages be less than [REDACTED] nor
20 greater than [REDACTED] at any time whether or not arbitrated. Subject to such qualification,
the Buyer's Damages will be paid by Seller to Buyer within 3 Business Days after being
determined by the independent parties unless disputed and arbitrated pursuant to the terms of
this Agreement in which event it shall be paid within 3 Business Days of the relevant arbitration

1 finding or order. As used herein, "Buyer's Damages" [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

ARTICLE 17

REPRESENTATIONS AND WARRANTIES

17.1 Execution. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has all the necessary corporate and legal power and authority and has been duly authorized by all necessary corporate action to enable it to lawfully execute, deliver and perform under this Agreement; and (ii) it is a valid legal entity duly organized and validly existing in good standing under the laws of the state of its formation and is, to the extent required, qualified to do business in the state where it is organized;

17.2 Permits. Each Party represents and warrants to the other Party that as of the Effective Date it has all permits, licenses or approvals necessary to lawfully perform its obligations contained herein in the manner prescribed by this Agreement.

17.3 Binding Obligations. Each Party represents and warrants to the other Party that as of the Effective Date this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or

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other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principals are considered in a proceeding at law or in equity.

17.4 Execution and Consummation. Each Party represents and warrants to the other Party that as of the Effective Date the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any law applicable to it or result in a breach or default under any evidence of its indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the Party of any of its obligations under this Agreement.

17.5 Actions and Proceedings. Each Party represents and warrants to the other that as of the Effective Date there is no pending or, to the knowledge of such Party, threatened action or proceeding affecting such Party before any Government Agency that has a reasonable likelihood of materially adversely affecting or reasonably threatening the ability of such Party to perform its obligations under this Agreement or the validity or enforceability of this Agreement against it and that there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

17.6 Absence of Certain Events. Each Party represents and warrants to the other Party that as of the Effective Date no Event of Default attributable to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

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ARTICLE 18

DISPUTE RESOLUTION

18.1 Senior Officers.

18.1.1 Each of the Parties will designate in writing to the other Parties a representative who will be authorized to resolve any dispute arising under this Agreement and, unless otherwise expressly provided herein, to exercise the authority of such Party to make decisions by mutual agreement.

18.1.2 If such designated representatives are unable to resolve a dispute under this Agreement, such dispute will be referred by each Party's representative, respectively, to a designated senior officer.

18.1.3 The Parties hereto agree: (i) to attempt to resolve all disputes arising hereunder promptly; and (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged and non-confidential records, information and data pertaining to any such dispute. Non-privileged and non-confidential information shall be made available to a Party pursuant to a confidentiality agreement consistent with the confidentiality provisions of this Agreement.

18.2 Arbitration.

18.2.1 All disputes arising under, out of, or in relation to any provision of this Agreement that are not resolved pursuant to Section 18.1 within 30 Days after either Party's receipt of notice referring the dispute to the senior officers of the Parties (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute of limitations) will be submitted upon written request of any Party to binding arbitration. Each Party will have the right to designate

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an arbitrator of its choice, who need not be from the American Arbitration Association ("AAA") panel of arbitrators but who (a) will be an expert in the independent power electric generation field and (b) will not be and will not have been previously an employee or agent of or consultant or counsel to either Party or any of its Affiliates and will not have a direct or indirect interest in either Party or any of its Affiliates or the subject matter of the arbitration. Such designation will be made by notice to the other Party and to the AAA within 10 Days or, in the case of payment disputes, 5 Days after the date of the giving of notice of the demand for arbitration. The arbitrators designated by the Parties will designate a third arbitrator, who will have a background in legal and judicial matters (and who will act as chairman), within 10 Days or, in the case of payment disputes, 5 Days after the date of the designation of the last of the arbitrators to be designated by the Parties, and the arbitration will be decided by the three arbitrators. If the two arbitrators cannot or do not select a third independent arbitrator within such period, either Party may apply to the AAA for the purpose of appointing any person listed with the AAA as the third independent arbitrator under the expedited rules of the AAA. Such arbitration will be held in alternating locations of the home offices of the Parties, commencing with Buyer's home office, or in any other mutually agreed upon location. The rules of the AAA will apply to the extent not inconsistent with the rules herein specified. Each Party will bear its own expenses (including attorneys' fees) with respect to the arbitration. The arbitrators will designate the Party to bear the expenses of the arbitrators or the respective amounts of such expense to be borne by each Party.

18.2.2 Subject to Section 16.2, the arbitrators conducting an arbitration proceeding under this Section shall have no authority to award to any Party consequential, incidental, punitive, exemplary or indirect damages or any lost profits or business interruption

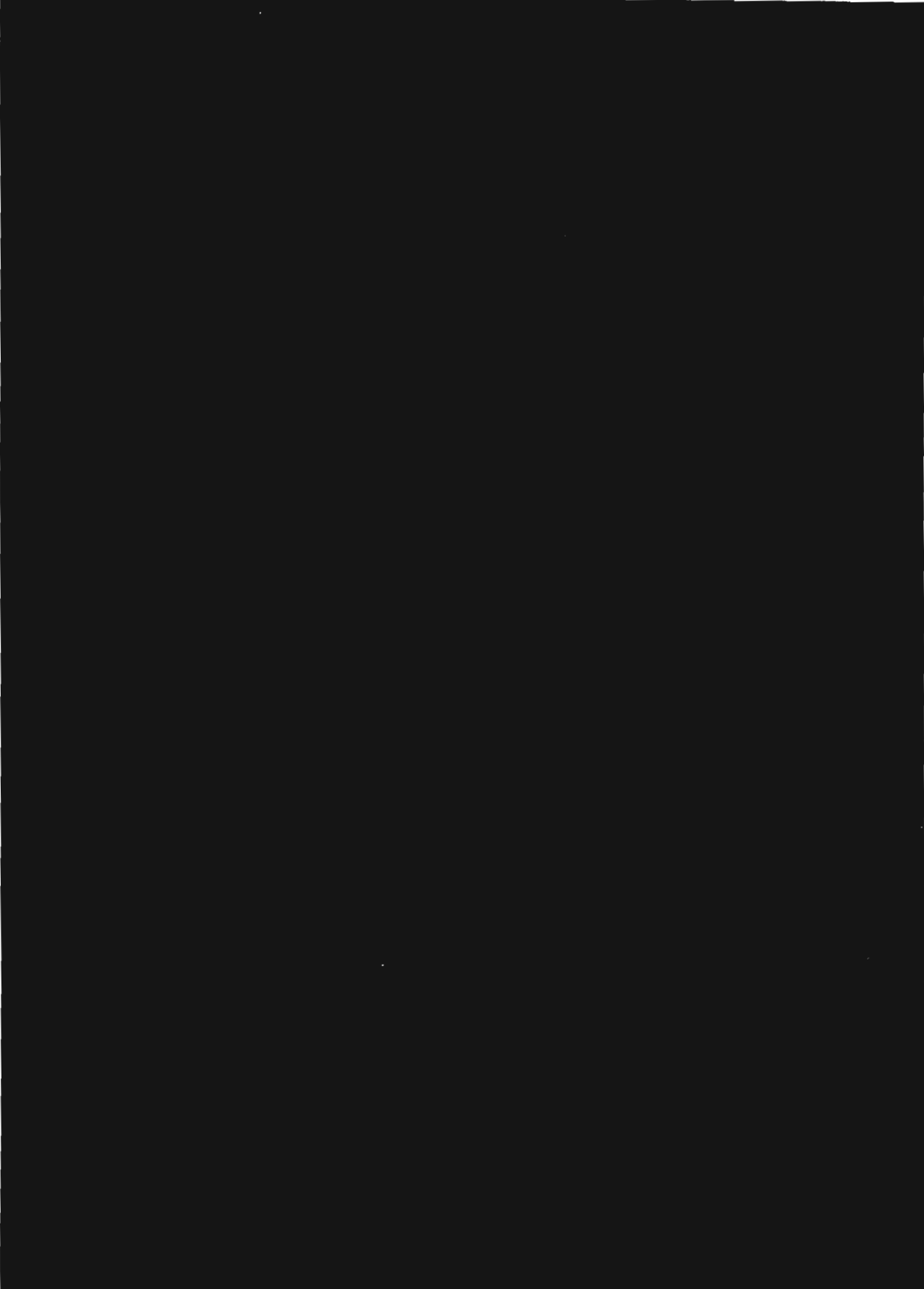
1 damages, whether by virtue of any Law or otherwise. Provided further, the fact that any
 2 arbitration proceeding is conducted hereunder and the decision of the arbitrators shall be
 3 deemed Confidential Information under Section 21.2; provided further, notwithstanding any
 4 provision in Article 21, Confidential Information, to the extent relevant, may be disclosed by
 5 any Party to the arbitrators conducting the arbitration and any court of competent jurisdiction
 6 enforcing the arbitrators' award.

7 **18.3 Binding Nature of Proceedings.** Each Party understands that this Agreement
 8 contains an agreement to arbitrate with respect to specified disputes. After signing this
 9 Agreement, each Party understands that it will not be able to bring a lawsuit concerning any
 10 dispute that may arise that is covered by this arbitration provision. Instead, each Party agrees to
 11 submit any such dispute to arbitration pursuant to Section 18.2. Any award of the arbitrator
 12 may be enforced by the Party in whose favor such award is made in any court of competent
 13 jurisdiction.

14 **ARTICLE 19**
 15 **ASSIGNMENT**

16 **19.1 Assignment.** Either Party may assign outright or collaterally this Agreement
 17 and its rights and obligations hereunder subject to the written consent of the other Party (which
 18 consent shall not be unreasonably withheld); provided that either Party may assign outright this
 19 Agreement and its rights and obligations hereunder without the consent of the other Party to any
 20 person with

21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]



1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

who has the legal power and authority, licenses and technical ability to perform and satisfy the obligations of the assigning Party under this Agreement (an "Eligible Assignee"). The assigning Party will notify the other Party in writing prior to any assignment with respect to which consent is not required hereunder. No assignment by a Party of this Agreement or its rights or obligations hereunder shall relieve the assigning Party of liability for its obligations under this Agreement without the written release of the other Party. Such release shall not be withheld if the Assignment Conditions (defined below) are satisfied.

