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Fla. Bar No. 0108202

November 8, 2024

*VIA ELECTRONIC FILING*

Mr. Adam J. Teitzman  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: Docket No. 2024 \_\_\_\_\_ -EI**  
**Florida Power & Light Company's Petition for Approval of Accounting Treatment**  
**for the Transfer of its Proportional Share of Plant Daniel Units 1 & 2**

Dear Mr. Teitzman:

On behalf of Florida Power & Light Company ("FPL"), enclosed for filing is FPL's Petition for Approval of Accounting Treatment for the Transfer of its Proportional Share of Plant Daniel Units 1 & 2, along with attached Appendices A-C.

If you or your staff have any question regarding this filing, please contact me at (561) 691-7255.

Respectfully submitted,

/s/ Joel T. Baker

Joel T. Baker  
Fla. Bar No. 0108202

Enclosures

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's  
Petition for Approval of Accounting  
Treatment for the Transfer of its Proportional  
Share of Plant Daniel Units 1 & 2

Docket No. \_\_\_\_\_  
Filed: November 8, 2024

**FLORIDA POWER & LIGHT COMPANY'S PETITION FOR APPROVAL OF  
ACCOUNTING TREATMENT FOR THE TRANSFER OF ITS PROPORTIONAL  
SHARE OF PLANT DANIEL UNITS 1 & 2**

Florida Power & Light Company ("FPL" or the "Company") hereby petitions this Commission for approval of accounting treatment and other related approvals that will enable FPL to transfer its proportional share of Plant Daniel Units 1 & 2 ("Units 1 & 2") to Mississippi Power Company ("MPC"). FPL acquired its 50% share of Units 1 & 2 following NextEra Energy, Inc.'s ("NextEra") acquisition of Gulf Power Company ("Gulf") in 2019, and, notwithstanding FPL's retirement of its portion of the units in January 2024, the Company currently is obligated to pay MPC certain costs for their continued operation. The transfer of FPL's interests in Units 1 & 2 to MPC (the "Transaction") alleviates this ongoing cost obligation and creates \$13.4 million of cumulative present value revenue requirements ("CPVRR") savings for customers. To effectuate the Transaction and enable these savings, FPL requests the Commission to: (i) determine that FPL's entry into the Transaction is prudent; (ii) authorize FPL to establish regulatory assets for the investment required to consummate the Transaction; (iii) authorize FPL to continue to accrue its proportionate share of dismantlement costs in base rates; and (iv) authorize FPL to continue to recover eligible pre-closing environmental costs pertaining to FPL's proportionate share of Units 1 & 2 through the Environmental Cost Recovery Clause ("ECRC").

To secure the benefits of the Transaction for FPL's customers as soon as practicable, FPL also requests this Petition be processed under the Commission's Proposed Agency Action procedures.

In further support of this Petition, FPL states as follows:

1. The name and address of the Petitioner is:

Florida Power & Light Company  
700 Universe Blvd  
Juno Beach, FL 33408

2. Any pleading, motion, notice, order or other document required to be served upon

FPL or filed by any party to this proceeding should be served upon the following individuals:

Kenneth A. Hoffman  
Vice President, Regulatory Affairs  
Florida Power & Light Company  
134 West Jefferson Street  
Tallahassee, FL 32301-1713  
Phone: 850-521-3919  
Fax: 850-521-3939  
Email: ken.hoffman@fpl.com

Russell Badders  
Assistant General Counsel  
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3. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, 366.06, and 366.07, Florida Statutes.

4. This Petition is being filed consistent with Rule 28-106.201, Florida Administrative Code ("F.A.C"). The agency affected is the Commission, located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399. This case does not involve reversal or modification of an agency decision or an agency's proposed action. Therefore, subparagraph (c) and portions of subparagraphs (b), (e), (f) and (g) of subsection (2) of that rule are not applicable to this Petition. In compliance with subparagraph (d), FPL states that it is not known which, if any, of the issues

of material fact set forth in the body of this Petition may be disputed by any others who may plan to participate in this proceeding. The discussion below demonstrates how the Petitioner's substantial interests will be affected by the agency determination.

### **I. Background on Plant Daniel**

5. Plant Daniel is a 2,142 megawatt ("MW") four-unit fossil fuel power plant located in Jackson County, Mississippi. MPC manages plant operations at each of the four units. Two of the plant's units, Units 1 & 2, are coal-fired units, which were placed in service between 1977 and 1981.<sup>1</sup> FPL acquired its 50% undivided interest in Units 1 & 2 through NextEra's 2019 acquisition of Gulf, which previously had held the 50% interest since June 1, 1981. The remaining 50% interest in Units 1 & 2 is owned by MPC. FPL's ownership interest in Units 1 & 2 has a net summer capacity of 502 MW.

6. In January of 2019, just after being acquired by NextEra, Gulf provided notice to MPC of Gulf's intent to retire its ownership portion of Units 1 & 2 in January 2024 in accordance with its operating agreement with MPC and no longer take power from either unit.<sup>2</sup> As Gulf's successor, FPL retired its share of Units 1 & 2 in January 2024 consistent with Gulf's prior notice. It is projected that MPC will retire Units 1 & 2 at the end of 2031.

7. Compared to the rest of FPL's generating fleet, Units 1 & 2 are inefficient, operating with an average effective heat rate of 11,210 British thermal units/kilowatt-hour (Btu/kWh) and annual capacity factors ranging from 19% to 43%.

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<sup>1</sup> Two additional gas-fired combined cycle units were placed in service in 2001.

<sup>2</sup> Gulf updated its original operating agreement with MPC dated June 1, 1981 after its acquisition by NextEra, executing an Amended and Restated Plant Daniel Operating Agreement with MPC on January 1, 2019. It was under the amended and restated agreement that Gulf provided MPC its notice of intent to retire its share of Units 1 & 2.

## **II. FPL's Current Costs and Obligations Related to Units 1 & 2**

8. Although FPL's proportional share of Units 1 & 2 has been retired, FPL continues to have cost responsibilities associated with its ownership of the units. FPL is obligated to pay costs, referred to as "Common Facilities" costs, to MPC pursuant to an operating agreement executed between FPL and MPC in 2022 ("2022 Operating Agreement"), which carried forth the obligation from prior operating agreements under Gulf. As detailed in the Declaration of Scott R. Bores, attached to this Petition as Appendix A, the Common Facilities costs include items such as operation and maintenance ("O&M") expenses, capital expenditures, general and administrative expenses, ad valorem taxes, and property insurance.

9. Under the 2022 Operating Agreement, FPL is required to pay its share of Common Facilities costs through the retirement date of Units 1 & 2, which, as stated above, is expected to occur in 2031. FPL's avoidable share of these costs is approximately \$10 million per year through 2031, regardless of whether Units 1 & 2 provide service to FPL's customers. As demonstrated in the CPVRR analysis attached to the Petition as Appendix B, the CPVRR of FPL's avoidable costs from January 1, 2025 through December 31, 2033 is \$59 million.<sup>3</sup> If MPC does not retire Units 1 & 2 by the end of 2031 the avoidable costs would increase along with the CPVRR benefit to FPL's customers.

## **III. Overview of the Transaction**

10. To alleviate FPL's ongoing Common Facilities cost responsibility, FPL entered into a purchase and sale agreement ("PSA") with MPC on November 8, 2024 to relinquish its 50%

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<sup>3</sup> Although the Common Facilities costs would discontinue at the projected retirement date of 2031, ad valorem tax responsibility would continue for FPL during dismantlement, which is projected to occur in years 2032 and 2033.

undivided interest in Units 1 & 2 to MPC. The PSA is provided with this Petition as Appendix C. Under the agreement, FPL will pay MPC \$45 million, if the Transaction closes on or before December 31, 2024,<sup>4</sup> for MPC to take ownership of FPL's share of Units 1 & 2 and relieve FPL of most Common Facilities costs related to the units.

11. Following consummation of the Transaction, MPC will bear all operating costs and incremental liabilities created post-sale, and will assume FPL's share of ongoing Common Facilities costs, excluding the portion of Common Facilities costs related to Coal Combustion Residuals ("CCR") produced prior to the Transaction's closing date.

12. Under the PSA, FPL will retain dismantlement and asset retirement obligations on the existing plant, along with other specified cost obligations, such as costs related to CCR produced prior to the Transaction's closing date, decommissioning liabilities related to dismantling Plant Daniel and restoration of the plant site (calculated as a percentage of FPL's pre-closing ownership interest), and pollution control revenue bond obligations. Additional details on the Transaction are provided in the attached declaration of Scott R. Bores, which is being submitted in support of this Petition as Appendix A.

13. As shown in Appendix B to this Petition, if all requisite approvals are obtained and the Transaction closes by December 31, 2024, the Transaction is projected to create \$13.4 million in CPVRR benefit for FPL's customers.

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<sup>4</sup> Payment under the PSA adjusts downward the longer it takes for the transaction to close, as shown on Exhibit C to the PSA. Should the Transaction not close by December 31, 2024, FPL will be obligated to pay approximately \$6.9 million in property taxes related to Units 1 & 2, which will be offset by a reduced transfer price.

#### IV. Requested Approvals

14. To effectuate the Transaction and begin delivering savings to customers, FPL must obtain specific approvals that will enable the Transaction to proceed. Specifically, FPL requests from the Commission the following: (i) a determination that entry into the Transaction is prudent; (ii) authorization to establish regulatory assets for FPL's payment to MPC; (iii) authorization to continue to accrue its proportionate share of dismantlement costs in base rates; and (iv) authorization to continue to recover environmental costs pertaining to FPL's proportionate share of Units 1 & 2 through the ECRC.

*i. Prudence*

15. To effectuate the Transaction, FPL requests a ruling from the Commission that FPL's entry into the Transaction is prudent. The Commission's standard for determining prudence is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made." *S. All. for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013) (quoting *In re Nuclear Cost Recovery Clause*, Docket No. 110009-EI, Order No. PSC-11-0547-FOF-EI, 2011 WL 5904236, at 26 (Fla. Pub. Serv. Comm'n, 2011)). FPL submits that relieving an ongoing operational cost obligation and generating a \$13.4 million CPVRR benefit for customers is a prudent investment that a reasonable utility manager would make. Were it not for the Transaction, FPL customers would continue to incur the Common Facilities cost obligations under the 2022 Operating Agreement and would not receive the \$13.4 million CPVRR benefit.

*ii. Regulatory Assets for Payment to MPC*

16. FPL proposes to treat the investment required to effectuate the Transaction as two regulatory assets and to defer recovery of those regulatory assets. Of the \$45 million transfer price,

FPL proposes to create a regulatory asset of \$39.3 million, proportionally representing the base rate recoverable components of the total transfer price. This proportion of the transfer price relates to base rate items such as ad valorem tax, property insurance, non-environmental O&M expense, capital investments that are expensed because FPL has retired its ownership portion, and avoidable MPC-allocated general and administrative expenses. FPL proposes to defer recovery of this regulatory asset until such time as FPL's base rates are next reset and recover it over 10 years. In addition, FPL proposes to earn a return on the unamortized balance at the Company's overall weighted average cost of capital until the balance is fully recovered.

17. FPL also proposes to establish a second regulatory asset in the amount of \$5.7 million, which proportionally represents the environmental costs that would be recovered through the ECRC if FPL maintained ownership of the units. This proportion of the transfer price relates to items such as environmental-related O&M expense, expensed capital, and MPC-allocated general and administrative expenses. FPL proposes to recover this regulatory asset through the ECRC over a period of 10 years beginning January 1, 2026, including a return on the unamortized balance at the Company's overall weighted average cost of capital that is used for clause investments until the balance is fully recovered.

18. The Commission has previously authorized the establishment of regulatory assets for investments made to divest uneconomic generation commitments and create savings for customers. *See, e.g.*, Order Nos. PSC-15-0401-AS-EI issued September 23, 2015 in Docket No. 150075-EI (Cedar Bay transaction); PSC-16-0506-FOF-EI issued November 2, 2016 in Docket No. 160154-EI (Indiantown Cogeneration transaction); PSC-2017-0415-AS-EI issued October 24, 2017 in Docket No. 20170123-EI (St. Johns River Power Park transaction). FPL submits that the requested accounting treatment for the cost to effectuate the Transaction is similar to the proposals



in prior petitions whereby regulatory assets have been authorized for the investment required to remove uneconomic contractual commitments and generate savings for customers.

19. No regulatory asset is being sought in this Petition for the remaining net book value of FPL's ownership share of Units 1 & 2. Since FPL's retirement of the units, the Company has reflected the estimated remaining investment as a negative amount (debit) in the accumulated reserve for the respective plant accounts, and has continued its depreciation for the retirements using rates approved as part of Gulf's 2017 rate settlement.<sup>5</sup> FPL indicated in its prior rate case that it would forgo seeking establishment of a regulatory asset in that case and instead return to the Commission in its next rate case to make such a request.<sup>6</sup> FPL intends to abide by those earlier commitments and is not seeking the establishment of a regulatory asset or recovery for the remaining net book value of its ownership share of the retired units in this Petition.

*iii. Continued Accrual of Units 1 & 2 Dismantlement Costs*

20. Under the PSA, FPL continues to hold dismantlement and decommissioning cost responsibility for Units 1 & 2 post-closing. FPL therefore requests that it be permitted to continue to accrue Units 1 & 2 dismantlement costs in base rates until the annual accrual is next reset with the support of a dismantlement study. Such a request is consistent with Paragraph 19 of FPL's 2021 base rate settlement agreement approved by the Commission in Order Nos. PSC-2021-0446-S-EI and PSC-2024-0078-FOF-EI, which specifies that dismantlement accrual amounts in effect at the beginning of the settlement's term will remain in effect until FPL's base rates are next reset in a general base rate proceeding.