19.2 Assignment Conditions. The non-assigning Party's obligation to recognize or perform for any person claiming rights in this Agreement by outright assignment or through collateral assignment (an "Assignee") shall be subject to such Assignee: (i) establishing that it satisfies the qualifications of an Eligible Assignee; (ii) having cured all existing Events of Default under this Agreement; and (iii) having executed and delivered to the non-assigning Party an assignment and assumption agreement whereby the Assignee assumes and agrees to satisfy all conditions and pay and perform all obligations in favor of the non-assigning Party then existing and/or thereafter arising under this Agreement (the "Assignment Conditions").

1 Any attempted assignment, directly or indirectly, by way of merger or otherwise, which is not in
2 compliance with the terms hereof shall be void and ineffective.

3 **ARTICLE 20**

4 **CREDITWORTHINESS AND SECURITY**

5 **20.1 Buyer's Provision of a Letter of Credit or Guaranty**

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

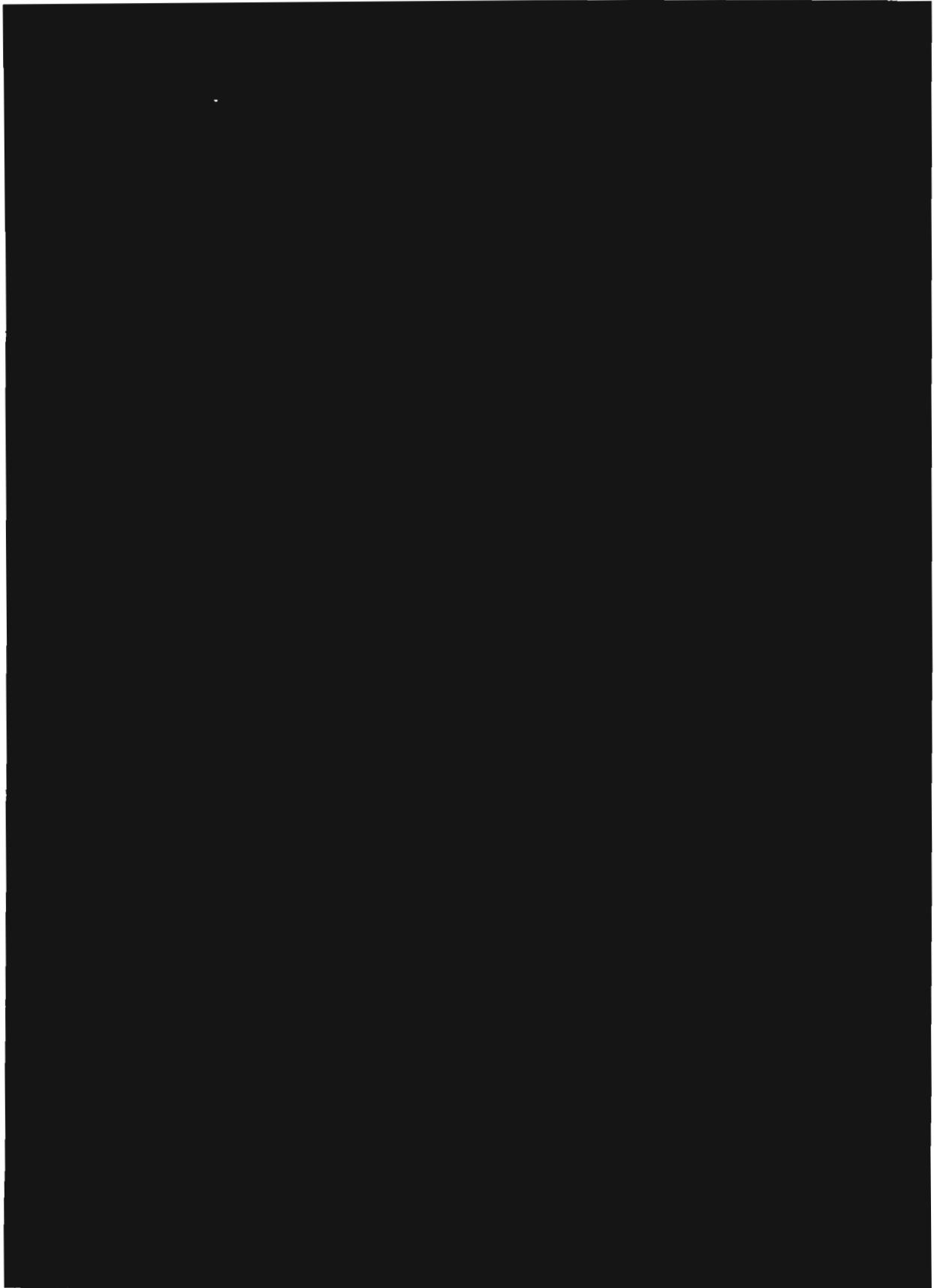
19 [REDACTED]

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21 [REDACTED]

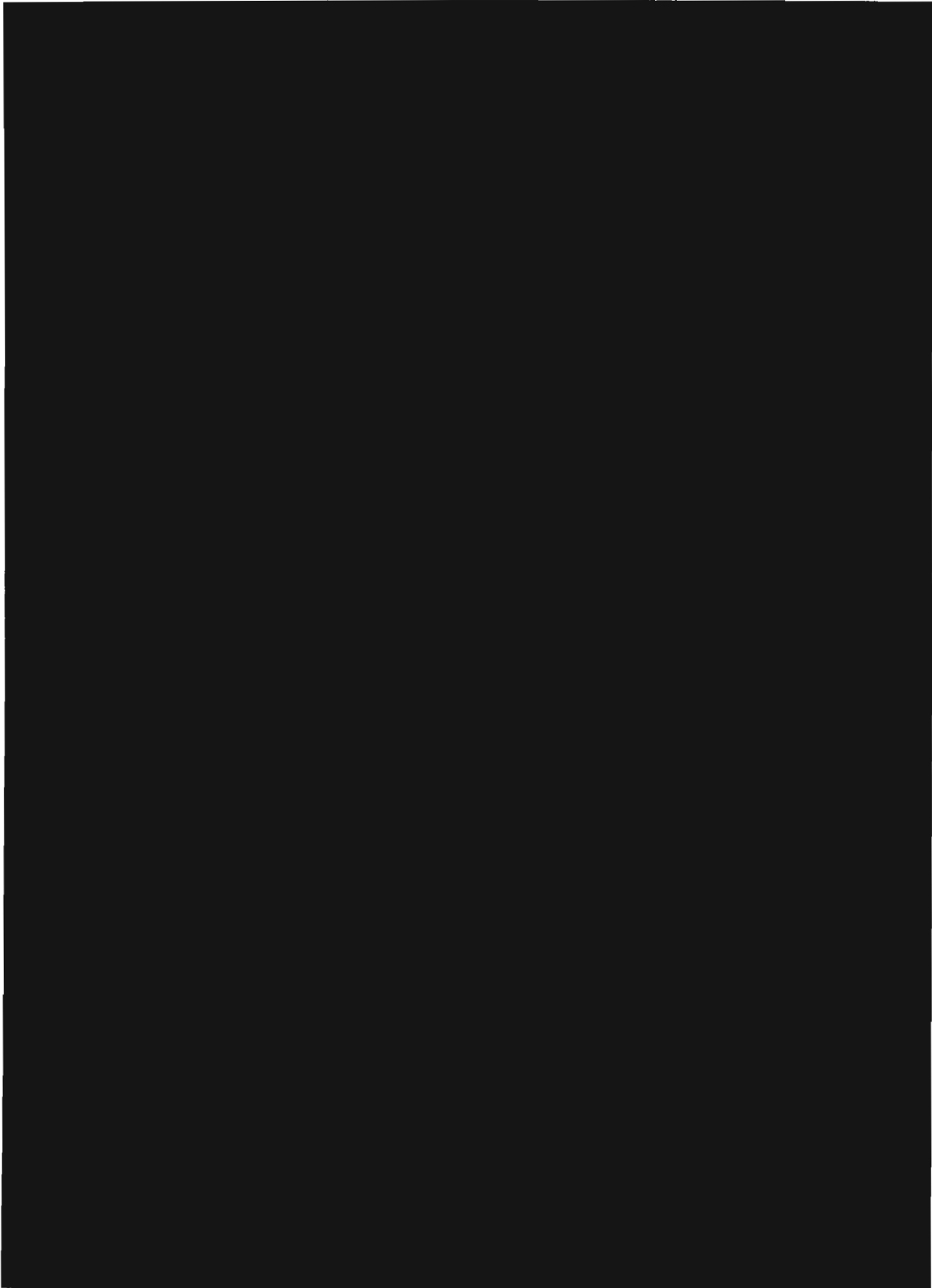
22 [REDACTED]