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<sup>5</sup> See Docket No. 20210015-EI, Direct Testimony of Keith Ferguson at 20-21.

<sup>6</sup> *Id.*

21. FPL proposes to submit with its next base rate petition a refreshed dismantlement study consistent with Rule 25-6.04364, F.A.C., that sets forth the appropriate dismantlement accruals for FPL's ownership share of Units 1 & 2 following consummation of the Transaction.

*iv. Continued Recovery of Units 1 & 2 Environmental Costs*

22. While the PSA shifts most Common Facilities costs to MPC, FPL remains obligated to cover common costs related to CCR produced prior to the Transaction's closing date, as well as other environmental liabilities arising from pre-closing activities. FPL therefore requests approval from the Commission to continue to recover eligible prudently incurred pre-closing environmental costs pertaining to FPL's proportionate share of Units 1 & 2 through the ECRC.

WHEREFORE, FPL respectfully requests the Commission (i) determine that FPL's entry into the Transaction is prudent; (ii) authorize FPL to establish regulatory assets for FPL's payment to MPC as described herein; (iii) authorize FPL to continue to accrue its proportionate share of dismantlement costs in base rates; and (iv) authorize FPL to continue to recover eligible pre-closing environmental costs pertaining to FPL's proportionate share of Units 1 & 2 through the ECRC. FPL also requests that the Commission process this Petition as a proposed agency action.

Respectfully submitted,

By: s/ Joel T. Baker

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Joel T. Baker, Principal Attorney  
Fla. Bar No. 108202  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's  
Petition for Approval of Accounting Treatment  
for the Transfer of its Proportional Share of  
Plant Daniel Units 1 & 2

Docket No: 2024 \_\_\_\_\_-EI

Date: November 8, 2024

**Declaration of Scott R. Bores**

1. My name is Scott R. Bores. My business address is Florida Power & Light Company ("FPL" or the "Company"), 700 Universe Boulevard, Juno Beach, Florida 33408.
2. I am employed by FPL as Vice President of Finance. I am responsible for the financial management of FPL, including accounting, budgeting, forecasting, economic projections, generation resource planning, and rates and tariffs.
3. I graduated from the University of Connecticut in 2003 with a Bachelor of Science degree in Accounting. I received a Master of Business Administration from Emory University in 2011. I joined FPL in 2011 and have held several positions of increasing responsibility, including Manager of Property Accounting, Director of Property Accounting, Senior Director of Financial Planning and Analysis, and my current position as Vice President of Finance. Prior to joining FPL, I held various accounting roles with Mirant Corporation, which was an independent power producer in Atlanta, Georgia, as well as worked for PricewaterhouseCoopers, LLP. I am a Certified Public Accountant ("CPA") licensed in the State of Georgia and a member of the American Institute of CPAs.
4. The purpose of my declaration is to support the cumulative present value revenue requirements ("CPVRR") savings and proposed regulatory accounting treatment

associated with the payment to Mississippi Power Company (“MPC”) for the prudent transfer of FPL’s ownership interest in Plant Daniel Units 1 & 2 (“Units 1 & 2”) to MPC as described in FPL’s petition (“Petition”) filed with this declaration.

5. Plant Daniel is a 2,142 megawatt (“MW”) four-unit fossil fuel power plant located in Jackson County, Mississippi. MPC manages plant operations at each of the four units. Two of the plant’s units, Units 1 & 2, are coal-fired units, which were placed in service between 1977 and 1981. FPL acquired its 50% undivided interest in Units 1 & 2 following NextEra Energy, Inc.’s (“NextEra”) 2019 acquisition of Gulf Power Company (“Gulf”), which previously had held the 50% interest since June 1, 1981. The remaining 50% interest in Units 1 & 2 is owned by MPC. FPL’s ownership interest in Units 1 & 2 has a net summer capacity of 502 MW.
6. In January of 2019, just after being acquired by NextEra, Gulf provided notice to MPC of Gulf’s intent to retire its ownership portion of Units 1 & 2 in January 2024 in accordance with its operating agreement with MPC. As Gulf’s successor, FPL retired its share of Units 1 & 2 in January 2024 consistent with Gulf’s 2019 notice. It is projected that MPC will retire Units 1 & 2 at the end of 2031.
7. Compared to the rest of FPL’s generating fleet, Units 1 & 2 are inefficient, operating with an average effective heat rate of 11,210 British thermal units/kilowatt-hour (“Btu/kWh”) and annual capacity factors ranging from 19% to 43%. By comparison, FPL’s system heat rate for 2023 was 7,032 Btu/kWh.
8. While FPL’s proportional share of Units 1 & 2 has been retired, FPL continues to have cost responsibilities associated with its ownership of the units. These costs, referred to as “Common Facilities” costs, are paid to MPC pursuant to an operating agreement

executed between FPL and MPC in 2022 (“2022 Operating Agreement”), which carried forth the obligation from prior operating agreements under Gulf. FPL’s avoidable share of these costs is approximately \$10 million per year, regardless of whether Units 1 & 2 provide service to FPL’s customers. The 2022 Operating Agreement also obligates FPL to continue paying Common Facilities costs through the retirement date of Units 1 & 2, which is expected to occur in 2031.

9. FPL has negotiated a purchase and sale agreement (“PSA”) with MPC, under which FPL will relinquish its 50% undivided interest in Units 1 & 2 to MPC along with responsibility for most of the Common Facilities costs (the “Transaction”). The PSA was executed by FPL and MPC on November 8, 2024. Under the agreement, FPL will pay MPC \$45 million, if the Transaction closes on or before December 31, 2024, for MPC to take ownership of FPL’s share of Units 1 & 2. If the Transaction does not close by December 31, 2024, FPL will be obligated to pay approximately \$6.9 million in property taxes related to Units 1 & 2, which will be offset by a reduced transfer price as shown in Exhibit C to the PSA. Exhibit C of the PSA further provides for a monthly reduction in transfer price that corresponds to the reduction in FPL’s avoided costs should closing not occur in 2024. Upon closing, MPC will assume FPL’s share of certain operating costs and incremental liabilities created from and after the date of closing.
10. Following consummation of the Transaction, MPC will bear all operating costs and incremental liabilities created post-sale and will assume FPL’s share of ongoing Common Facilities costs, excluding the portion of Common Facilities costs related to Coal Combustion Residuals (“CCR”) produced prior to the Transaction’s closing date. FPL’s avoidable Common Facilities cost obligations include operation and maintenance

(“O&M”) expenses, capital expenditures, MPC-allocated general and administrative expenses, ad valorem taxes, and property insurance. As demonstrated in the CPVRR analysis attached to the Petition as Appendix B, which was prepared under my oversight and direction, the CPVRR of FPL’s avoidable costs from January 1, 2025 through December 31, 2033 is \$59 million. Although the Common Facilities costs would discontinue at the projected retirement date of 2031, 2033 is the appropriate date to use for the CPVRR analysis since ad valorem tax responsibility would continue for FPL during dismantlement, which is projected to occur in years 2032 and 2033. If MPC does not retire Units 1 & 2 by the end of 2031, the avoidable costs would increase along with the CPVRR benefit to FPL’s customers.

11. Under the PSA, FPL will retain dismantlement and asset retirement obligations on the existing plant, along with other specified cost obligations, such as costs related to CCR produced prior to the Transaction’s closing date, decommissioning liabilities related to dismantling Plant Daniel and restoration of the plant site (calculated as a percentage of FPL’s pre-closing ownership interest), and pollution control revenue bond obligations.
12. To appropriately account for the investment required to effectuate the Transaction, FPL is seeking authority from the Commission to create two regulatory assets representing the payment to MPC as I discussed in paragraph 9 above. Of the \$45 million transfer price, FPL proposes to create a regulatory asset in the amount of \$39.3 million, proportionally representing the base rate recoverable components of the transfer price. This proportion of the transfer price relates to base rate items such as ad valorem tax, property insurance, non-environmental O&M expense, capital investments that are expensed because FPL has retired its ownership portion, and avoidable MPC-allocated

general and administrative expenses. FPL proposes to defer recovery of this regulatory asset until such time as FPL's base rates are next reset and recover it over 10 years. In addition, FPL proposes to earn a return on the unamortized balance at the Company's overall weighted average cost of capital until the balance is fully recovered.

13. FPL also proposes to establish a second regulatory asset in the amount of \$5.7 million, which proportionally represents the environmental costs that would be recovered through the Environmental Cost Recovery Clause ("ECRC") if FPL maintained ownership of the units. This proportion of the transfer price relates to items such as environmental-related O&M expense, expensed capital, and MPC-allocated general and administrative expenses. FPL proposes to recover this regulatory asset through the ECRC over a period of 10 years beginning January 1, 2026, and earn a return on the unamortized balance at the Company's overall weighted average cost of capital that is used for clause investments.
14. As reflected on Appendix B, the CPVRR analysis demonstrates that transferring FPL's ownership interest in Units 1 & 2 to MPC on December 31, 2024, and deferring recovery of the regulatory assets will result in an estimated \$13.4 million customer benefit, which represents an approximately 30% benefit for the consideration paid.
15. Under penalty of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true to the best of my knowledge and belief.

/s/ Scott R. Bores  
Scott R. Bores

Date: November 8, 2024

**Summary CPVRR Analysis for Plant Daniel**  
**Appendix B**

<i>\$ Millions</i>	<b>CPVRR</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>	<b>2032</b>	<b>2033</b>	<b>2034</b>	<b>2035</b>	<b>2036</b>
Discount Factor (8.14% WACC)		0.96	0.89	0.82	0.76	0.70	0.65	0.60	0.56	0.51	0.48	0.44	0.41
<b>Incremental Revenue Requirements<sup>(1)</sup></b>													
<b>Avoidable Costs (Base + Clause)</b>													
Common Facilities Expense <sup>(2)(7)</sup>	(\$28.9)	(\$5.3)	(\$5.1)	(\$5.2)	(\$5.4)	(\$5.5)	(\$5.6)	(\$5.7)	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Common Facilities Capital (expensed) <sup>(2)(7)</sup>	(8.1)	(1.6)	(1.4)	(1.4)	(1.5)	(1.5)	(1.5)	(1.6)	-	-	-	-	-
Property / Ad Valorem Tax <sup>(2)</sup>	(22.0)	(6.9)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	-	-	-
<b>Subtotal, Avoidable Costs</b>	<b>(59.0)</b>	<b>(13.8)</b>	<b>(9.3)</b>	<b>(9.4)</b>	<b>(9.6)</b>	<b>(9.8)</b>	<b>(9.9)</b>	<b>(10.1)</b>	<b>(2.8)</b>	<b>(2.8)</b>	-	-	-
<b>Regulatory Asset (Base + Clause)</b>													
Amortization of Reg Asset <sup>(3)(8)</sup>	28.8	-	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	-
Interest Expense <sup>(4)</sup>	3.5	0.8	0.7	0.7	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.0	(0.0)
Return on Equity <sup>(5)</sup>	9.9	2.2	2.1	1.8	1.6	1.4	1.2	1.0	0.8	0.5	0.3	0.1	(0.0)
Income Tax <sup>(6)</sup>	3.4	0.7	0.7	0.6	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.0	(0.0)
<b>Subtotal, Regulatory Asset</b>	<b>45.6</b>	<b>3.7</b>	<b>8.0</b>	<b>7.6</b>	<b>7.2</b>	<b>6.9</b>	<b>6.5</b>	<b>6.1</b>	<b>5.8</b>	<b>5.4</b>	<b>5.0</b>	<b>4.7</b>	<b>(0.0)</b>
<b>Net Customer Costs / (Savings)</b>	<b>(\$13.4)</b>	<b>(\$10.2)</b>	<b>(\$1.3)</b>	<b>(\$1.8)</b>	<b>(\$2.4)</b>	<b>(\$2.9)</b>	<b>(\$3.4)</b>	<b>(\$3.9)</b>	<b>\$3.0</b>	<b>\$2.6</b>	<b>\$5.0</b>	<b>\$4.7</b>	<b>(\$0.0)</b>

<b>Base: Incremental Revenue Requirements<sup>(1)</sup></b>													
Common Facilities Expense <sup>(2)</sup>	(\$22.5)	(\$3.9)	(\$4.0)	(\$4.1)	(\$4.2)	(\$4.3)	(\$4.4)	(\$4.5)	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Common Facilities Capital (expensed) <sup>(2)</sup>	(7.0)	(1.6)	(1.2)	(1.2)	(1.2)	(1.3)	(1.3)	(1.3)	-	-	-	-	-
Property / Ad Valorem Tax <sup>(2)</sup>	(22.0)	(6.9)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	(2.8)	-	-	-
Amortization of Base Reg Asset <sup>(3)</sup>	25.2	-	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	-
Interest Expense <sup>(4)</sup>	3.1	0.7	0.6	0.6	0.5	0.4	0.4	0.3	0.2	0.2	0.1	0.0	(0.0)
Return on Equity <sup>(5)</sup>	8.6	1.9	1.8	1.6	1.4	1.2	1.0	0.8	0.7	0.5	0.3	0.1	(0.0)
Income Tax <sup>(6)</sup>	2.9	0.6	0.6	0.5	0.5	0.4	0.4	0.3	0.2	0.2	0.1	0.0	(0.0)
<b>Base Revenue Requirement</b>	<b>(11.7)</b>	<b>(9.2)</b>	<b>(1.0)</b>	<b>(1.5)</b>	<b>(1.9)</b>	<b>(2.3)</b>	<b>(2.8)</b>	<b>(3.2)</b>	<b>2.3</b>	<b>1.9</b>	<b>4.4</b>	<b>4.1</b>	<b>(0.0)</b>
<b>Clause: Incremental Revenue Requirements<sup>(1)</sup></b>													
Common Facilities Expense <sup>(7)</sup>	(6.4)	(1.3)	(1.1)	(1.1)	(1.2)	(1.2)	(1.2)	(1.3)	-	-	-	-	-
Common Facilities Capital (expensed) <sup>(7)</sup>	(1.0)	(0.1)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	-	-	-	-	-
Property / Ad Valorem Tax <sup>(7)</sup>	-	-	-	-	-	-	-	-	-	-	-	-	-
Amortization of Clause Reg Asset <sup>(8)</sup>	3.7	-	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	-
Interest Expense <sup>(4)</sup>	0.4	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0	(0.0)
Return on Equity <sup>(5)</sup>	1.3	0.3	0.3	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.0	0.0	(0.0)
Income Tax <sup>(6)</sup>	0.4	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0	(0.0)
<b>Clause Revenue Requirement</b>	<b>(1.7)</b>	<b>(0.9)</b>	<b>(0.3)</b>	<b>(0.3)</b>	<b>(0.5)</b>	<b>(0.5)</b>	<b>(0.6)</b>	<b>(0.7)</b>	<b>0.7</b>	<b>0.7</b>	<b>0.6</b>	<b>0.6</b>	<b>(0.0)</b>
<b>Net Customer Costs / (Savings)<sup>(9)</sup></b>	<b>(\$13.4)</b>	<b>(\$10.2)</b>	<b>(\$1.3)</b>	<b>(\$1.8)</b>	<b>(\$2.4)</b>	<b>(\$2.9)</b>	<b>(\$3.4)</b>	<b>(\$3.9)</b>	<b>\$3.0</b>	<b>\$2.6</b>	<b>\$5.0</b>	<b>\$4.7</b>	<b>(\$0.0)</b>

- 1) Incremental Revenue Requirement represents the difference between the Revenue Requirement with and without the Transaction
- 2) Represents cost savings associated with FPL's 50% ownership interest in Plant Daniel that are recovered through base rates.
- 3) Represents the amortization of the base regulatory asset over 10 years.
- 4) Interest expense assumes 5.66% cost of debt and 40.4% debt to investor capital ratio.
- 5) Return on Equity assumes 10.80% cost of equity and 59.6% equity to investor capital ratio.
- 6) Income tax assumes blended state and federal tax rate of 25.345%.
- 7) Represents cost savings associated with FPL's 50% ownership interest in Plant Daniel that are recovered through clause rates.
- 8) Represents the amortization of the clause regulatory asset over 10 years.
- 9) Net Customer Costs / (Savings) reflect the sum of base and clause net revenue requirement.



**PURCHASE AND SALE AGREEMENT**

**by and among**

**FLORIDA POWER & LIGHT COMPANY**

**as Seller**

**and**

**MISSISSIPPI POWER COMPANY**

**as Purchaser**

**Dated as of November 8, 2024**

**Victor J. Daniel, Jr. Electric Generating Plant Units 1 and 2**

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## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the “Agreement”) is made and entered into effective as of November 8, 2024 (the “Effective Date”), by and between **FLORIDA POWER & LIGHT COMPANY** (“Seller” or “FPL”), a corporation organized and existing under the laws of the state of Florida, and **MISSISSIPPI POWER COMPANY**, a corporation organized and existing under the laws of the state of Mississippi (“Purchaser” or “MPC”). Seller and Purchaser are also referred to herein as a “Party” and collectively as the “Parties.”

### RECITALS

1. MPC and FPL each own a fifty percent (50%) undivided interest, as tenants in common, in a coal-fired electric generating facility comprised of two (2) 500 megawatt (“MW”) generating units (i.e., Units 1 and 2), a step-up transmission substation, all associated Plant Assets, and all of the real and personal property comprising the Plant Daniel coal-fired generating plant, including the site, the generating units and the Common Facilities (collectively, “Plant Daniel”), it being specifically acknowledged by the Parties that FPL does not own any interest in certain other facilities situated and operating on the site, primarily consisting of gas-fired generating Units 3 and 4 (collectively the “Other Plant Daniel Facilities”).

2. MPC and FPL have heretofore entered into that certain Second Amended and Restated Plant Daniel Operating Agreement, dated as of July 8, 2022 (“Operating Agreement”) and pursuant to the Operating Agreement, FPL no longer has the right to dispatch its share of Plant Daniel but remains obligated for its share of certain Common Facilities costs and its share of decommissioning costs.

3. The Parties desire that FPL transfer FPL’s interests described above from FPL to MPC as well as any other interests associated with FPL’s ownership of property (real, personal, or mixed) associated with Plant Daniel. Further, as described in more detail in this Agreement, the Parties desire that FPL transfer certain of the liabilities and obligations associated with such property interests to MPC, while FPL will retain certain other specified liabilities associated with Plant Daniel.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### AGREEMENT

#### ARTICLE I DEFINITIONS; USAGE

1.1 Definitions. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.1; provided, that any capitalized term not defined herein and otherwise defined in the Plant Contracts, shall be as defined in the Plant Contracts (which definitions are incorporated herein by this reference and utilized where the context requires).

“Acquisition Proposal” means any offer, proposal, inquiry, or indication of interest from any third party relating to any transaction involving any acquisition or purchase by any Person (other than Purchaser) of the Plant Assets or any interest therein.

“Action” means any action, suit, claim, petition, investigation, proceeding, audit, arbitration, mediation, hearing or any other proceeding by or against a Governmental Authority or any other Person.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or ownership interests, by Contract or otherwise, including, with respect to a corporation, partnership or limited liability company, the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Agent” has the meaning given to it in the Operating Agreement.

“Agreement” has the meaning set forth in the Preamble.

“Ancillary Agreements” means those other documents, instruments, certificates, or agreements as may be executed and delivered by one or both Parties in connection with this Agreement and the transactions contemplated hereby, including the Bill of Sale, and the Assignment and Assumption Agreements.

“Assignment and Assumption Agreements” has the meaning set forth in Section 2.4.1(b).

“Assumed Liabilities” has the meaning set forth in Section 2.1.3.

“Bill of Sale” has the meaning set forth in Section 2.4.1(a).

“Books and Records” means any and all data, books, records, files, documents, instruments, papers, correspondence that can be reasonably and practically provided, journals, deeds, licenses, Permits, computer files and programs, studies and Reports (including environmental and construction studies and Reports), in each case, (a) in all formats in which they are reasonably and practically available, including electronic, where applicable, and (b) in the possession or control of Seller or its Affiliates and to the extent the same relates to Seller or the Plant Assets.

“Business Day” means a day other than Saturday, Sunday, or any day on which the Federal Reserve Bank of New York is closed.

“Cap” has the meaning set forth in Section 10.4.2.

“Casualty Loss” has the meaning set forth in Section 5.6.1.

“Change” means any event, fact, condition, circumstance, change, occurrence, development, result, or effect occurring after the Effective Date or after such other date as may be specified in a particular provision utilizing such term.

“Change in Law” means (a) the adoption, enactment, promulgation, modification, amendment, or revocation, after the date of this Agreement, of any Laws, (b) any interpretation, reinterpretation, or administrative position relating to any Laws, or (c) any material requirements, or condition in connection with the issuance, renewal, extension, replacement, or modification of any approval of any Governmental Authority required in connection with this Agreement.

“Closing” has the meaning set forth in Section 2.3.

“Closing Date” has the meaning set forth in Section 2.3.

“Coal Combustion Residuals” or “CCR” means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers, as defined now or in the future in 40 C.F.R. § 257.53 or similar future federal, state, or local rules, regulations, or ordinances. For the avoidance of doubt, CCR includes (a) fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, and coal ash generated at the Plant Site prior to the promulgation of the CCR definitions referenced above; (b) any ash, wastes or materials included in future regulatory definitions of CCR, and (c) notwithstanding Section 2.1.2(b) and Section 2.1.3(f), any materials included in the definition of CCR as of the Effective Date, which if they are subsequently removed from the regulatory definition of CCR, will be considered CCR for purposes of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, or any successor law, and the regulations promulgated thereunder.

“Confidentiality Agreement” means the Mutual Nondisclosure Agreement dated as of December 19, 2023, by and among Purchaser and Seller and Southern Company Services, Inc.

“Contract” means any agreement, lease, license (other than a Permit), note, bond, evidence of Indebtedness, mortgage, indenture, security agreement, purchase order, binding bid, or other binding instrument or contract, whether written or oral.

“Decommissioning” has the meaning set forth in Section 2.1.2(a)(ii).

“Deductible Amount” has the meaning set forth in Section 10.4.1.

“Default Rate” means the lesser of (a) the prime rate under “Money Rates” as reported in the Wall Street Journal on the first Business Day of the month during which interest is payable plus two percent (2%) and (b) the maximum rate of interest permitted to be charged by applicable Law; provided, if such rate is not reported or such publication no longer exists, then the Parties shall use any successor rate or publication that has the same intended effect as the above rate.

“Direct Loss Claim” has the meaning set forth in Section 8.3.5.



“Easements” means easements, rights-of-way, licenses, occupancy, or encroachment permits, or similar entitlements which are used, or to be used, for or in the development, construction, ownership, operation, use, or maintenance of the Plant Assets.

“Effective Date” has the meaning set forth in the Preamble.

“Emission Allowances” means all emission reduction credits, emission allowances, emission credits, offsets, or similar instruments, including, without limitation, such instruments relating to emissions of greenhouse gases.

“Environmental Claim” means any Action by any Person alleging liability, actual or potential non-compliance with Environmental Law, fault, or responsibility of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, personal injuries, monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from the presence of, Release of or exposure to any Hazardous Substances, or any other environmental condition, or any action under or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Condition” means the presence or Release to the environment of Hazardous Substances, including any migration of Hazardous Substances through air, soil, or water.

“Environmental Law” means any applicable Law that relates to pollution, occupational safety, protection of occupational health or the protection of the environment, including, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401 et seq., (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Clean Water Act, 33 U.S.C. § 1251 et seq., (n) National Environmental Policy Act, 42 U.S.C. § 55 et seq., (o) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (p) the Bald and Golden Eagle Protection Act, (q) Archeological Resources Protection Act, 16 U.S.C. § 470aa et seq., (r) National Historic Preservation Act, 54 U.S.C. § 300101 et seq., and (s) any similar Laws of the state of Mississippi or of any other Governmental Authority having jurisdiction over the Plant or the Plant Site.

“Environmental Permit” means any Plant Permit issued under any Environmental Law.

“Escalation Notice” has the meaning set forth in Section 11.1.

“Excluded Liabilities” has the meaning set forth in Section 2.1.2(a).

“Expiration Date” has the meaning set forth in Section 10.1.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“FPL” has the meaning set forth in the Preamble.

“FPL Mortgage Indenture” means the Mortgage and Deed of Trust dated as of January 1, 1944, as amended and supplemented, between FPL and Deutsche Bank Trust Company Americas, as Trustee.

“FPL Ownership Interest” means FPL’s undivided ownership interest of fifty percent (50%) in Plant Daniel and the Plant Assets.

“FPSC” means Florida Public Service Commission or any successor agency.

“FPSC Approval” means the final, non-appealable Order by the FPSC for FPL to recover in retail rates the retail portion of the Transfer Amount as capital in a manner consistent with FPL’s request to the FPSC for such ratemaking treatment.

“Fraud” means actual common law fraud under Mississippi law judicial decisions, committed willfully and knowingly with the intent to deceive, and not, for the avoidance of doubt, other judicial decisions or other Governmental Authority interpretations of federal or state securities laws or constructive or equitable fraud.

“Fundamental Purchaser Representations” means the representations and warranties of Purchaser set forth in Section 4.1 (Existence), Section 4.2 (Authority), Section 4.3 (Binding Agreement), Section 4.5 (Governmental Approvals and Filings), and Section 4.7 (Brokers).

“Fundamental Seller Representations” means the representations and warranties of Seller set forth in Section 3.1 (Existence), Section 3.2 (Authority), Section 3.3 (Binding Agreement), 3.5 (Governmental Approvals and Filings), Section 3.8 (Title to Plant Assets), Sections 3.9.1 and 3.9.4 (Real Property), Section 3.14 (Environmental Matters), and Section 3.16 (Brokers).

“GAAP” means generally accepted accounting principles in the United States of America applied on a consistent basis.

“Governmental Authority” means any federal, state, or tribal entity, authority, agency, court, tribunal, department, board, council, commission or other body or political subdivision thereof, including, without limitation, any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Hazardous Substance” means: (a) any petroleum or petroleum products, flammable materials, explosives, oil, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar import under any Environmental Law; and (c) any other chemical

or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Law, including the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or any similar state statute.

“Indebtedness” means any of the following: (a) any indebtedness for borrowed money, whether secured or unsecured; (b) any obligations evidenced by bonds, debentures, notes or other similar instruments; (c) any obligations as lessee under capitalized leases; (d) any obligations, contingent or otherwise, under acceptances, letters of credit, or similar facilities; (e) any obligations created or arising under conditional sale or title retention agreements; (f) any net obligations payable under any rate, currency, commodity or other swap, option, or derivative agreement; (g) any obligations secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (other than Permitted Liens); (h) any guaranty of any of the foregoing, and (i) all accrued interest, prepayment penalties, fees, reimbursement, indemnities, premiums, make-whole payments and termination or breakage costs or penalties with respect to any Indebtedness referred to above.