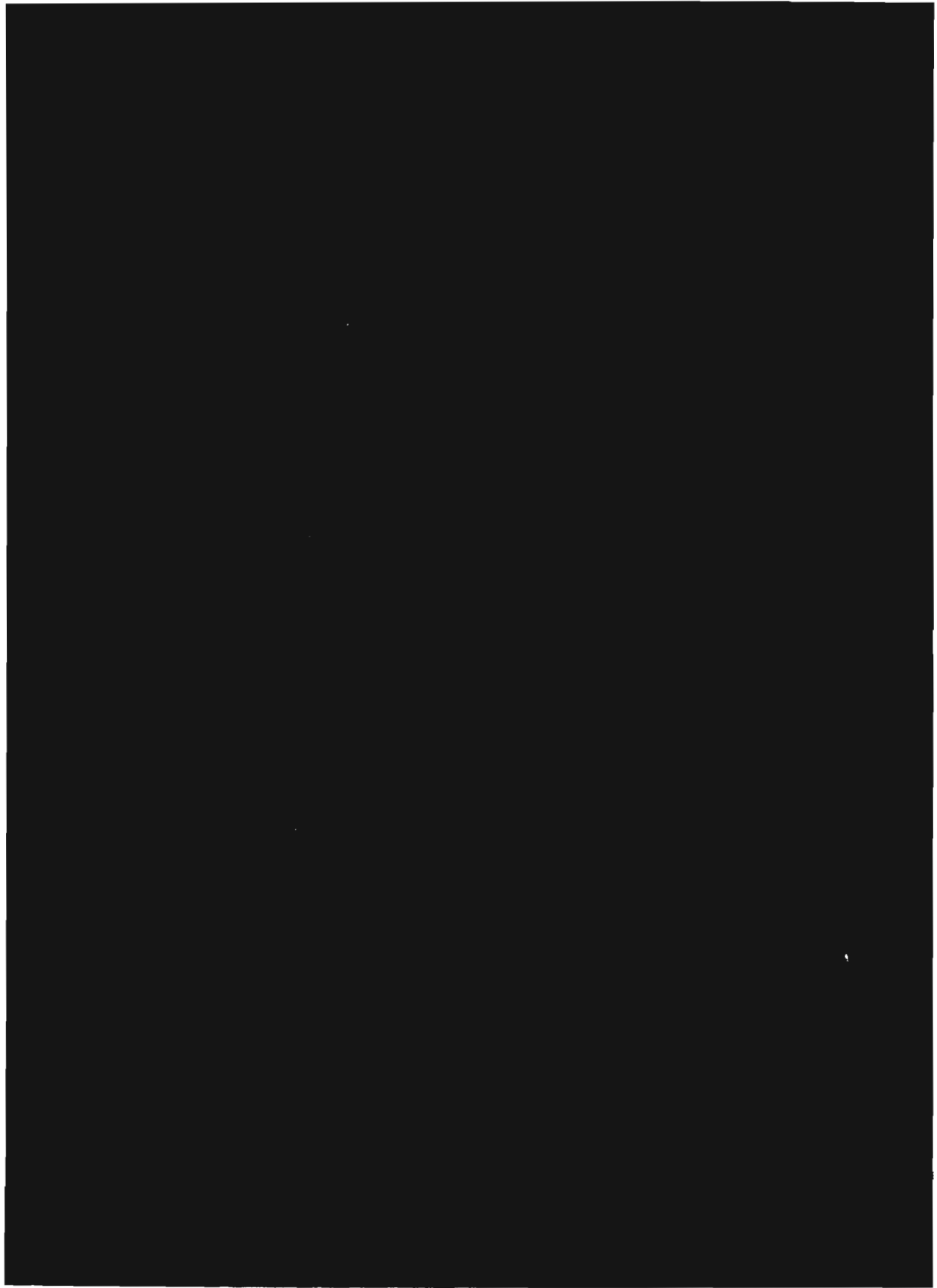


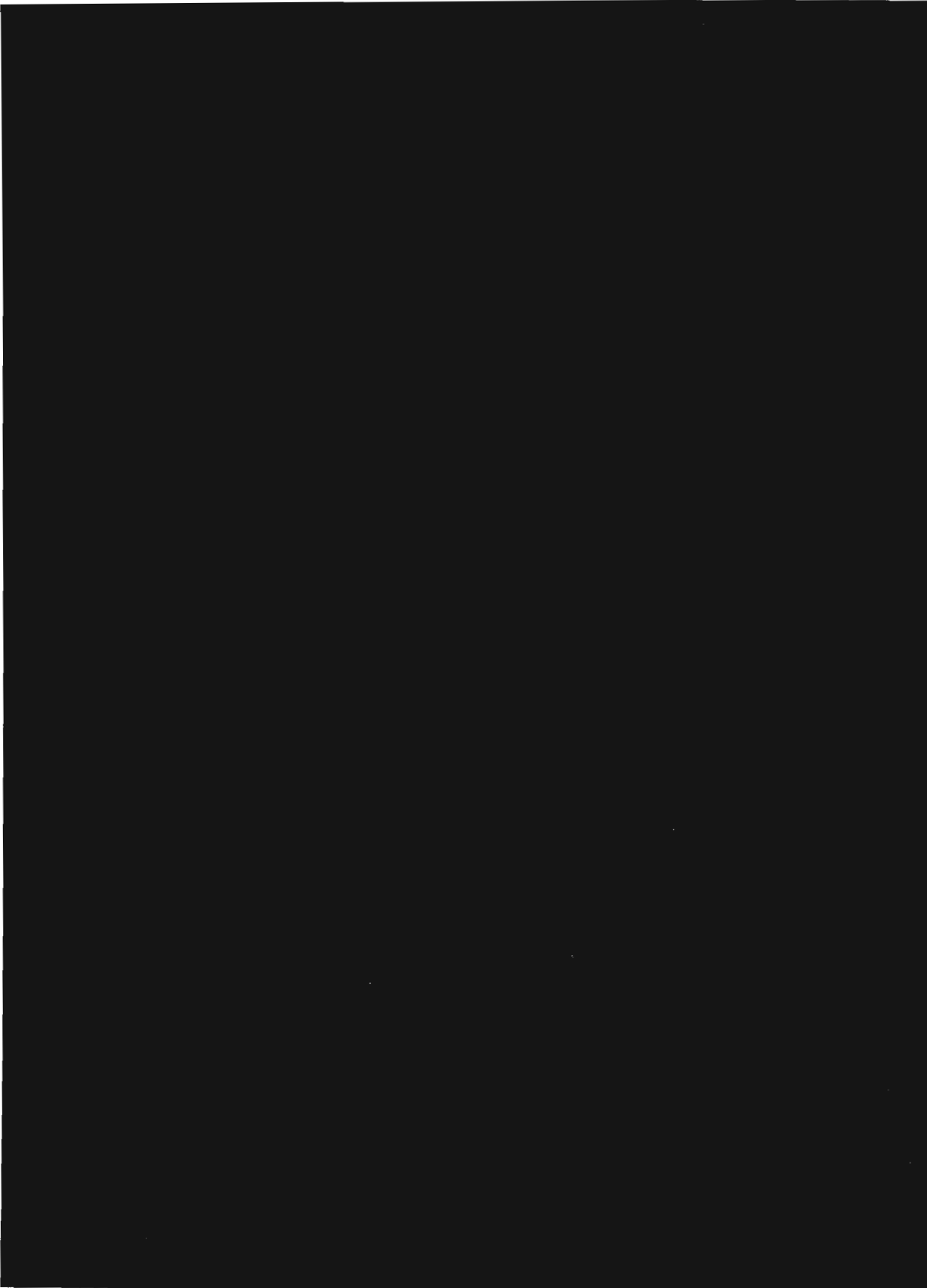




1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 20.2 Seller's Provision of a Letter of Credit or Guaranty [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]







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ARTICLE 21

MISCELLANEOUS

21.1 Governing Law; Waiver of Jury Trial.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA, EXCLUSIVE OF ITS CONFLICTS OF LAW PROVISIONS, AND, TO THE EXTENT APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA. BY CHOOSING TO HAVE THIS AGREEMENT GOVERNED BY AND CONSTRUED UNDER THE LAW OF THE STATE OF FLORIDA, THE PARTIES ARE IN NO WAY SUBMITTING TO OR INCORPORATING INTO THIS AGREEMENT ANY FLORIDA STATUTE, REGULATION, OR ORDER, OR ANY OF THE SAME INVOLVING THE GENERATION, SALE, PURCHASE OR TRANSMISSION OF ELECTRIC CAPACITY OR ELECTRIC ENERGY IN, OR FOR CONSUMPTION IN, THE STATE OF FLORIDA. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

21.2 Confidentiality.

21.2.1 Scope of Protection.

(i) For purposes of this Section 21.2: (a) "Seller Confidential Information" means the terms of this Agreement and all drafts of the same, together with any documents, data or drafts labeled or otherwise expressly identified as "Confidential" by Seller

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when provided to Buyer; (b) "Buyer Confidential Information" means the terms of this Agreement and all drafts of the same, together with any documents, data or drafts labeled or otherwise expressly identified as "Confidential" by Buyer when provided to Seller; and (c) "Confidential Information" means collectively the Seller Confidential Information and the Buyer Confidential Information.

(ii) Seller shall not disclose to third parties any Buyer Confidential Information; provided that nothing contained herein shall prohibit Seller from providing any such Buyer Confidential Information to its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons in connection with the acquisition of all or a significant portion of the assets or stock of Southern Power or any of its Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or other financing activities by Southern Power or any of its Affiliates who in the reasonable judgment of Seller should have access to such Buyer Confidential Information and are bound by an obligation to maintain such confidentiality provided that Seller shall be responsible for any use or disclosure of such Buyer Confidential Information by any of its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons inconsistent with this Section 21.2; provided further that nothing contained herein shall prohibit Seller from providing Buyer Confidential Information to the NERC or SEARUC solely to the extent that (i) Seller determines in its reasonable discretion that the provision of such information is required to enhance and/or maintain reliability; (ii) such entity is obligated to maintain such confidentiality;

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and (iii) Seller has notified Buyer of its intention to release such information no less than 5 Business Days prior to the release subject to the requirements of applicable law and regulation.

(iii) Buyer shall not disclose to third parties any Seller Confidential Information; provided that nothing contained herein shall prohibit Buyer from providing any such Seller Confidential Information to its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons in connection with the acquisition of all or a significant portion of the assets or stock of Buyer or any of its Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or other financing activities by Buyer or any of its Affiliates who in the reasonable judgment of Buyer should have access to such Seller Confidential Information and are bound by an obligation to maintain such confidentiality provided that Buyer shall be responsible for any use or disclosure of such Seller Confidential Information by any of its or its Affiliates' agents, employees, officers, directors, representatives, contractors, advisors, accountants, rating agencies, underwriters, investors, counsel, prospective or actual purchasers, prospective or actual lenders or such other Persons inconsistent with this Section 21.2; provided further that nothing contained herein shall prohibit Buyer from providing Seller Confidential Information to the NERC or SEARUC solely to the extent that (i) Buyer determines in its reasonable discretion that the provision of such information is required to enhance and/or maintain reliability, (ii) such entity is obligated to maintain such confidentiality, and (iii) Buyer has notified Seller of its intention to release such information no less than 5 Business Days prior to the release subject to the requirements of applicable law and regulation.