“Indemnifying Party” has the meaning set forth in Section 8.3.1.

“Indemnitee” has the meaning set forth in Section 8.3.1.

“Insurance Recovery Amount” has the meaning set forth in Section 10.5.1.

“Intellectual Property” means (a) patents and industrial designs (including any continuations, divisionals, continuations-in-part, renewals, reissues and applications for any of the foregoing), (b) copyrights (including any registrations and applications for any of the foregoing), (c) trademarks, service marks, trade names, logos, slogans, trade dress and applications for registration of the foregoing, and (d) trade secrets and confidential information, including confidential know-how, processes, formulae, algorithms, models or methodologies.

“Intentional Breach” means a breach of this Agreement as a result of any action or inaction undertaken by a Party, where such Party (a) knows that the action or inaction is a breach of this Agreement and (b) acts or refrains from acting with an intention that such action or inaction will result in a breach of this Agreement.

“Law” means any federal, state, local or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, Order, Permit, certificate, authorization, or approval of a Governmental Authority which is binding on a Party, including on any of its property, assets, operations, business, or other activities.

“Liability” means any Indebtedness, costs, expenses, losses, damages, payments, penalties and other obligations of a Person, whether accrued or fixed, absolute or contingent, matured or unmatured, reserved or unreserved, or determined or determinable, and whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of the applicable Person, including those arising under any applicable Law, claim, demand, Action, whether asserted or unasserted, or Order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority and those arising under any Contract, release or warranty, or any fines, damages or equitable relief which may be imposed.

For the avoidance of doubt, Liabilities include any such Liabilities arising out of (a) contract or tort; (b) violation of or non-compliance with applicable Law (including Environmental Law); (c) Environmental Conditions at the Plant, Plant Site, or related to the Plant Assets (including costs of Remediation); (d) Liabilities (including any fines, penalties or costs imposed by a Governmental Authority) related to the Plant Assets arising under Environmental Laws or relating to Hazardous Substances (including costs of Remediation); (e) the Plant Contracts (including Liabilities arising out of any failure to perform, improper performance, warranty or other breach, default or violation by a Party or any of its Affiliates); (f) the Plant Permits; (g) Pre-Closing Taxes and Seller Income Taxes with respect to the transfer of the Plant Assets pursuant to this Agreement; and (h) any Actions related to the Plant Assets.

“Lien” means any mortgage, pledge, security deed, deed of trust, hypothecation, assignment, deposit arrangement, charge, security interest, encumbrance, lien (statutory or other) or preference, priority or other security agreement of any kind or nature whatsoever, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing or the filing of any financing statement or similar instrument under the Uniform Commercial Code as in effect in any relevant jurisdiction or comparable Law of any jurisdiction, domestic or foreign.

“Loss” means any judgment, amount paid in settlement, damage, fine, penalty, deficiency, Liability, loss, or expense (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default, or assessment).

“Made Available” means with respect to any information, document, or other material that: (a) such information, document, or material was provided by Seller for review by Purchaser and its Representatives for a reasonable period of time prior to the execution of the Agreement in the SharePoint site maintained by Seller in connection with the transactions contemplated by the Agreement (it being understood that a document that was only provided for review in the SharePoint site in the two (2) days prior to the execution of the Agreement shall only be deemed to have been provided for a reasonable period of time if the Seller shall have promptly notified Purchaser or its outside legal counsel in writing that such document was uploaded into the SharePoint site), and (b) Purchaser and its Representatives had access to such information, document or material. Material “Made Available” shall also include any material that Seller received in writing from the Purchaser.

“Material Casualty Loss” has the meaning set forth in Section 5.6.3(a), 5.6.3(b), or 5.6.3(c), as applicable.

“MPC” has the meaning set forth in the Preamble.

“MPSC” means the Mississippi Public Service Commission or any successor agency.

“MPSC Approval” means the final, non-appealable approvals issued by the MPSC: (a) for Purchaser to purchase from Seller the Plant Assets on the terms and subject to the conditions set forth in this Agreement, (b) providing for the recovery by Purchaser of any and all costs associated with the transactions contemplated by this Agreement (including the costs of acquiring, owning, operating and maintaining the Plant Assets), (c) authorizing the inclusion of the Plant Assets in

rate base and rates, and (d) any related approvals deemed necessary or appropriate by Purchaser, all in a manner consistent with Purchaser's request to the MPSC for approval.

“Operating Agreement” has the meaning set forth in the Recitals.

“Order” means any binding order, writ, judgment, injunction, decree, stipulation, determination, or award of any Governmental Authority.

“Outside Closing Date” means March 31, 2025.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Permits” means registrations, permits, licenses, authorizations, consents, approvals, grants, franchises, variances, certificates of authority, letter rulings, or similar rights and privileges granted by or obtained from any Governmental Authority, as well as applications for any of the foregoing.

“Permitted Encumbrances” means all exceptions, restrictions, easements, imperfections of title, charges, rights-of-way and other encumbrances in respect of real property that do not materially interfere with the use of, or adversely affect the value of, the Plant Assets, taken as a whole.

“Permitted Liens” means (a) those Liens set forth in Schedule 1.1(b); and (b) Liens for current Taxes and other governmental charges or assessments not yet due and payable or being contested in good faith in the appropriate proceedings.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority, or any other form of entity.

“Plant Assets” means Seller's interest (including the FPL Ownership Interest) in all assets, properties, rights and interests of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and whether at or deliverable to the Plant Site), and any goodwill related thereto, owned or leased by, or licensed to, Seller as of the Closing Date, in each case, which relate to or are used or held for use in connection with the operation, maintenance, repair, ownership or use of Plant Daniel and the Plant Daniel Common Facilities, including all such assets, properties, rights and interests as set forth in the Plant Contracts, and also including the following assets, properties, rights and interests:

- (a) the Books and Records;
- (b) the Plant Site;
- (c) the Plant Contracts;
- (d) the Plant Real Property Agreements;
- (e) the Plant Equipment;

(f) the Plant Improvements;

(g) the Plant Intellectual Property;

(h) Any claims, rights, causes of actions, warranties, prepayments, insurance proceeds, that are not otherwise included in the Excluded Liabilities (excluding the rights and benefits accruing to the Seller from its participation as a plaintiff in the lawsuit described with more specificity on Schedule 3.6, which rights and benefits, along with associated costs and obligations, shall remain with Seller);

(i) the Reports;

(j) the Emission Allowances for the Plant Assets; and

(k) Any miscellaneous assets necessary, useful, or used in or ancillary to operating the above Plant Assets and primarily used in connection therewith but not otherwise enumerated above, which in the ordinary course of business are typically located at the Plant Site or other locations or facilities which are owned, operated, maintained, or under the control of the Seller or its Affiliates or the Agent (under the Operating Agreement) or its Affiliates.

“Plant Contracts” means each of the Contracts to which Seller or any of its Affiliates is a party with respect to the Plant Assets that is listed on Schedule 1.1(c).

“Plant Daniel” has the meaning set forth in the recitals.

“Plant Daniel Common Facilities” shall mean any of the items of common facilities and common site facilities listed in Schedule III and Schedule IV of the Operating Agreement.

“Plant Equipment” means all equipment, materials, supplies, tools, inventory and other tangible personal property related to, used or held for use by Seller or any of its Affiliates for or in connection with the operation, maintenance, repair, ownership or use of the Plant Assets (including all equipment and tangible personal property up to the point of interconnection), in each case, whether located at or deliverable to the Plant Site.

“Plant Improvements” means all buildings, structures, fixtures, and improvements located at or on the Plant Site (including all buildings, structures, fixtures, and improvements up to the point of interconnection and all of the common site facilities listed on Schedule IV to the Operating Agreement).

“Plant Intellectual Property” means all Intellectual Property and licenses to use such Intellectual Property owned or held by Seller or any of its Affiliates and used or held for use with respect to the Plant Assets.

“Plant Permits” means all Permits required by applicable Law and Prudent Utility Practices for the operation, maintenance, repair, ownership, and use of the Plant Assets at the Plant Site.

“Plant Real Property Agreements” means all Contracts, instruments, deeds for fee, leasehold or sub-leasehold, Easements and any other interest in real property, including, but not limited to, any Contracts for real property rights granted by the state of Mississippi or any other

Governmental Authority (including any option to acquire the same), and all amendments, assignments, and modifications thereto and all schedules and exhibits attached thereto, which comprise the Plant Site, to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates or any of the Plant Assets are bound, and that grant, convey, assign or otherwise affect real property interests relating to the Plant Site, including those which are listed on Schedule 1.1(h).

“Plant Site” means the real property located in Jackson County, Mississippi, including the Easements, upon which the Plant Assets and the access and other real property rights are located, as further described on Schedule 1.1(i).

“Pollution Control Revenue Bond Obligations” means all obligations of FPL (including as successor to Gulf Power Company) relating to any pollution control revenue bonds issued by the Mississippi Business Finance Corporation, including, without limitation, all obligations of FPL under any loan agreement relating to such bonds or any other agreements relating to such bonds.

“Post-Closing Taxes” has the meaning set forth in Section 9.5.

“Pre-Closing Tax Period” shall mean any taxable period ending on or before the Closing Date, or with respect to any Straddle Period, the portion of the Straddle Period ending on the Closing Date.

“Pre-Closing Taxes” has the meaning set forth in Section 9.4.

“Prudent Utility Practices” means the practices, methods and acts generally engaged in or approved by a significant portion of the electric power industry in the United States for similarly situated facilities in the United States during a particular period, or any of such practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, economy and expedition, the Plant Contracts and the other Contracts affecting the construction, ownership, use, operation and maintenance of the Plant Assets. Without limiting the foregoing, Prudent Utility Practices are not intended to be limited to the optimum practices, methods, or acts, to the exclusion of all others, but rather to include a spectrum of possible practices, methods or acts generally acceptable in the region during the relevant period in light of the circumstances.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Indemnified Party” has the meaning set forth in Section 8.1.

“Purchaser Material Adverse Effect” means any Change that, individually or taken together with any other Changes, is or would reasonably be expected to be materially adverse to the ability of Purchaser to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party.

“Purchaser’s Consents” has the meaning set forth in Section 4.4.2.

“Purchaser Income Taxes” means any income, franchise, or similar Taxes imposed on, or Taxes imposed on, or measured by reference to, the net income or net worth of, Purchaser or any Affiliate of Purchaser.

“Purchaser’s Knowledge” means the actual knowledge, after due inquiry, of the Persons listed on Schedule 1.1(j).

“Related Person” means with respect to each Party and its Affiliates, the employees, officers, and directors of such Party and its Affiliates.

“Release” has the meaning set forth in Environmental Laws and relates to Hazardous Substances that originate from the Plant Site or the operation of the Plant Assets, but also shall include any actual or threatened releasing, spilling, leaking, discharging, abandoning, disposing, pumping, pouring, emitting, emptying, injecting, leaching, dumping, depositing, dispersing, allowing to escape or migrate into or through the environment or the Plant Site of any Hazardous Substance, including the abandonment or discarding of any Hazardous Substance in barrels, drums, or other containers, into or within the environment or the Plant Site, including the migration of any Hazardous Substance into, under, on, through, or in the air, soil, subsurface strata, surface water, groundwater, drinking water supply, any sediments associated with any water bodies, or any other environmental medium.

“Remediation” means actions required now or in the future under Environmental Laws or by a Governmental Authority, or that Purchaser reasonably determines is required to resolve a claim by a third party against a Purchaser Indemnified Party, in each case to address an Environmental Condition, including any monitoring, investigation, assessment, characterization, treatment, cleanup, containment, removal, mitigation, response, or restoration work.

“Reports” means all internal or third party reports, studies, analyses and tests (and all amendments and supplements thereto) prepared for, or commissioned by, and delivered to, Seller or any of its Affiliates that relate to the Plant Assets. Reports include environmental impact studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, including interconnection system impact studies, wildlife studies, studies or analysis of or reports on the Environmental Condition of the Plant Site or compliance by the Plant Assets or the Plant Site with Environmental Laws, Federal Aviation Administration analyses, state department of transportation analyses, zoning studies, visual impact studies, and wetlands studies.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, investment bankers, engineers, consultants, and other representatives or advisors.

“Required Regulatory Approvals” means the MPSC Approval and the FPSC Approval.

“Restoration Cost” has the meaning set forth in Section 5.6.1.

“Schedule” or “Schedules” means one or more of the disclosure schedules attached hereto with respect to each Party.



“Seller” has the meaning set forth in the Preamble.

“Seller Income Taxes” means any income, franchise, or similar Taxes imposed on, or Taxes imposed on, or measured by reference to, the net income or net worth of, Seller or any Affiliate of Seller.

“Seller Indemnified Party” has the meaning set forth in Section 8.2.