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(iv) Notwithstanding the foregoing, either Party may disclose Confidential Information (i) to the extent relevant, to the independent parties determining Seller's Damages or Buyer's Damages (as appropriate), and (ii) to its and its Affiliates' employees, officers, directors, accountants, counsel and other advisors who need to know such information in connection with the performance of their duties or services for the disclosing Party or its Affiliates; provided, however, that such Persons shall be required to maintain the confidentiality of such information consistent with the requirements of this Agreement.

21.2.2 Required and Other Disclosure.

(i) Notwithstanding anything in this Section to the contrary, if Buyer is required by applicable law or regulation, or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Seller Confidential Information or otherwise intends to disclose Seller Confidential Information to FERC or its staff (other than at the request or requirement of FERC or its staff) or pursuant to the request or requirement of any appropriate state regulatory commission or body, Buyer may make disclosure of such Seller Confidential Information; provided, however, that all reasonable steps are taken by Buyer to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as Buyer learns of the disclosure request or requirement or otherwise intends to disclose any Seller Confidential Information pursuant hereto and prior to making disclosure, Buyer shall, to the extent permitted by law, notify Seller of the requirement, request or intention and the terms thereof and any Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. Buyer, at Seller's expense, shall cooperate with Seller to the maximum extent practicable to minimize the disclosure of the Seller Confidential Information consistent

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with applicable law. Buyer shall cooperate with Seller to obtain proprietary or confidential treatment of such Seller Confidential Information by the Person to whom such Seller Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate remedy or the receipt of a waiver by Seller, Buyer is nonetheless, in the written opinion of counsel, legally compelled to disclose Seller Confidential Information or otherwise may become subject to contempt or other censure or penalty, Buyer may, in such instance but not otherwise, without liability hereunder, disclose that portion of the Seller Confidential Information which and to whom such counsel advises Buyer is legally required to be disclosed (but none other), provided that Buyer exercises Commercially Reasonable Efforts to preserve the confidentiality of the Seller Confidential Information, including by cooperating with Seller to obtain an appropriate protective order or other reliable assurance that the Seller Confidential Information shall be accorded confidential treatment. Seller shall be liable for all reasonable legal costs incurred by Buyer in cooperating with Seller to obtain such an appropriate protective order or confidential treatment.

(ii) Notwithstanding anything in this Section to the contrary, if Seller is required by applicable law or regulation, or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Buyer Confidential Information or otherwise intends to disclose Buyer Confidential Information to FERC or its staff (other than at the request or requirement of FERC or its staff) or pursuant to the request or requirement of any appropriate state regulatory commission or body, Seller may make disclosure of such Buyer Confidential Information; provided, however, that all reasonable steps are taken by Seller to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as Seller learns of the disclosure

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request or requirement or otherwise intends to disclose any Buyer Confidential Information pursuant hereto and prior to making disclosure, Seller shall, to the extent permitted by law, notify Buyer of the requirement, request or intention and the terms thereof and any Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. Seller, at Buyer's expense, shall cooperate with Buyer to the maximum extent practicable to minimize the disclosure of the Buyer Confidential Information consistent with applicable law. Seller shall cooperate with Buyer to obtain proprietary or confidential treatment of such Buyer Confidential Information by the Person to whom such Buyer Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate protective remedy or the receipt of a waiver by Buyer, Seller is nonetheless, in the written opinion of counsel, legally compelled to disclose Buyer Confidential Information or otherwise may become subject to contempt or other censure or penalty, Seller may, in such instance but not otherwise, without liability hereunder, disclose that portion of the Buyer Confidential Information which and to whom such counsel advises Seller is legally required to be disclosed (but none other), provided that Seller exercises Commercially Reasonable Efforts to preserve the confidentiality of the Buyer Confidential Information, including, without limitation, by cooperating with Buyer to obtain an appropriate protective order or other reliable assurance that the Buyer Confidential Information shall be accorded confidential treatment. Buyer shall be liable for all reasonable legal costs incurred by Seller in cooperating with such Buyer to obtain an appropriate protective order or confidential treatment.

(iii) Nothing in this Section 21.2 shall prohibit or otherwise limit the use or disclosure of Confidential Information if such Confidential Information: (i) was

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previously known to the disclosing or using Party unrelated to this Agreement without an obligation of confidentiality; (ii) was developed by or for the disclosing or using Party unrelated to this Agreement using nonconfidential information; (iii) was acquired by the disclosing or using Party from a third party which is not, to the disclosing or using Party's knowledge, under an obligation of confidence with respect to such information; (iv) is or becomes publicly available other than through a manner inconsistent with this Section 21.2; or (v) is provided or made available for inspection by Seller or Buyer under public records or public disclosure laws but only to the extent required to be so provided or made available.

(iv) The provisions of this subsection shall supercede any contrary provisions of this Section 21.2 regarding the disclosure of information to FERC or its staff pursuant to the request or requirement of FERC or its staff. In providing Buyer Confidential Information to FERC or its staff pursuant to the request or requirement of FERC or its staff, Seller shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. To the extent permitted by law, Seller shall promptly notify Buyer when it is required or requested by FERC or its staff to disclose Buyer Confidential Information. Seller shall not be prohibited to make or liable for the disclosure to FERC or its staff of any Buyer Confidential Information pursuant to the request or requirement of FERC or its staff consistent with this subsection. In providing Seller Confidential Information to FERC or its staff pursuant to the request or requirement of FERC or its staff, Buyer shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. To the extent permitted by law, Buyer shall promptly notify Seller when it is required or requested by FERC or its staff to

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disclose Seller Confidential Information. Buyer shall not be prohibited to make or liable for the disclosure to FERC or its staff of any Seller Confidential Information pursuant to the request or requirement of FERC or its staff consistent with this subsection. Notwithstanding the foregoing, the Parties acknowledge that any request of FERC for confidential treatment of information may be denied by FERC in whole or in part.

(v) The Parties agree to seek confidential treatment of the Confidential Information from the FPSC to the maximum extent possible pursuant to Chapter 366.093, Florida Statutes, and Rule 25-22.006 of the Florida Administrative Code; however, notwithstanding the foregoing, the Parties acknowledge that a request for confidential treatment of Confidential Information may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the FPSC to such information. In the event any Confidential Information will need to be disclosed in connection with the application for the FPSC Approval, Buyer shall consult and cooperate with Seller prior to such disclosure, including, without limitation, in determining the extent to which confidential treatment will be sought for such terms, conditions and provisions.

(vi) Seller may file this Agreement with the Securities and Exchange Commission ("Commission") as may be necessary under the Public Utility Holding Company Act and the rules and regulations thereunder in connection with Seller's application to the Commission for such orders and approvals as may be required for financing and/or the issuance and sale of interests in or debt issued or to be issued by Seller and/or its Affiliates. Seller shall request confidential treatment of the Buyer Confidential Information in this Agreement in connection with such filing; however, the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the

1 Commission to such information. In addition, Seller may disclose such Buyer Confidential
2 Information as required by the Commission pursuant to the Securities and Exchange Act of
3 1934, as amended, and any rule or regulation promulgated thereunder.

4 (vii) Except for filings with the Commission or other regulatory
5 authorities, any public statement and/or press release by a Party hereto concerning this
6 Agreement (except statements or releases by the Non-Defaulting Party after an Event of
7 Default) shall be reviewed and agreed upon by the Parties before release, which agreement shall
8 not be unreasonably withheld or delayed.

9 The obligations under this Section 21.2 with respect to any Party shall survive
10 until the earlier of [REDACTED]

21.3 Survivorship of Obligations. Termination of this Agreement shall not discharge any Party from any obligation it owes the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense or liability occurring, accruing or arising prior to such termination. It is the intent of the Parties that any such obligation owed (whether the same shall be known or unknown as of the termination or cancellation of this Agreement) will survive the termination or cancellation of this Agreement in favor of the Party to which such obligation is owed. The Parties also intend that the indemnification and limitation of liability provisions contained in Sections 14.2 and 14.3 shall remain operative and in full force and effect and that any specific survivability provisions in any other sections be given full effect.

21.4 No Third Party Beneficiaries. This Agreement is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any Persons, corporations, associations, or entities other than the Parties and their permitted successors and assigns, and the rights and obligations of each of the Parties under this Agreement are solely for

1 the use and benefit of, and may be enforced solely by the Parties, their permitted successors and
2 assigns.

3 **21.5 Section Headings Not to Affect Meaning.** The descriptive headings of the
4 various Articles and Sections of this Agreement have been inserted for convenience of reference
5 only and shall in no way modify or restrict any of the terms and provisions thereof. References
6 to "Articles", "Sections" and "Appendices" in this Agreement shall mean the Articles, Sections
7 and Appendices of this Agreement unless otherwise expressly noted.

8 **21.6 Computation of Time.** In computing any period of time prescribed or allowed
9 by this Agreement, the designated period of time shall begin to run on the Day immediately
10 following the Day of the act, event or default that precipitated the running of the designated
11 period of time. The designated period shall expire on the last Day of the period so computed
12 unless that Day is not a Business Day, in which event the period shall run until the end of the
13 next Business Day.

14 **21.7 Interest.** Whenever the provisions of this Agreement require the calculation of
15 an interest rate, such rate shall be computed at an annual rate equal to the Prime Rate as of the
16 date on which the calculation begins, but not to exceed the maximum rate which may be
17 lawfully charged. Interest on obligations arising under this Agreement shall be compounded
18 daily and be calculated based on a 360 day year.

19 **21.8 Entire Agreement.** [REDACTED]
20 [REDACTED] this Agreement constitutes the entire
21 agreement between the Parties relating to the subject matter hereof and supersedes any other
22 agreements, written or oral, between the Parties concerning such subject matter. The Parties
23 have entered into this Agreement in reliance upon the representations and mutual

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understandings contained herein and not in reliance upon any oral or written representation or information provided by one Party to another Party not contained or incorporated herein.

21.9 Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21.10 Amendments. This Agreement may only be amended by written agreement signed by duly authorized representatives of the Parties.

21.11 Waivers. Waivers of the provisions of this Agreement or excuses of any violations of this Agreement shall be valid only if in writing and signed by an authorized officer of the Party issuing the waiver or excuse. A waiver or excuse issued under one set of circumstances shall not extend to other occurrences under similar circumstances.

21.12 No Partnership Created. Any provision of this Agreement to the contrary notwithstanding, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. If it should appear that one or more changes to this Agreement would be required in order not to create an entity referenced in the preceding sentence, the Parties agree to negotiate promptly and in good faith with respect to such changes.

21.13 Character of Sale. The sale of capacity and energy hereunder shall not constitute a sale, lease, transfer or conveyance to Buyer or any other party of any contractual rights or ownership interests in any generating unit or other equipment comprising the Facility, nor does the sale of capacity and energy hereunder constitute a dedication of ownership of any generating unit or other equipment comprising the Facility.

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21.14 Notices. Any notice, demand, request, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other, shall be in writing (unless otherwise expressly provided by this Agreement) and shall be considered duly delivered when received by hand delivery, first-class mail, facsimile, or by overnight delivery, at the address(es) and to the attention of the person(s) listed below; provided, however, if actual delivery occurs at a time other than between the hours of 0800 and 1700 CPT on a Business Day (each a "Business Hour"), delivery shall be deemed to have occurred in the next Business Hour after actual delivery.

(i) To Seller:

**Vice President, Business Development
Southern Company Generation and Energy Marketing
Bin 935
270 Peachtree Street, NW
Atlanta, Georgia 30303**

**Telephone: 404-506-0346
Facsimile: 404-506-0399**

With a copy to:

**Senior Vice President, General Counsel and Assistant Secretary
Southern Power Company
600 North 18th Street
Birmingham, Alabama 35203**

**Telephone: 205-257-0472
Facsimile: 205-257-2027**

And

**Vice President, Fleet Operations and Trading
Southern Company Services, Inc.
600 North 18th Street, GS-8259
Birmingham, Alabama 35203**

**Telephone: 205-257-6139
Facsimile: 205-257-4441**

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(ii) To Buyer:

Vice President, Energy Marketing and Trading
Florida Power & Light Company
700 Universe Boulevard
EMT/JB
Juno Beach, Florida 33408

Telephone: 561-691-7878
Facsimile: 561-691-7759

With a copy to:

Director, Resource Assessment and Planning
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Telephone: 305-552-3622
Facsimile: 305 552-2905

Either Party may change the information set forth in this Section 21.14 by giving written notice to the other Party in the manner prescribed by this Section.

21.15 Survival. Any provision(s) of this Agreement that expressly comes into or remains in force following the termination or expiration of this Agreement shall, subject to the express terms of the relevant provision, survive the termination or expiration of this Agreement.

21.16 Construction. The language used in this Agreement is the product of both Parties' efforts. Accordingly, each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.

21.17 Imaged Agreement. Any original executed Agreement, schedule confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the

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schedule confirmation, if introduced as evidence in automated facsimile form, the transaction tape, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the transaction tape, the schedule confirmation or the Imaged Agreement (or photocopies of the transcription of the transaction tape, the schedule confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

21.18 Severability. If any provision or provisions of this Agreement or the application thereof to any Person or circumstance or in any jurisdiction is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable as written for any reason, then it is the intent of each of the Parties that any such provision or provisions shall be given force and effect to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Agreement and the application of such provision or provisions to other Persons or circumstances or in other jurisdictions shall be deemed valid and enforceable to the fullest extent possible and continue in force and effect. If the determination that any provision or provisions hereof are illegal, invalid, unlawful, void or unenforceable (even after such provision or provisions are given force and effect to the fullest extent possible) results in a significant material deviation from the Parties' original intent or economic expectations regarding this Agreement, the Parties shall negotiate to (and/or the applicable court, in its discretion, may) replace any such illegal, invalid, unlawful, void or unenforceable provision or

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provisions with valid provision(s) which result in the least deviation from the Parties' intent and economic expectations.

21.19 Agency of Southern Company Services, Inc. Seller hereby designates Southern Company Services, Inc. to serve as its agent for purposes of the implementation and administration of this Agreement. Seller may designate a new agent from time to time under this Agreement by giving Buyer 60 Days written notice in which event Southern Company Services, Inc.'s role, as agent, shall cease and the newly-designated agent shall be substituted for the sole purpose of serving and acting as agent for Seller hereunder.

21.20 Include. As used herein, the words "include" or "including" shall be deemed to be followed by the words "without limitation."

21.21 Examples. Examples of calculations pursuant to the provisions of this Agreement are set forth in Appendix H. Such calculations are for example purposes only and are not intended to, and shall not, modify any of the terms of this Agreement. To the extent there is a conflict between any of these examples and the other terms of this Agreement, such other terms shall govern. Moreover, such examples shall be given no weight in interpreting or construing the provisions of this Agreement.

[The Next Page is the Signature Page.]

EXECUTION COPY

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed in duplicate by their respective duly authorized officers as of the Effective Date.

SOUTHERN COMPANY SERVICES, INC.

As Agent for
Southern Power Company

BY: _____

NAME: William N. McKenzie

TITLE: Vice President

FLORIDA POWER & LIGHT COMPANY

BY: _____

NAME: Terry L. Morrison

TITLE: Vice President

1

APPENDIX A

2

MONTHLY CAPACITY PAYMENT CALCULATION

3 A. Monthly Capacity Price

4 The Monthly Capacity Price for each Month of the Service Term shall be [REDACTED]/kW-
5 month.

6 B. Monthly Capacity Payment

7 For each Month, the Monthly Capacity Payment ("MCP") shall be calculated as follows:

8 MCP [REDACTED]
9 [REDACTED]

10 Where:

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 In the event that Buyer's obligation to purchase Contract Capacity begins on a Day other than
15 the first Day of a Month, or if Buyer's obligation to purchase Contract Capacity ends on a Day
16 other than the last Day of a Month, the calculation of the Monthly Capacity Payment and/or
17 Capacity Availability Performance Adjustment will be determined on a pro rata basis.

18 C. Capacity Availability Performance Adjustment

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 [REDACTED]

23 Where:

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]

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13 If the CAPA is positive, then Buyer owes Seller the amount of the CAPA. If the CAPA is
14 negative, then Seller owes Buyer the absolute value of the CAPA. After CAPA is calculated by
15 Seller, Seller shall adjust the next Monthly invoice to Buyer to reflect CAPA as either a credit to
16 Buyer or an additional amount owed to Seller (as applicable).

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Table A-1
Capacity Adjustment Factor for Peak Performance Period

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[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

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Table A-2
Capacity Adjustment Factor for Normal Off-Peak Performance Period

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27
28

[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

1 **Table A-3**
2 **Capacity Adjustment Factor for Major Maintenance Off-Peak Performance Period**

3 [Redacted]

4 [Redacted]

5 [Redacted]

6 [Redacted]

7 [Redacted]

8 For purposes of Tables A-1, A-2 and A-3, for each Performance Period, the ADA shall
9 be determined by Seller as follows:

10 ADA = [Redacted]

11 Where:

12 [Redacted]

13 [Redacted]

14 [Redacted]

15 [Redacted]

16 [Redacted]

17 [Redacted]

APPENDIX B

ENERGY PAYMENT CALCULATION

The Monthly Energy Payment for each Month shall be determined according to the following formula:

MEP = [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Where:

MEP = the Monthly Energy Payment, expressed in dollars.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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12 Table B-1

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Table B-2

Heat Rates

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

APPENDIX C

CALCULATION OF START PAYMENT

The Monthly Start Payment ("MSP_M") shall be calculated for each Month as follows:

MSP_M = [REDACTED]

Where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[Redacted]

[Redacted]

[Redacted]

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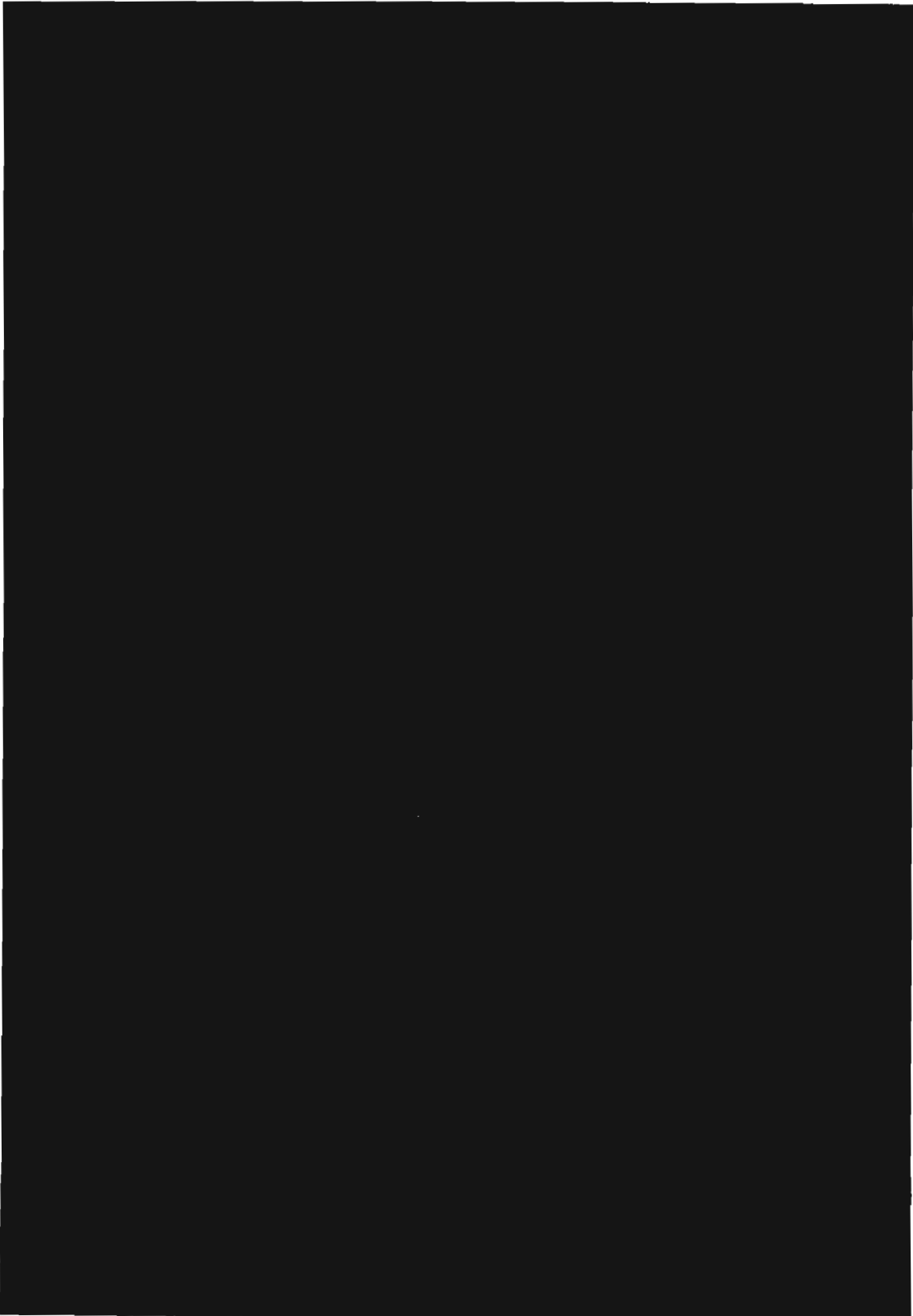
Table C-1