“Seller Material Adverse Effect” means any Change that, individually or taken together with any other Changes, is or would reasonably be expected to be materially adverse to: (a) the business, tangible or intangible assets, operations, ownership, use, or condition (financial or otherwise) of the Plant Assets; (b) the validity or enforceability of this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby; or (c) the ability of Seller to perform its obligations under this Agreement or the Ancillary Agreements to which Seller is a party; provided, however, that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Seller Material Adverse Effect: (i) changes in general economic conditions; (ii) changes in GAAP or Law or the interpretation thereof; (iii) changes in the industry sector in which Seller operates; (iv) changes in political conditions (including civil unrest); (v) acts of war, sabotage or terrorism or military actions or any escalation or material worsening thereof; (vi) natural disasters or other similar force majeure events; (vii) epidemics, pandemics, or disease outbreaks (including without limitation the COVID-19 virus); (viii) any failure to meet internal projections, estimates or forecasts for any period (it being understood that the underlying facts or causes giving rise or contributing to such failure may be taken into account in determining whether there has been, or would reasonably be expected to be, a Seller Material Adverse Effect if any Change related thereto is not otherwise excluded under this definition); and (ix) the announcement or disclosure of the transactions contemplated hereby; provided, however, that clauses (i) through (ix) shall not apply to the extent the Plant Site or Plant Assets are disproportionately impacted by any such Change as compared to other similarly situated energy projects (or the sites on which they are located). For the avoidance of doubt, the terms “material,” “materially,” and “materiality” as used in this Agreement with an initial lower case “m” shall have their respective customary and ordinary meanings, without regard to the meaning ascribed to Seller Material Adverse Effect.

“Seller’s Consents” has the meaning set forth in Section 3.4.2.

“Seller’s Knowledge” means the actual knowledge, after due inquiry, of the Persons listed on Schedule 1.1(m) but excluding facts and information provided by the Agent under the Operating Agreement.

“Straddle Period” means any taxable period beginning on or before and ending after the Closing Date.

“Straddle Period Taxes” means any Taxes (other than Seller Income Taxes and property Taxes) imposed on or with respect to the Plant Assets or Seller for a Straddle Period.

“Tax” or “Taxes” means (a) any and all taxes imposed by any foreign, federal, state or local government or any agency or political subdivision of any such government, which taxes shall include all income taxes, profits taxes, taxes on gains, alternative minimum taxes, estimated taxes,

payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, welfare taxes, disability taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, value added taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real or personal property taxes, stamp taxes, environmental taxes, Transfer Taxes, workers' compensation taxes and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and charges of the same or of a similar nature to any of the foregoing; (b) any Liability for the payment of any amounts of the type described in (a) as a result of being a member of, or a successor member of, an affiliated, combined, consolidated or unitary group for any taxable period; (c) any Liability for the payment of any amounts of the type described in (a) as a result of being a Person required by Law to withhold or collect taxes imposed on another Person; (d) any Liability for the payment of amounts of the type described in (a), (b), or (c) as a result of being a transferee of, or a successor in interest to, any person or as a result of an express or implied obligation to indemnify any person; and (e) any and all interest, penalties, additions to tax and additional amounts imposed in connection with or with respect to any amounts described in (a), (b), (c) or (d), whether disputed or not.

“Tax Returns” means any return, report, rendition, information return, claim for refund or other document (including any related or supporting information) supplied to or required to be supplied to any Taxing Authority with respect to Taxes, including any attachments, amendments, and supplements thereto.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“Third Party Claim” has the meaning set forth in Section 8.3.1.

“Third Party Claim Notice” has the meaning set forth in Section 8.3.1.

“Transfer Amount” has the meaning set forth in Section 2.2.1.

“Transfer Taxes” has the meaning set forth in Section 9.3.

1.2 Rules as to Usage. Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

(a) Each defined term has its defined meaning throughout this Agreement, and in each annex, exhibit and Schedule hereto, regardless of whether it appears before or after the place where it is defined. The defined terms have the respective prescribed meanings for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb).

(b) The word “includes,” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions. Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

(c) “Writing,” “written,” and comparable terms refer to printing, typing, and

other means of reproducing in a visible form.

(d) Any Law defined or referred to herein means such Law as from time to time amended, modified, or supplemented, including by succession of comparable successor Law and any rules, regulations, and interpretations promulgated thereunder.

(e) References to a Person are also to its permitted successors and assigns.

(f) “Hereof,” “herein,” “hereunder,” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section, or other subdivision thereof or exhibit or schedule or other attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an exhibit, schedule or other attachment are, unless the context otherwise requires, to an article, section, subsection, or subdivision of or an exhibit or schedule or other attachment to such agreement or instrument.

(g) Pronouns, whenever used in any agreement or instrument that is governed by this Agreement and of whatever gender, shall include all Persons. References to any gender include, unless the context otherwise requires, references to all genders.

(h) The word “or” will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, “or” will be interpreted to mean “and/or” rather than “either/or”). When expressing the obligation of a Party, “shall” and “will” have equal force and effect.

(i) Whenever the consent or approval of any Party is required pursuant to this Agreement, unless expressly stated that such consent or approval is to be given in the sole discretion of such Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

(j) Where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(k) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(l) References to any contract, agreement or other document mean such contract, agreement or other document as amended, modified, or supplemented and in effect from time to time in accordance with its terms and, if applicable, the terms of this Agreement.

(m) References to the United States, the US, and the U.S. refer to the United States of America.

(n) This Agreement consists of the Articles contained herein and the annexes,

Schedules and exhibits attached hereto, all of which comprise part of one and the same agreement with equal force and effect.

## ARTICLE II PURCHASE AND SALE; TRANSFER AMOUNT; CLOSING

### 2.1 Purchase and Sale; Excluded Liabilities; Assumed Liabilities.

2.1.1 Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Purchaser free and clear of all Liens (other than Permitted Liens), and Purchaser shall purchase and acquire, all of Seller's right, title, and interest in, to and under the Plant Assets, including the FPL Ownership Interest in certain of the Plant Assets (which Seller owns or to which Seller has a right pursuant to the Plant Contracts, among other instruments), and Plant Assets not included as part of the FPL Ownership Interest, if any.

#### 2.1.2 Excluded Liabilities.

(a) Excluded Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall retain, and shall be responsible for paying, performing, and discharging when due, and the Purchaser and its Affiliates shall not assume or have any responsibility for the following (collectively, the "Excluded Liabilities"):

(i) *Pre-Closing Liabilities:* All Liabilities of Seller or any of its Affiliates, calculated as a percentage (based upon the FPL Ownership Interest) of the total Liability relating to the Plant Assets and/or the operation of the Plant Assets occurring during, accrued during, arising from or related to (in whole or in part), in each case, all periods prior to the Closing; provided that this Section 2.1.2(a)(i) shall not be applicable to any Liabilities relating to (A) Decommissioning, which is governed by Section 2.1.2(a)(ii); or (B) CCR, which are governed by Section 2.1.2(a)(iii). For example, if a Governmental Authority issues a ten thousand dollar (\$10,000) fine after the Closing for violations of a permit related to a Plant Daniel Common Facility and the fine is based on circumstances existing both before and after the Closing, such ten thousand dollar (\$10,000) fine shall be an Excluded Liability (Seller's share of which shall be based on the FPL Ownership Interest) under this Section 2.1.2(a)(i). For the avoidance of doubt, however, any Liabilities that are not otherwise Excluded Liabilities pursuant to Section 2.1.2(a)(ii), Section 2.1.2(a)(iii) or Section 2.1.2(a)(iv) and are related solely to the operation of the Plant Assets after the Closing are Assumed Liabilities.

(ii) *Decommissioning Liability.* All Decommissioning Liabilities of Seller or any of its Affiliates, calculated as a percentage (based upon the FPL Ownership Interest) of the total Decommissioning Liability for all tangible Plant Assets, regardless of whether such Decommissioning Liabilities relate to pre-Closing or post-Closing Decommissioning Liabilities (as determined by application of the FERC Uniform System of Accounts upon the Decommissioning of the Plant Assets). "Decommissioning" means all activities associated with, related to, or arising from the dismantling and removal of Plant Daniel and the restoration of the Plant Site and any Decommissioning Liabilities necessary to maintain Plant Daniel and the Plant Site in a safe condition under any applicable Laws (including Environmental

Laws) and any other legally binding obligations, all of which shall be in MPC's reasonable discretion.

(iii) *Coal Combustion Residuals.* All Liabilities of Seller or any of its Affiliates for CCR (including for Remediation), calculated as a percentage (pro-rated based upon the FPL Ownership Interest) of the total CCR-related Liability for Plant Daniel and the Plant Site, regardless of whether such CCR-related Liabilities relate to pre-Closing or post-Closing operation, assessment, monitoring, corrective action, maintenance (including capital maintenance), design, disposal, transportation, storage, reopening, closure (of CCR-related Plant Assets) and post-closure (of CCR-related Plant Assets) care of all CCR produced pre-Closing that are on, off, or under the Plant Site and any costs and expenses associated therewith, related to or arising from the CCR. For the avoidance of doubt, costs related to CCR that is solely produced after Closing (and is not commingled with pre-Closing CCR) is an Assumed Liability except for Decommissioning Liability (which is an Excluded Liability pursuant to Section 2.1.2(a)(ii)) associated with such post-Closing CCR. For example, given FPL's Ownership interest, FPL will be responsible for fifty percent (50%) of the total cost (including capital, operations, and maintenance costs) to operate, maintain and monitor any ash pond or gypsum cell that contains any CCR produced by pre-Closing operation of Plant Daniel.

(iv) *All Other Liabilities of Seller.* All other Liabilities of Seller or any of its Affiliates relating to the Plant Assets and/or the operation of the Plant Assets that are not expressly set forth as an Assumed Liability. For the avoidance of doubt, (A) all Pollution Control Revenue Bond Obligations; (B) all obligations of Seller and its Affiliates under this Agreement; (C) all obligations of Seller and its Affiliates with respect to any Taxes (including those set forth in Section 9.4, but excluding those set forth in Section 9.5); (D) all transaction expenses of Seller and its Affiliates related to this Agreement and the transactions consummated hereunder, and (E) the costs and obligations associated with and arising out of Seller's participation as a plaintiff in the lawsuit described with more specificity on Schedule 3.6, shall be Excluded Liabilities and shall be retained by Seller and its Affiliates, and Purchaser shall have no obligations with respect thereto.

(b) Changes in Law or Operation. The Parties acknowledge and agree that Seller's responsibility for Excluded Liabilities pursuant to Section 2.1.2(a) includes the effect of any (i) Change in Law; or (ii) Change in the operation, maintenance or other activities with respect to the Plant Assets pursuant to Prudent Utility Practices (or any Action arising out of or relating to clauses (i) or (ii)), regardless of whether any such Change in Law or Change makes such responsibility more or less burdensome on the Participants.

2.1.3 Assumed Liabilities. From and after the Closing, Purchaser shall assume, and Purchaser hereby agrees to pay, satisfy, and discharge when due, the following Liabilities of Seller (the "Assumed Liabilities"), and no other Seller Liabilities:

- (a) all Liabilities under the Plant Contracts, other than Excluded Liabilities;
- (b) all Liabilities arising solely from the ownership, operation, maintenance or use of the Plant Assets by Purchaser following the Closing, other than Excluded Liabilities;
- (c) all Liabilities arising from any incremental costs that are solely attributable

to new uses of Plant Site by Purchaser after the Closing that are different in both scope or kind than any pre-Closing uses of such Plant Site. For the avoidance of doubt, the Assumed Liabilities described in this Section 2.1.3(c) include Liability for incremental Decommissioning costs arising solely from such new usage of the Plant Site, but do not include Decommissioning Liability for facilities, buildings, equipment or other assets that were used for operation or maintenance of the Plant Assets;

(d) all Liabilities related to new generating assets built on the Plant Site and any facilities or systems related to such new generating assets. For the avoidance of doubt, the Assumed Liabilities described in this Section 2.1.3(d) include Liability for incremental Decommissioning costs arising solely from such new generating assets, but do not include Decommissioning Liability for facilities, buildings, equipment or other assets that were used for operation or maintenance of the Plant Assets; and

(e) All Other Liabilities of Purchaser. The following shall be Assumed Liabilities: (A) all obligations of Purchaser and its Affiliates under this Agreement; (B) all obligations of Purchaser and its Affiliates with respect to any Taxes (including those set forth in Section 9.5, but excluding those set forth in Section 9.4); (C) all transaction expenses of Purchaser and its Affiliates related to this Agreement and the transactions consummated hereunder; and (D) Liabilities solely arising from or relating to the Other Plant Daniel Facilities.

(f) Changes in Law or Operation. The Parties acknowledge and agree that, except as and to the extent expressly provided in Section 2.1.3(e) above, Purchaser's responsibility for Assumed Liabilities pursuant to this Section 2.1.3 includes the effect of any (i) Change in Law; or (ii) Change in the operation, maintenance or other activities with respect to the Plant Assets pursuant to Prudent Utility Practices (or any Action arising out of or relating to clauses (i) or (ii)), regardless of whether any such Change in Law or Change makes such responsibility more or less burdensome on the Participants.

#### 2.1.4 Payment of Excluded Liabilities.

(a) For each calendar month following the Closing, Purchaser shall deliver, on or before the fifteenth (15<sup>th</sup>) day of such month, notice of the Excluded Liabilities anticipated to be due and payable by Seller during the succeeding calendar month, plus or minus any adjustments for Excluded Liabilities incurred in prior months but not previously charged or credited to Seller. Seller shall make payments in immediately available funds to an account designated by Purchaser no later than ten (10) Business Days after receipt of such invoice. Each such invoice shall be accompanied by an accounting (prepared by Purchaser) of the Excluded Liabilities incurred and credits or debits, if any, accrued for the preceding months. As part of such invoice, Purchaser shall provide Seller with such information that allows Seller, at a minimum, to discern the type and nature of Excluded Liabilities for which Seller is being invoiced. Additionally, Purchaser shall, at Seller's request, provide Seller with any additional information as is reasonably required by Seller in order to account for such payments made pursuant to this Section 2.1.4(a), at Seller's cost and expense. If Seller in good faith disputes any portion of the amount due on any invoice as further described in Section 2.1.4(c), Seller shall nonetheless make the full payment of such invoice during the pendency of any dispute. If any payment is not made within such ten (10) Business Day period, such amounts shall accrue interest at the Default Rate.