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		[Redacted]	
	[Redacted]	[Redacted]	[Redacted]
	[Redacted]	[Redacted]	[Redacted]
	[Redacted]	[Redacted]	[Redacted]
	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

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32
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[Redacted]



APPENDIX D

SCHEDULING PARAMETERS

The Scheduling Parameters are as follows:

Amounts of Scheduled Energy for Any Hour:

Buyer may Schedule energy associated with the Contract

[Redacted]

Table D-1

	MW
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

Minimum Duration of Schedule:

[Redacted]

Minimum Time between a Schedule Shut-Down and a Schedule Start:

[Redacted]

Compliance with Governmental Approvals and Laws

Under no circumstance shall Seller be required to operate the Facility in a manner that violates any Governmental Approval or Law.

APPENDIX E

DEMONSTRATION OF FACILITY GENERATING CAPABILITY AND TESTING

A. Demonstration of Generating Capability.



B. Testing Procedures



APPENDIX F
LETTER OF CREDIT

Beneficiary

Applicant

Attn: _____

We hereby issue our Irrevocable Standby Letter of Credit No. _____ in your favor for \$ _____ U.S. Dollars available for payment at sight in immediately available funds against your drafts drawn on us and accompanied by a Certificate signed by a purported Authorized Officer of _____, containing one or more of the following statements:

- (a) "An Event of Default by or attributable to _____ or any of its direct or indirect successors or assignees has occurred under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Southern Power Company, and Florida Power & Light Company entered into as of _____, 2004 (as amended, replaced or assigned, the "Agreement"), and the amount of the draft provided herewith does not exceed the amount owed or reasonably expected to be owed to the Beneficiary under the Agreement."
- (b) "Beneficiary has determined or been notified that the expiration date of Letter of Credit No. _____ will not be extended and _____ is required to but has not provided Beneficiary with an acceptable substitute letter of credit or guaranty and it is less than thirty days until the expiration date of such Letter of Credit No. _____."
- (c) "Beneficiary has designated an Early Termination Date resulting from an Event of Default by or attributable to _____ or any of its direct or indirect successors or assignees under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Southern Power Company, and Florida Power & Light Company entered into as of _____, 2004 (as amended, replaced or assigned, the "Agreement"), and the amount of the draft provided herewith does not exceed the amount owed or reasonably expected to be owed to the Beneficiary under the Agreement."

Special Conditions

- 1. Multiple and partial drawings are permitted.

2. Any drafts drawn under this Letter of Credit must bear the clause "Drawn under _____ Letter of Credit No. _____ Dated _____, _____."

3. This Letter of Credit expires at the counters of _____ at the close of business on _____, 20__ [insert date which is at least one year after the date of issuance of the letter of credit] (which date as may be extended in the manner provided herein is referred to as the "expiration date"). The expiration date shall be deemed automatically extended without amendments for one year from the initial expiration date and thereafter for one year from each anniversary of the initial expiration date unless at least sixty (60) days prior to the then applicable expiration date we notify Beneficiary in writing by facsimile at _____, Attention: _____, and by overnight courier to _____, Attention: _____ with a copy to _____ that we are not going to extend the expiration date.

4. We hereby engage with the Beneficiary that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored by us upon presentation to ourselves by payment in accordance with the Beneficiary's payment instructions. If requested by the Beneficiary, payment under this Letter of Credit will be made by wire transfer of immediately available funds to Beneficiary's account at any financial institution located in the continental United States. All payments under this Letter of Credit will be made in our own funds.

5. This Letter of Credit is subject to and governed by the ICC Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication Number 500 (the "UCP"), and, to the extent not inconsistent therewith, the laws of the State of [_____]. Anything to the contrary in Article 41 of the UCP notwithstanding, this Letter of Credit is intended to remain in full force and effect until it expires in accordance with its terms. Any failure by you to draw upon this Letter of Credit shall not cause this Letter of Credit to be unavailable for any future drawing. If this Letter of Credit expires during an interruption of business as described in Article 17 of the UCP, we hereby specifically agree to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

6. Anything to the contrary in Article 48 of the UCP notwithstanding, this Letter of Credit is transferable any number of times, but only in the full unutilized balance hereof and not in part. Transfer shall be effective upon execution and delivery by Beneficiary to us of our standard transfer form together with the original of this Letter of Credit and payment of our standard transfer fee. Transfer may be made only to any person or entity which is a direct or indirect permissible assignee of you or successor to you under that certain Contract for the Purchase of Capacity and Energy originally between Southern Company Services, Inc., as agent for Southern Power Company, and Florida Power & Light Company entered into as of _____, 2004, as amended, replaced or assigned.

7. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto, or upon our ability to perfect any lien, security interest or any other reimbursement.

As used herein, "Authorized Officer" shall mean the President or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer, Officer or Assistant Officer of the relevant signing person.

(Signed)

APPENDIX G

PARENT GUARANTY

This Parent Guaranty ("Guaranty Agreement") is made and entered into as of the _____ day of _____, 200_____ by _____, a _____ (together with its successors, "Guarantor"), in favor of _____, a _____ (collectively with its successors and permitted assigns, "Beneficiary").

RECITALS:

A. _____, a _____ (collectively with its successors and permitted assigns, "Contractor"), and Beneficiary directly and/or through their respective agents have entered into that certain Contract for the Purchase of Capacity and Energy, dated as of _____, 200_____ (as the same may be amended, restated, replaced and/or assigned, the "PPA").

B. Guarantor has agreed to execute, deliver and perform this Guaranty Agreement in order to satisfy the terms and conditions of the PPA.

NOW, THEREFORE, with reference to the above recitals and in reliance thereon, in consideration of Beneficiary entering into and performing the PPA and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor agrees in favor of Beneficiary as follows:

1. General. Capitalized terms not otherwise defined in this Guaranty Agreement shall have the same meaning as ascribed to such terms in the PPA. Subject to the provisions of Sections 2, 3 and 11 below, Guarantor hereby absolutely, irrevocably and unconditionally guarantees and promises to pay to Beneficiary, its successors and permitted assigns, when due all of Contractor's present and future obligations, debts and liabilities of all kinds to Beneficiary under the PPA (as the same may be extended, amended, restated or replaced, the "Obligations"). Any payments made by Guarantor to Beneficiary hereunder shall be made in the lawful money of the United States in the amount(s) required under the PPA no later than four (4) Business Days following Beneficiary's delivery to Guarantor of written notice of an Event of Default by or attributable to Contractor under the PPA and demand for payment under this Guaranty Agreement. The foregoing demand for payment shall include, at a minimum, sufficient information to allow Guarantor to evaluate the request for payment and determine the nature of any non-payment by Contractor under the PPA. This Guaranty Agreement is a guaranty of payment and not of collection.

2. Nature of Guaranty. The Guarantor's obligations hereunder shall not be affected by any circumstances relating to the Obligations that might otherwise constitute a legal or equitable discharge of or defense to the Guarantor not available to Contractor. The Guarantor agrees that Beneficiary may resort to the Guarantor for payment of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Contractor or any other obligor principally or secondarily obligated with respect to any Obligations. Beneficiary shall not be obligated to file any claim relating to the Obligations in the event that Contractor or Guarantor becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Beneficiary to so file and any bankruptcy or insolvency of Contractor or Guarantor shall not affect the Guarantor's obligations

hereunder. In the event that any payment by Contractor or Guarantor in respect of any Obligations is voided, rescinded or recovered from Beneficiary as a preference or fraudulent transfer under the United States Bankruptcy Code or any applicable state law, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made and/or this Guaranty Agreement shall be reinstated as necessary. This Guaranty Agreement shall continue to be effective if Contractor or Guarantor merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

3. Maximum Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED OR IMPLIED ELSEWHERE IN THIS GUARANTY AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF GUARANTOR HEREUNDER IS \$ _____, TOGETHER WITH ANY AMOUNTS PAYABLE BY GUARANTOR PURSUANT TO SECTION 8.

4. Termination. This is a continuing guaranty of all present and future Obligations. If and only if (i) the PPA has expired or been properly terminated and all Obligations are indefeasibly paid or (ii) this Guaranty Agreement is no longer required to be maintained in effect pursuant to the terms of the PPA, then and only then, Guarantor may terminate this Guaranty Agreement effective thirty (30) days after written notice by the Guarantor to the Beneficiary of Guarantor's intention to terminate this Guaranty Agreement; provided further, that this Guaranty Agreement, if not sooner terminated or discharged, shall terminate at such time that Contractor otherwise satisfies the requirements of Section _____ of the PPA without giving effect to this Guaranty Agreement. If this Guaranty Agreement is so terminated or discharged, then Beneficiary shall return this original Guaranty Agreement to Guarantor within five (5) Business Days of Guarantor's written request. This Guaranty Agreement may not otherwise be terminated or revoked without Beneficiary's prior written consent. Notwithstanding the provisions of this Section 4, and despite any termination of this Guaranty Agreement (except to the extent that this Guaranty is required to be returned pursuant to the terms of this Section 4), this Guaranty Agreement shall remain in full force and effect and shall continue to apply to (i) all Obligations outstanding or due before the effective date of termination, and (ii) any extensions or renewals of, interest accruing on, or fees, costs or expenses (including attorney's fees) incurred with respect to, such Obligations.

5. No Conditions. This Guaranty Agreement is direct, continuing, unconditional, and absolute and is subject only to the defenses that may be expressly reserved by Guarantor under this Guaranty Agreement. Without limiting the generality of the foregoing, Guarantor agrees that this Guaranty Agreement is not conditioned upon its receipt of any type of notice except as set forth in Section 1 (including, but not limited to, notice of acceptance of this Guaranty Agreement), and Guarantor hereby waives any right it may otherwise have to same.

6. No Discharge. Without limiting the foregoing, to the extent permitted by applicable law, but subject to the provisions of Section 11, none of the following or any similar event or occurrence shall operate to discharge Guarantor hereunder:

- 6.1 Any modification of any contract between Beneficiary and Contractor;
- 6.2 Beneficiary's acceptance of any instrument in substitution for any claim or debt;
- 6.3 Any renewal, extension, modification or substitution of or for any instrument;

6.4 Any leniency or failure to pursue collection by Beneficiary with respect to Contractor or Guarantor;

6.5 Any release or impairment of collateral, if any, which secures payment of Contractor's obligations to Beneficiary; or

6.6 The inclusion by any subsequent separate agreement or by any amendment of this Guaranty Agreement at a later date of additional guarantors of the Obligations guaranteed hereunder, or the subsequent release of any one or more of such guarantors.

7. Consents, Waivers and Renewals. Guarantor agrees that Beneficiary may, at any time and from time to time, without notice to or consent of Guarantor and without impairing, reducing or releasing this Guaranty Agreement or the obligations of Guarantor hereunder: (1) extend the time of payment of any Obligations or take, exchange or surrender any collateral or security for any Obligations or renew or make any change in the terms of any Obligations or any other liability of Contractor or Guarantor to Beneficiary, (2) take or fail to take any action of any kind in respect of any security for any Obligations or other liability of Contractor or Guarantor to Beneficiary, (3) waive or release or exercise or refrain from exercising any rights against Contractor or Guarantor or others, (4) assign, create, renew, modify, replace, discharge, release, compromise or subordinate the PPA, any Obligations or any other liability of Contractor or Guarantor or any other person to Beneficiary or any security therefor, or (5) enter into, amend, replace or release any agreement effecting or modifying any of the foregoing.

8. Costs of Collection. The Guarantor will pay for all of Beneficiary's reasonable costs incurred in enforcing its rights under this Guaranty Agreement, by legal process or otherwise, including, but not limited to, Beneficiary's reasonable attorneys' fees; provided, however, if Beneficiary is unsuccessful in enforcing its rights under this Guaranty Agreement in the event of a dispute over amounts owing, Beneficiary shall be responsible for Beneficiary's costs and attorneys' fees arising in connection with such attempted enforcement of this Guaranty Agreement.

9. Subrogation. Guarantor waives and will not exercise any rights which it may acquire by way of subrogation until all the Obligations of Contractor under the PPA shall have been paid in full and this Guaranty Agreement shall have been terminated. Subject to the foregoing, upon payment of all the Obligations of Contractor under the PPA and termination of this Guaranty Agreement (but not before), Guarantor shall be subrogated to the rights of Beneficiary against Contractor in respect of payments made by Guarantor under this Guaranty Agreement.

10. Assignment. This Guaranty Agreement is assignable by Beneficiary to any Eligible Assignee to whom the PPA has been assigned by Beneficiary in accordance with the provisions of Section _____ thereof and shall inure to the benefit of Beneficiary, and its successors and permitted assigns. This Guaranty Agreement is not otherwise assignable by Beneficiary without the prior written consent of Guarantor. This Guaranty Agreement is not assignable or delegable by Guarantor without the prior written consent of Beneficiary which will not be unreasonably withheld or delayed.

11. Validity and Defenses. Guarantor represents and warrants to Beneficiary that this Guaranty Agreement has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms,

except as the enforceability of this Guaranty Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity. The Guarantor hereby reserves to itself all rights, counterclaims and other defenses which Contractor may have to payment of any amounts arising under or in respect of the PPA, except for defenses waived elsewhere in this Guaranty Agreement and except for defenses arising from the bankruptcy or insolvency of Contractor, Beneficiary (but subject to such rights with respect to Beneficiary's bankruptcy or insolvency as expressly reserved to Contractor in the PPA), Guarantor or any other party, or the power or authority of Contractor to enter into the PPA or to perform its obligations thereunder.

12. Governing Law. Legal rights and obligations hereunder shall be determined in accordance with the laws of the State of Beneficiary's principal place of business, without regard to the principles of conflicts of laws thereunder.

13. Severability. Every provision of this Guaranty Agreement is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

14. Notices. All notices, requests, demands and other communications required or permitted to be made or given under this Guaranty Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery, (ii) five (5) days after the date of deposit in the U.S. Mail, by registered or certified mail, postage prepaid, or (iii) the day after the date of delivery to a reputable overnight courier service for overnight delivery, in each case addressed to the parties as follows:

If to Beneficiary, to: _____

Attn: _____

If to Guarantor, to: _____

Attn: _____

Any party may change its address for receiving notice by written notice given to the other as set forth above.

15. Entire Agreement/No Amendment. This Guaranty Agreement constitutes the entire agreement and understanding of the parties hereto respecting its subject matter and supersedes all prior written and contemporaneous oral agreements, representations and understandings relating to its subject matter. No term hereof may be changed, waived, discharged or terminated unless by an instrument signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

16. No Waiver; Cumulative Rights. No failure or delay on the part of Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed Beneficiary by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary at any time or from time to time. Without limiting the foregoing: (i) this Guaranty Agreement shall not release, modify, revoke or terminate any other guaranty heretofore executed by Guarantor; nor shall any other guaranty hereafter executed by Guarantor release, modify, revoke or terminate this Guaranty Agreement except to the extent such subsequent guaranty makes specific reference to this Guaranty Agreement is agreed to in writing by Beneficiary and expressly so provides, and (ii) all of Guarantor's liabilities and obligations and Beneficiary's rights and remedies are cumulative.

17. Waivers. Guarantor waives notice of the PPA and the Obligations, any acceptance of this Guaranty Agreement, presentment, all rights of exemption, demand (except as set forth in Section 1), notice of dishonor, protest, notice of protest, notice of any sale of collateral security, notice of the release or discharge of any person or collateral and, except as expressly set forth above, all other notices.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty Agreement on the date shown below.

By: _____
Its: _____
Date: _____

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APPENDIX H

EXAMPLE CALCULATIONS

3 A. Hourly Capacity Calculations, EFMH, and EUH

4 Pursuant to Section 21.21 of this Agreement, Table H-1 provides the following example calculations:
5 hourly capacity calculations, Equivalent Force Majeure Hours, Equivalent Unavailable Hours, and
6 Monthly Capacity Payment. To facilitate clarity, some simplifying assumptions regarding data have
7 been made. The assumptions for these examples are set forth below and in Lines 1-14 of Table H-1.
8 Each example calculation, using line numbers, is set forth in the second column of the Table H-1.

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13 Assumptions for the examples in Table H-1 are:

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Table H-1

Assumptions

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Line	Calculations (Using Line Numbers)		Units	Value
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7				
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9				
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Example Hourly Calculations of Capacity, EFMH, and EUH

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Example Calculations of Monthly Capacity Payment

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1 **B. Capacity Availability Performance Adjustments**

2 Pursuant to Section 21.21 of the Agreement, Table H-2 provides the following example calculations:
3 Capacity Availability Performance Adjustment for a Peak Performance Period, Capacity Availability
4 Performance Adjustment for a Normal Off-Peak Performance Period, and Capacity Availability
5 Performance Adjustment for a Major Maintenance Off-Peak Performance Period.

6 Each example calculation, using line numbers, is set forth in the second column of Table H-2.

7 Assumptions for the examples in Table H-2 are:

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

Table H-2

Example Calculations of Capacity Availability Performance Adjustments

Peak Performance Period

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Line	Calculations (Using Line Numbers)	Assumptions	Units	Value
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Normal Off-Peak Performance Period

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Major Maintenance Off-Peak Performance Period

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1 C. Monthly Energy Payment

2 Pursuant to Section 21.21 of the Agreement, Table H-3 provides an example calculation of the
3 Monthly Energy Payment.

4 Each example calculation, using line numbers, is set forth in the second column of Table H-3.

5 Assumptions for the examples in Table H-3 are:

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

Table H-3

Example Calculation of Monthly Energy Payment

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Line	Calculations (Using Line Numbers)	Monthly Energy Payment Calculation	Units	Value
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5				
6				
7				
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26				
27				
28				
29				
30				

1 E. Monthly Fuel Transportation Payment

2 Pursuant to Section 21.21 of the Agreement, Table H-5 provides an example calculation of the
3 Monthly Fuel Transportation Payment.