(b) Seller shall have until the one hundred and eightieth (180<sup>th</sup>) day after Purchaser furnishes such invoice (and accounting) to dispute such invoice by written notice of a good faith dispute of any charge or credit made within such invoice, and, at Seller's own expense, may conduct or cause to be conducted a reasonable audit of data, records, or other pertinent information specifically related to each such dispute no more than two (2) times in any one-year period; provided that such information shall not include commercially sensitive or privileged information. Seller shall provide at least ten (10) Business Days' advance notice of any such audit and shall conduct such audit during normal business hours and in such manner as to minimize disruption of Purchaser and its Affiliates. All reasonable costs incurred by Purchaser or its Affiliates in cooperating with such audit shall be borne by Seller. Seller shall promptly provide the results of such audit to Purchaser. If such audit reveals that Purchaser has overcharged Seller, Purchaser shall, subject to the dispute resolution provisions of Article XI, credit Seller the amount of the overcharge on the next invoice (or shall promptly pay Seller if no suitable invoice will be provided to include such credit). If such audit reveals that Purchaser has undercharged Seller, Purchaser shall bill Seller the amount of the undercharge on the next invoice.

(c) Except for Taxes (which are subject to Article IX), Seller may only dispute such invoice if it contains (i) costs incurred in violation of Prudent Utility Practices; (ii) costs that are not Excluded Liabilities; or (iii) billing errors.

## 2.2 Transfer Amount.

2.2.1 Amount. The total consideration for the Plant Assets includes the amount Seller shall pay or cause to be paid to Purchaser, which shall be an amount equal to the amount set forth in Exhibit C applicable to the Closing Date (the "Transfer Amount"), in consideration for the assumption by Purchaser of the Assumed Liabilities, among other things as provided herein. Payment of the Transfer Amount shall be made in accordance with Section 2.2.2 of this Agreement.

### 2.2.2 Method of Payment of Transfer Amount.

(a) At the Closing, Seller shall pay to Purchaser the Transfer Amount.

(b) Payment of the Transfer Amount shall be made in United States Dollars, by wire transfer of immediately available federal funds to an account located in the United States as Purchaser may specify by written notice.

2.2.3 Prorations. Except for Taxes (which are subject to Article IX), each item of expense incurred by Seller in the ordinary course of business consistent with past practice that would typically be prorated as of the Closing Date for transactions similar to the transactions described herein shall be prorated between Purchaser and Seller as of the Closing Date, so that Seller is responsible for the prorated amounts incurred for the period of time prior to the Closing Date, and Purchaser is responsible for the prorated amounts incurred for the period of time from and after the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days); provided, that notwithstanding anything to the contrary herein, Purchaser shall not pay any amount under this Section 2.2.3 that constitutes an Excluded Liability. In the event that actual figures for such prorated amounts are not available at the Closing Date, the proration shall be based upon the amounts accrued through the Closing Date or paid for

the most recent year (or other appropriate period) for which actual amounts paid are available. Such prorated amounts shall be re-prorated and paid to the appropriate Party within sixty (60) days of the date that the previously unavailable actual figures become available. Seller and Purchaser agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 2.2.3.

2.2.4 Documentation. Each Party agrees to provide the other Party with a receipt, confirmation, or other appropriate documentation reasonably requested by the other Party from time to time in order to evidence the payments made by Purchaser pursuant to this Agreement.

2.3 The Closing. The closing of the transactions contemplated herein (the “Closing”) will take place by electronic exchange of documents and payments at 10:00 a.m. Eastern time on the date as soon as practicable (but in no event longer than three (3) Business Days, after the conditions to the Closing set forth in Section 6.1 and Section 6.2 have been satisfied or waived, or at such other place, time or date as Purchaser and Seller mutually agree in writing (the “Closing Date”). The Closing shall be effective as of 12:01 a.m. Eastern time on the Closing Date.

#### 2.4 Closing Deliveries.

2.4.1 Purchaser’s Closing Deliveries. At the Closing, Purchaser will execute and deliver or pay (as applicable) to Seller the following items:

(a) a counterpart signature page to the Bill of Sale substantially and in all material respects in the form attached hereto as Exhibit A (the “Bill of Sale”), executed by an authorized representative of Purchaser;

(b) counterpart signature pages to the Assignment and Assumption Agreements substantially and in all material respects in the forms attached hereto as Exhibit B-1 and Exhibit B-2 (collectively, the “Assignment and Assumption Agreements”), executed by an authorized representative of Purchaser;

(c) a certificate, dated as of the Closing Date, executed by an authorized officer of Purchaser, certifying as to the matters set forth in Section 6.2.1 and Section 6.2.2;

(d) a certificate, dated as of the Closing Date, executed by an authorized officer of Purchaser, certifying that attached thereto is a true, correct, and complete copy of a Certificate of Good Standing with respect to Purchaser, issued by the Secretary of State of the State of Mississippi within five (5) Business Days of the Closing;

(e) a Form W-9 properly completed by Purchaser; and

(f) such other documents and instruments as may be reasonably requested by Seller to complete the transactions contemplated by this Agreement.

2.4.2 Seller’s Closing Deliveries. At the Closing, Seller will pay to Purchaser the Transfer Amount in accordance with Section 2.2.2, and will execute and deliver, or will cause to be executed and delivered (as applicable), to Purchaser the following items:

(a) a counterpart signature page to the Bill of Sale, executed by an authorized



representative of Seller;

(b) counterpart signature pages to the Assignment and Assumption Agreements, executed by an authorized representative of Seller;

(c) one or more special warranty deeds, in form and substance reasonably acceptable to Purchaser, conveying to Purchaser those Plant Assets which are real property, executed by an authorized representative of Seller and properly notarized and witnessed;

(d) a Form W-9 properly completed by Seller;

(e) a certification of non-foreign status of Seller, in the form and manner which complies with the requirements of Section 1445(b)(2) of the Code and Treasury Regulation Section 1.1445-2(b)(2) and in form and substance reasonably satisfactory to Purchaser;

(f) a certificate, dated as of the Closing Date, executed by an authorized officer of Seller, certifying that attached thereto is a true, correct, and complete copy of a Certificate of Good Standing with respect to Seller, issued by the Secretary of State of the State of Florida within five (5) Business Days of the Closing, and resolutions of the governing body of Seller authorizing the transaction contemplated by this Agreement;

(g) a certificate, dated as of the Closing Date, executed by an authorized officer of Seller, certifying as to the matters set forth in Section 6.1.1 and Section 6.1.2;

(h) evidence reasonably satisfactory to Purchaser that none of the Plant Assets, Plant Site nor any of Seller's interests in the Plant Real Property Agreements is subject to the Lien of the FPL Mortgage Indenture, including, if applicable, evidence of release pursuant to the terms of the FPL Mortgage Indenture; and

(i) such other documents and instruments as may be reasonably requested by Purchaser to complete the transactions contemplated by this Agreement.

## 2.5 Further Assurances; Post-Closing Cooperation.

2.5.1 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably deem necessary or desirable in order to more effectively (a) transfer, convey, and assign to Purchaser, and to confirm Purchaser's title to one hundred percent (100%) of Plant Daniel and the Plant Assets, (b) effectuate the assumption by Purchaser of, among other things, the Plant Contracts, Plant Real Property Agreements, and Plant Intellectual Property, and the assumption by Purchaser of the Assumed Liabilities, and (c) otherwise to complete the transactions contemplated by this Agreement.

2.5.2 Books and Records. Following the Closing, each Party and its Affiliates will afford each other Party and their respective Representatives, during normal business hours, reasonable access to the Books and Records and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection

with (i) the preparation of Tax Returns or preparations for and participation in any investigation with respect thereto, (ii) compliance with the requirements of or preparation of reports to any Governmental Authority, (iii) compliance with financial reporting requirements, (iv) the investigation, settlement, preparation for the defense or prosecution of, or defense or prosecution of any Action, (v) Excluded Liabilities or Assumed Liabilities, (vi) rights and obligations arising under Article VIII, Article IX, or Article XI hereof, or (vii) the discharge of obligations under this Agreement. Each Party shall maintain the Books and Records reasonably expected to be required in connection with the matters described in items (i) through (iv) of the preceding sentence for the later of (A) seven (7) years after the Closing Date or (B) twenty-four (24) months after the final performance related to such items, or in the case of Books and Records relating to Taxes, for the period required by Section 9.6.

2.5.3 Delivery of Books and Records. No later than the Closing Date (or in the case of Books and Records not immediately required for the ownership, use, operation and maintenance of the Plant Assets that cannot be reasonably and practicably delivered at the Closing, as soon as reasonably practicable thereafter, but no later than forty-five (45) days after the Closing Date), Seller shall deliver any Books and Records (to the extent providing such to Purchaser does not violate any applicable Law) that are not located at the Plant Site to Purchaser at Purchaser's offices in Gulfport, Mississippi, the Plant Site or another location as designated by Purchaser unless otherwise in the possession of Purchaser.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Schedules (which shall be arranged in sections corresponding to the sections contained in this Article III, and the disclosure in any section shall be deemed to qualify or apply to other sections in this Article III to the extent that it is reasonably apparent on its face without further investigation that such disclosure also qualifies or applies to such other sections), Seller hereby represents and warrants to Purchaser as follows:

3.1 Existence. Seller is duly formed, validly existing and in good standing under the Laws of the state of Florida. Seller has the requisite power and authority to own and operate the Plant Assets, including to own, operate and lease its properties and assets and to carry on its business as now being conducted. Seller is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the location and character of the assets owned or held under lease by it or the nature and conduct of the business transacted by it makes qualification necessary.

3.2 Authority. Seller has full corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is or will be a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which it will be a party in connection with the transactions contemplated hereby, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary entity action on the part of Seller.

3.3 Binding Agreement. This Agreement and the Ancillary Agreements to which Seller is (or will be) a party have been (or will be when delivered) duly executed and delivered by

Seller and, assuming due and valid authorization, execution and delivery thereof by Purchaser and each other party thereto, this Agreement and the Ancillary Agreements to which it is (or will be) a party are (or will be when delivered) valid and binding obligations of Seller enforceable against Seller in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity).

3.4 No Conflicts. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Seller of its obligations under this Agreement and the Ancillary Agreements to which it is (or will be) a party and the completion of the transactions contemplated hereby and thereby, shall not:

3.4.1 conflict with or result in a violation or breach of any of the terms, conditions or provisions of Seller's organizational documents;

3.4.2 assuming all of the consents and approvals set forth in Schedule 3.4 (the "Seller's Consents") have been obtained or given, result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Plant Contract or Contract (with or without notice or lapse of time or both) with respect to the Plant Assets to which Seller or any of its Affiliates is a party or by which Seller, any of its Affiliates or any of the Plant Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct, and complete copies of which have been furnished to Purchaser, except to the extent already in Purchaser's possession); and

3.4.3 assuming all of the required approvals from Governmental Authorities and all of the Seller's Consents have been obtained or given, conflict with or result in a violation or breach of any term or provision of any Law applicable to Seller or the Plant Assets; or assuming all of the required approvals from Governmental Authorities and all of the Seller's Consents have been obtained or given, result in the imposition or creation of any Lien (other than a Permitted Lien or a Permitted Encumbrance) upon any of the Plant Assets, other than in favor of Purchaser.

3.5 Governmental Approvals and Filings. Except for the Required Regulatory Approvals and except as set forth in Schedule 3.5, no consent or approval of, filing with, or notice to, any Governmental Authority by Seller is required in connection with the execution, delivery, and performance by Seller of this Agreement or any of the Ancillary Agreements to which it is (or will be) a party or the completion of the transactions contemplated hereby or thereby.

3.6 Legal Proceedings. Except as provided on Schedule 3.6, there are no Actions (a) outstanding or pending to which Seller or any of its Affiliates is a party or (b) to Seller's Knowledge, threatened against Seller or any of its Affiliates or any of its or their respective assets and properties, including the Plant Assets, in each case, which seek or would be reasonably expected to (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or any of the Ancillary Agreements, or (ii) individually or in the aggregate, materially affect the Plant Assets or Seller's ability to perform its obligations under this Agreement, including no material Orders outstanding and no unsatisfied material judgments, penalties or awards against or affecting Seller with respect to the Plant Assets. Seller has no suits, claims, charges, complaints or demands of

any kind whatsoever currently pending against Purchaser with any local, state, or federal court or any governmental, administrative, investigative, civil rights or other agency or board.

3.7 Compliance with Laws. To Seller's Knowledge, Seller and the Plant Assets (including the ownership, construction, operation, maintenance, repair and use thereof) are not in violation of or in default under any Law (excluding any Environmental Laws, which are addressed in Section 3.14, and Tax Laws, which are addressed in Article IX), in each case, in any material respect. Within the five (5) years prior to the Effective Date, Seller has not received written notification alleging that Seller or any Plant Assets (including the ownership, construction, operation, maintenance, repair or use thereof) is in violation of any Law (excluding any Environmental Laws, which are addressed in Section 3.14, and Tax Laws, which are addressed in Article IX), in each case, in any material respect.