4 The example calculation, using line numbers, is set forth in the second column of Table H-5.

5 Assumptions for the example in Table H-5 are:

6 [Redacted]
7 [Redacted]

8 Table H-5

9 Example Calculation of Monthly Fuel Transportation Payment

Line	Calculations (Using Line Numbers)	Units
10	[Redacted]	[Redacted]
11	[Redacted]	[Redacted]
12	[Redacted]	[Redacted]
13	[Redacted]	[Redacted]
14	[Redacted]	[Redacted]
15	[Redacted]	[Redacted]
16	[Redacted]	[Redacted]
17	[Redacted]	[Redacted]
18	[Redacted]	[Redacted]
19	[Redacted]	[Redacted]
20	[Redacted]	[Redacted]
21	[Redacted]	[Redacted]
22	[Redacted]	[Redacted]

b

ORIGINAL

Exhibit C

Justification Table

DOCUMENT NUMBER-DATE
11780 NOV-28
FPSC-COMMISSION CLERK

**EXHIBIT C
REVISED 11/2/2004**

COMPANY: Florida Power & Light Company
TITLE: Confidential Power Purchase Contract Information (T. Hartman Documents TLH-1, TLH-2, TLH-3)
Docket No: 040001-EI

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-1	Cover	1	N			
TLH-1	Page i	1	N			
TLH-1	Contract	1-8 9 10 11-13 14 15-16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41-49	N Y Y N Y N Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y N N Y Y N Y N Y Y N N Y Y Y N N	Lines 1-23 Lines 1-16 Lines 10-11 Lines 6-14 Lines 20-23 All Lines 14-23 All All All Lines 1-11, 12-22 Lines 1-18 Lines 16-22 Lines 7-8, 10-11, 20-23 Lines 1-4, 7-24 All Lines 1-11 Lines 18-23 Lines 1-3, 6-7, 11, 17-18 Lines 4-18 Lines 6-7, 20-23 Lines 1-5, 18	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
		50 51 52 53 54 55 56 57-60 61 62 63 64 65 66 67 68 69 70 71 72 73-80 81 82 83-88	Y Y N Y Y Y Y N Y Y Y Y Y Y Y Y Y Y Y Y Y Y N Y Y Y N	Lines 21-22 Lines 1-5 Lines 3-4, 7-8 Line 12 Line 9, 14-20 Line 9, 14-20 Lines 16-22 All Lines 1-4 Lines 3-22 All All All Lines 1-8, 9-20 All All All All Line 10 Line 19-20		
TLH-1	Appendix A – Monthly Capacity Payment Calculation	1	Y	Lines 4, 8-9, 11-13, 24-27	(d), (e)	T. Hartman
TLH-1	Appendix A – Monthly Capacity Payment Calculation	2	Y	All	(d), (e)	T. Hartman
TLH-1	Appendix B - Energy Payment Calculation and Emissions Adjustment	1	Y	Lines 6, 8-35	(d), (e)	T. Hartman
TLH-1	Appendix B - Energy Payment Calculation and Emissions Adjustment	2	Y	Lines 1-5, 7-30, 32-34	(d), (e)	T. Hartman
TLH-1	Appendix B - Energy Payment Calculation and Emissions Adjustment	3	Y	Lines 1-9, 11-22, 24-43	(d), (e)	T. Hartman
TLH-1	Appendix B - Energy Payment Calculation and Emissions Adjustment	4-5	Y	All	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-1	Appendix C – Calculation of Start Payment	1	Y	Lines 4, 6-8	(d), (e)	T. Hartman
TLH-1	Appendix D – Scheduling Parameters	1	Y	Lines 6-7, 9, 11	(d), (e)	T. Hartman
TLH-1	Appendix E – Letter of Credit	3	N			
TLH-1	Appendix F – Guaranty Agreement	6	N			
TLH-1	Appendix G - Example Calculations	1	Y	Lines 12-13, 15-29	(d), (e)	T. Hartman
TLH-1	Appendix G - Example Calculations	2	Y	Lines 6-19, 21-29, 31-36, 38-50a	(d), (e)	T. Hartman
TLH-1	Appendix G - Example Calculations	3	Y	Lines 7-23	(d), (e)	T. Hartman
TLH-1	Appendix G - Example Calculations	4	Y	Lines 6-13, 15-19, 21-28, 30-37, 39-52	(d), (e)	T. Hartman
TLH-1	Appendix G - Example Calculations	5	Y	Lines 6, 12-16	(d), (e)	T. Hartman
TLH-2	Cover Page	1	N			
TLH-2	Table of Contents	i	N			
TLH-2	Table of Contents	ii	N			

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
		73 74 75 76-79 80 81-82 83 84-90 91 92 93 94-99	Y Y Y Y Y Y Y N Y N Y N	Lines 14-21 All Lines 1-2, 22-23 All Lines 1-3, 4-23 All Lines 1-13 Lines 21-22 Lines 9-10		
TLH-2	Appendix A - Monthly Capacity Payment Calculations	1	Y	Lines 4, 8-9, 11-13, 19, 25-27	(d), (e)	T. Hartman
TLH-2	Appendix A - Monthly Capacity Payment Calculations	2	Y	Lines 1-11, 14-15, 22-26, 29-31	(d), (e)	T. Hartman
TLH-2	Appendix A - Monthly Capacity Payment Calculations	3	Y	Lines 3-8, 11, 13-18	(d), (e)	T. Hartman
TLH-2	Appendix B - Energy Payment Calculation	1	Y	Lines 5-9, 12-28	(d), (e)	T. Hartman
TLH-2	Appendix B - Energy Payment Calculation	2	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix B - Energy Payment Calculation	3	Y	Lines 2-10, 12-24	(d), (e)	T. Hartman
TLH-2	Appendix B - Energy Payment Calculation	4	Y	Lines 2-10	(d), (e)	T. Hartman
TLH-2	Appendix B - Energy Payment Calculation	5	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix C – Calculation of Start Payment	1	Y	Lines 4, 6-15, 17-29	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-2	Appendix C – Calculation of Start Payment	2	Y	Lines 2-29	(d), (e)	T. Hartman
TLH-2	Appendix D - Scheduling Parameters	1	Y	Lines 4-8, 11-12, 14-16, 18-19, 21, 23-24	(d), (e)	T. Hartman
TLH-2	Appendix E - Demonstration of Facility Generating Capability and Testing	1	Y	Lines 4-16, 18-31	(d), (e)	T. Hartman
TLH-2	Appendix F – Letter of Credit	1	Y	Lines 13-14, 26-28	(d), (e)	T. Hartman
TLH-2	Appendix F – Letter of Credit	2-3	N			
TLH-2	Appendix G – Parent Guaranty	5	N			
TLH-2	Appendix H - Example Calculations	1	Y	Lines 11-12, 14-28	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	2	Y	Lines 5-17, 19-32, 35-39	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	3	Y	Lines 8-19	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	4	Y	Lines 6-26, 28-37	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	5	Y	Lines 6-23	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	6	Y	Lines 6-41	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-2	Appendix H - Example Calculations	7	Y	Lines 5, 10-17	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	8	Y	Lines 6-7, 12-16	(d), (e)	T. Hartman
TLH-3	Cover	1	N			
TLH-3	Table of Contents	i	N			
TLH-3	Table of Contents	ii	N			
TLH-3	Table of Contents	iii	N			
TLH-3	Table of Contents	iv	N			
TLH-3	Contract	1,2 3 4 5-8 9 10 11-16 17 18 19 20 21 22 23 24 25-27 28 29 30 31 32 33	N Y Y N Y Y N Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y Y	Lines 16-17, 20-21 Lines 2-3, 7, 9 Lines 18-23 All Lines 15-18 Line 23 Line 5 Lines 6-8, 22-23 Lines 1-7 Lines 13-23 All Lines 14-23 All Lines 1-11, 12-22 Lines 1-18 Lines 16-22 Lines 7-8, 10-11, 20-23 Lines 1-4, 6-23 All	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
		34 35 36 37 38 39 40 41 42 43 44-46 47 48 49 50-51 52 53 54 55-64 65 66 67 68 69 70 71 72-74 75 76 77 78 79-81 82 83-85 86-93 94 95 96-101	Y N N N Y Y N Y Y Y Y Y N Y Y N Y N Y Y Y Y N Y Y Y Y N Y Y Y Y N Y Y Y Y N Y Y N	Lines 1-11 Lines 1-9, 12-13, 17, 23 Line 1 Lines 10-22 Lines 1-2 Lines 14-22 All Line 8, 19-23 Lines 17-23 Lines 1-6 Line 23 Lines 1, 13-21 Line 11 Lines 11-12, 13-17 Lines 15-16, 19-20 Line 23 Line 19-20 Lines 1-8, 19-20 Lines 1-8 Lines 20-23 All Lines 1-7 Lines 5-22 All Lines 1-11, 12-23 All Line 10 Lines 19-20		
TLH-3	Appendix A - Monthly Capacity payment Calculation	1	Y	Lines 4, 8-9, 11-13, 19-22, 24-30	(d), (e)	T. Hartman
TLH-3	Appendix A - Monthly Capacity payment Calculation	2	Y	Lines 1-12, 19-23, 26-28	(d), (e)	T. Hartman
TLH-3	Appendix A - Monthly Capacity payment Calculation	3	Y	Lines 3-7, 10, 12-17	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-3	Appendix B - Energy Payment Calculation	1	Y	Lines 5-8, 11-30	(d), (e)	T. Hartman
TLH-3	Appendix B - Energy Payment Calculation	2	Y	Lines 1-11, 14-15, 16-33	(d), (e)	T. Hartman
TLH-3	Appendix B - Energy Payment Calculation	3	Y	Lines 3-7	(d), (e)	T. Hartman
TLH-3	Appendix C - Calculation of Start Payment	1	Y	Lines 4-6, 8-33	(d), (e)	T. Hartman
TLH-3	Appendix C - Calculation of Start Payment	2	Y	Lines 1-19, 21-35	(d), (e)	T. Hartman
TLH-3	Appendix D - Scheduling Parameters	1	Y	Lines 5-8, 10-18, 20, 22	(d), (e)	T. Hartman
TLH-3	Appendix E - Demonstration of Facility Generating Capability and Testing	1	Y	Lines 4-16, 18-31	(d), (e)	T. Hartman
TLH-3	Appendix F – Letter of Credit	3	N			
TLH-3	Appendix G – Parent Guaranty	5	N			
TLH-3	Appendix H - Example Calculations	1	Y	Lines 9-12, 15-28	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	2	Y	Lines 5-18, 20-35, 37-44	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	3	Y	Lines 8-19	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-3	Appendix H - Example Calculations	4	Y	Lines 6-15, 17-26, 28-38	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	5	Y	Lines 6-18	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	6	Y	Lines 5-30	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	7	Y	Lines 5, 8-31	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	8	Y	Lines 6-7, 12-22	(d), (e)	T. Hartman