3.8 Title to Plant Assets.

3.8.1 As of the Effective Date, Seller or an Affiliate of Seller has good and valid title to, or a valid leasehold or license interest in, as applicable, the Plant Assets, including all Plant Assets constituting personal property (as opposed to real property), and any Plant Assets not part of the FPL Ownership Interest, free and clear of all Liens, except for Permitted Liens. At the Closing, Purchaser will acquire good and valid title to, or a valid leasehold or license interest in, as applicable, the Plant Assets, including all Plant Assets constituting personal property, and any Plant Assets not part of the FPL Ownership Interest, free and clear of all Liens, except for Permitted Liens.

3.8.2 No Person other than Seller owns or has any interest in, or option or other right (contingent or otherwise), including a right of first refusal or a right of first offer, with respect to, or has any Lien (other than Permitted Liens) on, any of the Plant Assets. There are no adverse claims of ownership to any of the Plant Assets and neither Seller nor any of its Affiliates has received any notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Plant Assets.

3.8.3 All Plant Equipment and Plant Improvements are, and immediately before the Closing shall be, located at the Plant Site. None of the Plant Assets is subject to any condemnation or eminent domain proceeding.

3.9 Real Property.

3.9.1 As of the Effective Date, Seller holds, as a tenant-in-common with Purchaser, good, marketable and fee simple title to, or good and valid leasehold or Easement interests in, the Plant Site pursuant to the Plant Real Property Agreements, free and clear of all Liens other than Permitted Liens and Permitted Encumbrances. At the Closing, Purchaser will acquire good, marketable and fee simple title to, or good and valid leasehold or Easement interests in, the Plant Site pursuant to the Plant Real Property Agreements, free and clear of all Liens other than Permitted Liens and Permitted Encumbrances.

3.9.2 With respect to Seller and, to Seller's Knowledge, each other party thereto, each Plant Real Property Agreement (a) was duly executed and delivered by a person with the power and authority to do so, and (b) is legal, valid, binding and in full force and effect, except as

the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and equitable principles.

3.9.3 (a) Neither Seller nor any Affiliate of Seller is in breach or default in any material respect under any Plant Real Property Agreement and, to Seller's Knowledge, no other party to a Plant Real Property Agreement is in breach or default in any material respect thereunder; (b) no event has occurred which, with notice or lapse of time, or both, would constitute a breach or default by Seller or any Affiliate of Seller or, to Seller's Knowledge, any other party to a Plant Real Property Agreement, or, to Seller's Knowledge, would permit termination, modification or acceleration, thereof; and (c) neither Seller nor any Affiliate of Seller has and, to Seller's Knowledge, no other party to a Plant Real Property Agreement has, repudiated any provision thereof.

3.9.4 Neither the Plant Site nor any of Seller's interests in the Plant Real Property Agreements is subject to any Lien, assignment, lease, sublease, transfer, conveyance, option, mortgage, security deed, deed of trust or other encumbrance, other than Permitted Liens.

3.9.5 There are no commitments or agreements between Seller or any Affiliate of Seller, on the one hand, and any Governmental Authority, public or private utility or any other Person, on the other hand, affecting the Plant Assets, the Plant Site, the Plant Real Property Agreements, the Plant Equipment, the Plant Improvements, the Plant Permits, or any portion thereof or interest therein.

3.9.6 There are no Actions pending or, to Seller's Knowledge, threatened, against or affecting the Plant Assets, the Plant Site, the Plant Real Property Agreements or the Plant Improvements, or any portion thereof or interest therein, in the nature of, or in lieu of, condemnation, land use, zoning or eminent domain proceedings, or otherwise.

3.9.7 To Seller's Knowledge, the Plant Site, the Plant Real Property Agreements, the Plant Contracts, and the Plant Improvements, along with any other Participant's interests, constitute all of the rights, titles, and interests in real property necessary for the utilization of the Plant Assets in the manner in which they are currently owned and operated.

3.9.8 Schedule 1.1(h) contains a true, correct, and complete list of all Plant Real Property Agreements. Seller has Made Available to Purchaser true, correct, and complete copies of (a) all Plant Real Property Agreements, and (b) title insurance commitments, policies, opinions, abstracts, and surveys with respect to the Plant Site, in each case, that are in the possession or control of Seller or any of its Affiliates, except to the extent (a) and (b) are already in Purchaser's possession.

3.10 No Seller Material Adverse Effect. To Seller's Knowledge, no event(s) has occurred, or circumstance(s) exists that, individually or in the aggregate, would reasonably be expected to have a Seller Material Adverse Effect.

3.11 Contracts.

3.11.1 Schedule 1.1(c) sets forth a true, correct, and complete list and description

of all Plant Contracts, and the Plant Assets are not bound by, or will be bound after the Closing by, any Contract other than the Plant Contracts.

3.11.2 Seller has Made Available to Purchaser true, correct, and complete copies of all Plant Contracts, including all amendments, supplements, schedules, and exhibits thereto except to the extent already in Purchaser's possession. No written waiver or, to Seller's Knowledge, material oral waiver of any term or condition of any Plant Contract is currently in effect. Seller has not assigned any of its interests in any of the Plant Contracts, and none of Seller's interests in any of the Plant Contracts is subject to any Liens (other than Permitted Liens).

3.11.3 Neither Seller, nor to Seller's Knowledge, any other party to any Plant Contract, is in breach or default in any material respect in the performance or observance of any term or provision of, and no event has occurred which, with the giving of notice or the lapse of time or both, would result in such a breach or default under, any Plant Contract. Each Plant Contract constitutes a legal, valid, and binding agreement of Seller and, to Seller's Knowledge, of each other party thereto, enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency or other similar Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity).

3.12 Permits. Seller holds no Permits, nor has it applied for any Permits required by Law, in each case for the ownership, occupancy, operation, maintenance, repair, and use of the Plant Assets at the Plant Site as currently conducted and the generation and sale of electric power therefrom. To the Seller's Knowledge, such Permits are held in the name of the Agent.

3.13 Insurance. Seller does not maintain insurance with respect to the Plant Assets.

3.14 Environmental Matters.

3.14.1 Except as set forth on Schedule 3.14, to Seller's Knowledge, (a) Seller and the Plant Assets (including the ownership, construction, operation, maintenance, repair, and use thereof) are, and in the past five (5) years have been, in material compliance with all applicable Environmental Laws (including all Environmental Permits); (b) Seller has not entered into or agreed to any Order and is not subject to any Order relating to compliance with any Environmental Law or to the investigation or cleanup of Hazardous Substances or Environmental Conditions, in each case, relating to the Plant Assets; (c) there are no Actions pending or, to Seller's Knowledge, threatened under any Environmental Law relating to the Plant Assets; and (d) Seller otherwise has not in the past five (5) years been subject to any Environmental Claim or received from any Person written notice with respect thereto.

3.14.2 Except as set forth on Schedule 3.14, to Seller's Knowledge, there has been no Release of Hazardous Substances at, on, beneath or from the Plant Site, except for Releases of Hazardous Substances that would not reasonably be expected to result in an Action by a Governmental Authority or any other Person or a requirement to conduct a Remediation.

3.14.3 To Seller's Knowledge, neither Seller nor any of its Affiliates are in possession of or have caused to be created any environmental Reports related to the Plant Assets, including environmental site assessment studies and Reports and other environmental assessments, studies, audits and Reports, including Reports, assessments, studies, audits and Reports relating to

wetlands, air and emissions or discharges, or threatened or endangered species, that are in the possession or control of Seller or any of its Affiliates and which relate to environmental matters in connection with development, construction, ownership, use, operation or maintenance of the Plant Assets or the Plant Site or which concern any condition of the environment with respect to the Plant Assets or Plant Site (including any Environmental Conditions). Seller has Made Available to Purchaser all notices of violations and other material notices and Reports in the past five (5) years related to compliance with or liability under any Environmental Law that relates to the Plant Assets.

3.14.4 To Seller's Knowledge, there exist no conditions, facts or circumstances that would reasonably be expected to (a) result in the imposition of Liabilities under, or noncompliance with, any Environmental Laws or Environmental Permits at the Plant Site or by the Plant Assets, or Seller, or (b) materially impact the ability of Purchaser to use, operate, maintain, or repair the Plant Assets in compliance with Environmental Laws and Environmental Permits.

3.14.5 Except as set forth on Schedule 3.14, to Seller's Knowledge, (a) there are no species listed as threatened or endangered under any Environmental Law, or a candidate for such status, or otherwise identified under Environmental Laws as having special status have been observed by Seller or any of its Affiliates or Representatives at the Plant Site, (b) no bald or golden eagles or migratory birds or their nests have been observed on the Plant Site, (c) no human remains or historical, archeological or paleontological resources have been identified on the Plant Site and (d) no "waters of the United States," "waters of the State of Mississippi," "wetlands," or other water bodies are located on the Plant Site.

3.14.6 Schedule 3.14 sets forth all Emission Allowances held by or on behalf of Seller or allocated or issued to the Plant Assets. Neither Seller nor any of its Affiliates has transferred Seller's right to receive or retain any Emission Allowances that it currently holds or that will be allocated to the Plant Assets in the future. Seller holds all Emission Allowances for the ownership and/or operation of the Plant Assets as currently owned and operated and to comply with all Plant Contracts.

### 3.15 No Employees.

3.15.1 Seller has no employees that work at the Plant Site or with respect to the Plant Assets (including the operation, maintenance, use, and repair thereof).

3.15.2 None of Seller or any of its Affiliates has any Liabilities with respect to any employees of Seller or any of its Affiliates or any other individuals (including independent contractors, contract workers, leased employees or temporary employees) that have performed work principally in relation to the Plant Assets or the Plant Site.

3.15.3 None of Seller or any of its Affiliates has made any commitments or representations to any Person regarding (a) potential employment by Purchaser or any of its Affiliates in connection with the Plant Assets or the Plant Site after the Closing Date, or (b) any terms and conditions of any such potential employment by Purchaser or any of its Affiliates following the Closing Date.

3.16 Brokers. All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Seller directly with Purchaser without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim by any Person against Purchaser for a finder's fee, brokerage commission, or similar payment.

3.17 Plant Intellectual Property. Seller owns no Plant Intellectual Property.

3.18 Due Diligence. To Seller's Knowledge, the information Made Available by Seller to Purchaser does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

3.19 Reports. Other than dismantlement and decommissioning studies and ten-year site plans that are periodically filed by Seller with the FPSC, which are publicly available in their entirety, Seller has no additional Reports other than those previously provided by Purchaser to Seller.

3.20 Anti-Corruption. None of Seller or any Affiliate of Seller, or to Seller's Knowledge, any Person acting on behalf of Seller or any Affiliate of Seller, has, directly or indirectly, made contributions, gifts, or payments relating to any political activity or solicitation of business which was prohibited by Law or, on behalf of Seller, made any direct or indirect unlawful payment to any official or employee of any Governmental Authority, or established or maintained any unlawful or unreported funds. None of Seller or any Affiliate of Seller, or to Seller's Knowledge, any Person acting on behalf of Seller or any Affiliate of Seller, has accepted or received any unlawful contribution, payment, gift, entertainment, or expenditure.

3.21 Solvency. No petition or notice has been presented, no Order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up, or dissolution of Seller. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Seller's assets or the income of Seller. Seller has no plan or intention of, nor has received any written notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, Order, or resolution or of seeking the appointment of such a receiver, trustee, custodian, or similar fiduciary. Seller will have unrestricted cash sufficient to satisfy its obligations to pay the Transfer Amount as and when required pursuant to Section 2.2.

3.22 Data Security. Seller has Made Available true and correct copies of all current privacy policies adopted by the Agent for the Plant Assets in connection with their operations, except to the extent already in Purchaser's possession. Except as would not result in a material liability to the Plant Assets, Seller has taken commercially reasonable steps to protect and maintain data security with respect to the Plant Assets.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Except as set forth in the Schedules (which shall be arranged in sections corresponding to the sections contained in this Article IV, and the disclosure in any section shall be deemed to qualify or apply to other sections in this Article IV to the extent that it is reasonably apparent on



its face without further investigation that such disclosure also qualifies or applies to such other sections), Purchaser hereby represents and warrants to Seller as follows:

4.1 Existence. Purchaser is duly formed, validly existing and in good standing under the Laws of the state of Mississippi. Purchaser has the requisite corporate power and authority to own, operate and lease its properties and assets. Purchaser is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the location and character of the assets owned or held under lease by it or the nature and conduct of the business transacted by it makes qualification necessary.

4.2 Authority. Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action on the part of Purchaser.

4.3 Binding Agreement. This Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party have been (or will be when delivered) duly executed and delivered by Purchaser and, assuming due and valid authorization, execution and delivery thereof by Seller and each other party thereto, this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party are (or will be when delivered) valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity).

4.4 No Conflicts. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Purchaser of its obligations under this Agreement and the Ancillary Agreements to which it is (or will be) a party and the completion of the transactions contemplated hereby and thereby shall not:

4.4.1 conflict with or result in a violation or breach of any of the terms, conditions or provisions of Purchaser's organizational documents;

4.4.2 assuming all of the consents and approvals set forth in Schedule 4.4 (the "Purchaser's Consents") have been obtained or given, result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract or other obligation (with or without notice or lapse of time, or both) to which Purchaser is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct and complete copies of which have been furnished to Seller); and

4.4.3 assuming all of the required approvals from Governmental Authorities and all of the Purchaser's Consents have been obtained or given, conflict with or result in a violation or breach of any term or provision of any Law applicable to Purchaser or any of its assets and

properties.

4.5 Governmental Approvals and Filings. Except for the Required Regulatory Approvals and except as set forth in Schedule 4.5, no consent or approval of, filing with or notice to, any Governmental Authority by Purchaser is required in connection with the execution, delivery, and performance by Purchaser of this Agreement or any of the Ancillary Agreements to which it is (or will be) a party or the completion of the transactions contemplated hereby or thereby.

4.6 Legal Proceedings. There are no Actions (a) outstanding or pending to which Purchaser is a party or (b) to Purchaser's Knowledge, threatened against Purchaser or any of its assets and properties, in each case, which would be reasonably expected to (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or any of the Ancillary Agreements, or (ii) materially affect the ability of Purchaser to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party.

4.7 Brokers. All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Purchaser directly with Seller without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against Seller for a finder's fee, brokerage commission or similar payment.

4.8 Solvency. No petition or notice has been presented, no Order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Purchaser. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Purchaser's assets or the income of Purchaser. Purchaser has no plan or intention of, nor has received any written notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, Order, or resolution or of seeking the appointment of such a receiver, trustee, custodian, or similar fiduciary.

4.9 Purchaser's Knowledge. To Purchaser's Knowledge no representation or warranty of Seller made in this Agreement is untrue or incomplete in any material respect. To Purchaser's Knowledge there is no material error in, or material omission from, the Disclosure Schedules.

## ARTICLE V COVENANTS

5.1 Efforts to Close and Fulfillment of Conditions. After the Effective Date and prior to Closing:

5.1.1 Each Party shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under Law to complete and make effective the transactions contemplated by this Agreement. Such actions shall include each Party using its commercially reasonable efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, as soon as reasonably practicable after the Effective Date.

5.1.2 Each Party shall use commercially reasonable efforts to refrain from taking

(or omitting to take) any action which would reasonably be expected to materially delay the completion of the transactions contemplated by this Agreement; provided, however, that Purchaser's inclusion in its application for MPSC Approval requests or action plan items unrelated to the Plant Assets, shall not be deemed to be an action which would reasonably be expected to materially delay the completion of the transactions contemplated by this Agreement; provided, further, that Seller's inclusion in its application for FPSC Approval requests or action plan items unrelated to the Plant Assets, shall not be deemed to be an action which would reasonably be expected to materially delay the completion of the transactions contemplated by this Agreement.

## 5.2 Consents and Approvals.

5.2.1 After the Effective Date and prior to Closing, each Party shall: (a) use commercially reasonable efforts to cooperate with the other Party in obtaining consents or approvals of, making all filings with, and giving all notices to, Governmental Authorities or other Persons required with respect to Required Regulatory Approvals; (b) use commercially reasonable efforts to respond promptly and accurately to any requests for additional information made by any such Governmental Authority with respect to Required Regulatory Approvals; (c) consult with each other with respect to the transfer to Purchaser of the Plant Assets or the obtaining by Purchaser of applicable Required Regulatory Approvals; and (d) cooperate in good faith with the Governmental Authorities and undertake commercially reasonable efforts with respect to the Required Regulatory Approvals.

5.2.2 Seller shall request from the applicable counterparties to the Plant Contracts the Seller's Consents if required, in the forms reasonably acceptable to the Parties.

5.3 Filings with Governmental Authorities Generally. In furtherance of the Parties' obligations under Section 5.2, each Party shall prepare, as soon as is practical following the execution of this Agreement, all necessary filings with respect to the Required Regulatory Approvals that may be required by applicable Governmental Authorities. Each Party shall use commercially reasonable efforts to submit all necessary filings as promptly as practicable, but no later than thirty (30) days after execution of this Agreement. Except as limited in Section 5.3.1 or 5.3.2, the Parties shall promptly furnish each other with copies of any notices, correspondence, or other written communications from the applicable Governmental Authority with respect to Required Regulatory Approvals, shall promptly make any appropriate or necessary subsequent or supplemental filings, shall permit the other Party or their counsel to review in advance any proposed material written communications with such Governmental Authorities regarding filings with respect to Required Regulatory Approvals and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate (provided that any exchange of information between Seller and Purchaser in connection with any filings shall be done in a manner that complies with applicable antitrust Laws). Each Party shall bear its own costs and expenses (including filing fees and legal fees) incurred in the preparation of such filings.

5.3.1 MPSC Approval. Notwithstanding anything in Section 5.2 or Section 5.3 to the contrary, (a) Purchaser shall control the strategy for securing all approvals from the MPSC necessary to consummate the transactions contemplated by this Agreement, and (b) Purchaser shall not be required to (1) consult with Seller regarding, or permit Seller to review, any filings or other information submitted by or on behalf of Purchaser to the MPSC, (2) incorporate or otherwise address any Seller comments with respect to any filings or other information submitted by or on

behalf of Purchaser to the MPSC, (3) provide notice to Seller of communications between Purchaser and the MPSC or copies of any notices, correspondence, or other written communications between Purchaser and the MPSC, or (4) permit Seller to participate in any discussions or meetings between Purchaser and MPSC. For the avoidance of doubt, all references to the MPSC include the MPSC staff as well as the Mississippi Public Utilities Staff.

5.3.2 FPSC Approval. Notwithstanding anything in Section 5.2 or Section 5.3 to the contrary, (a) Seller shall control the strategy for securing all approvals from the FPSC necessary to consummate the transactions contemplated by this Agreement, and (b) Seller shall not be required to (1) consult with Purchaser regarding, or permit Purchaser to review, any filings or other information submitted by or on behalf of Seller to the FPSC, (2) incorporate or otherwise address any Purchaser comments with respect to any filings or other information submitted by or on behalf of Seller to the FPSC, (3) provide notice to Purchaser of communications between Seller and the FPSC or copies of any notices, correspondence, or other written communications between Seller and the FPSC, or (4) permit Purchaser to participate in any discussions or meetings between Purchaser and FPSC. For the avoidance of doubt, all references to the FPSC include the FPSC staff.

5.4 Limitation. Notwithstanding the foregoing, nothing in Sections 5.1 through 5.3, inclusive, shall require, or be construed to require, Purchaser or Seller or any of their respective Affiliates to agree to: (a) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Purchaser or Seller or any of their respective Affiliates (other than pursuant to this Agreement); (b) waive any of their respective conditions to Closing set forth in Section 6.1 and Section 6.2; (c) any modification or waiver of the terms and conditions of this Agreement; (d) any qualifications, conditions or requirements related to market power or concerning the operation of the Plant Daniel or participation in, or the structure of, any markets, including markets for transmission, energy, capacity or ancillary services; (e) in the case of the Seller, any qualifications or conditions proposed or imposed by a Governmental Authority as part of a Required Regulatory Approval that adversely affects Seller or any of its Affiliates; (f) in the case of the Purchaser, any qualifications or conditions proposed or imposed by a Governmental Authority as part of a Required Regulatory Approval that adversely affects Purchaser or any of its Affiliates; (g) any condition imposed by a Governmental Authority restricting, limiting or disallowing a Party's recovery of any costs associated with the transactions contemplated by this Agreement (including the costs of acquiring, owning, operating and maintaining any portion of Plant Daniel) that is not otherwise acceptable to the affected Party, in its sole discretion; or (h) take any other action to overturn, oppose, appeal, or defend against any action by any Governmental Authority or private party to avoid entry of, or to have overturned, vacated, or terminated any applicable Law or Order that would restrain, prevent or delay the consummation of the transactions contemplated by this Agreement.

#### 5.5 Operation and Maintenance of Plant Assets.

5.5.1 Commencing on the Effective Date and ending on the earlier of the Closing Date and the date as of which this Agreement is validly terminated by Purchaser or Seller in accordance with this Agreement, except as otherwise consented to by Purchaser in writing and without limiting the obligations of the Parties under Section 5.6, each of Seller and Purchaser shall conduct its business and preserve, operate, maintain, and repair the Plant Assets in the ordinary course consistent with past practice and in compliance with the Operating Agreement, Plant

Permits and applicable Law and otherwise consistent with Prudent Utility Practices (including (a) keeping in full force and effect its legal existence, (b) maintaining its Books and Records in accordance with GAAP, Prudent Utility Practices and applicable Law, (c) performing and complying in all material respects with the Plant Contracts and Plant Real Property Agreements, and (d) preserving the goodwill of all lessors, licensors, independent contractors, distributors, supplies, Governmental Authorities, and others having business with the Plant Assets).

5.5.2 Without limiting Section 5.6.1, Seller shall not, and shall not cause or permit its Affiliates to, without the prior written consent of Purchaser (and in each case only to the extent permitted under the Plant Contracts):

(a) enter into, modify, amend, terminate or assign any material Contract relating to the Plant, the Plant Assets, or the Plant Site;

(b) modify or amend in any material respect, terminate, or assign any Plant Contract or Plant Real Property Agreement; waive, release, or assign any material rights or claims under any Plant Contract or Plant Real Property Agreement; violate in a material manner any material term of any Plant Contract or Plant Real Property Agreement; or take any action or fail to take any action that would reasonably be expected to cause a material breach of any Plant Contract or Plant Real Property Agreement;

(c) take any action that would cause the failure of a Plant Permit to be maintained, preserved, renewed, or otherwise kept in full force and effect;

(d) take any action that would cause any Person to make any material change in the conduct of the business with respect to the Plant Assets or any make any material change in the operation or maintenance of the Plant Assets, or otherwise take any action or fail to take any reasonable action which would reasonably be expected to materially adversely affect the Plant Assets;

(e) sell, lease, or otherwise dispose of, or incur or permit to exist, a Lien (other than a Permitted Lien) on, any of the Plant Assets, or otherwise acquire additional interests in the Plant Assets beyond the FPL Ownership Interest as of the Effective Date;

(f) except in connection with obtaining or maintaining the Plant Permits required or permitted pursuant to this Agreement, agree or consent in writing to any matter in connection with any proceeding by or before any Governmental Authority related to the Plant Assets;

(g) take any action that would cause any Person to amend, supplement or terminate any Plant Permit or any related application therefor;

(h) take any action that would cause the failure of any Person to maintain in force the insurance policies related to the Plant Assets pursuant to the Plant Contracts;

(i) take any action that would cause the failure of any Person to perform all scheduled maintenance and repair for the Plant Assets under Plant Contracts (including long term service agreements and warranties);

(j) take any action that would cause the failure of any Person to obtain and hold Emission Allowances required for the ownership and/or operation of the Plant Assets as currently owned and operated, and otherwise required to comply with the Plant Contracts and applicable Law, or sell, assign or transfer any Emission Allowances allocated to or otherwise acquired for the Plant Assets;

(k) take any action that would cause any Person to make any material changes in the levels of inventory of spare parts or other supplies or materials respecting the Plant Assets, except as consistent with Prudent Utility Practices or projected maintenance schedules Made Available to Purchaser prior to the Effective Date; or

(l) enter into any agreement or otherwise commit to take any actions described in the foregoing clauses.

5.5.3 Notwithstanding Section 5.6.1 or Section 5.6.2, Seller may take reasonable actions with respect to emergency situations or to comply with Plant Permits or applicable Laws; provided, that to the extent reasonably practicable and permitted by applicable Law, Seller shall promptly notify Purchaser of any such action if it would otherwise violate Section 5.6.2.

## 5.6 Casualty Loss.

5.6.1 If Plant Assets are damaged or destroyed by casualty loss or other similar event or circumstance (ordinary wear and tear excepted) prior to Closing (a “Casualty Loss”), Agent shall address the Casualty Loss, including performing such activities related to the replacement, repair or restoration of such Plant Assets affected by the Casualty Loss and Seller shall bear in its share of the cost of repairing such Casualty Loss (“Restoration Cost”) per the terms of the Plant Contracts.

5.6.2 If for whatever reason, Restoration Costs are incurred after the Closing to address a pre-Closing Casualty Loss such costs shall be Excluded Liabilities (Seller’s share of which shall be based on the FPL Ownership Interest) pursuant to Section 2.1.2(a)(i).

### 5.6.3 Material Casualty Loss.

(a) “Material Casualty Loss” means any Loss for which the aggregate Restoration Cost exceeds one million dollars (\$1,000,000.00).

(b) In addition to the foregoing, for any Plant Asset, a “Material Casualty Loss” also means a Casualty Loss that cannot be repaired so that the damaged property (a) satisfies Seller’s representations, warranties and covenants in this Agreement, including, for the avoidance of doubt, a condition that will enable compliance with the Plant Contracts, and (b) is otherwise acceptable to Purchaser, in its reasonable discretion.

(c) If the Casualty Loss is a Material Casualty Loss, then Purchaser may elect, in its sole discretion by written notice to Seller within ten (10) days after the written determination of a Material Casualty Loss to terminate this Agreement pursuant to Section 7.1.6.

5.7 Purchaser’s Inspection Right. After the Effective Date and prior to Closing, Purchaser, its Related Persons, and its Representatives shall have reasonable access, upon

reasonable prior written notice, to the Plant Assets not already in the possession of Purchaser (including permitting Purchaser, its Related Persons, and its Representatives to make such copies and inspections thereof as Purchaser may reasonably request, unless already in the possession of Purchaser), all for purposes of inspection and review; provided, however, that any access shall be conducted during normal business hours.

5.8 No Solicitation of Competing Transaction. After the Effective Date and until the earlier of the Closing or the date of any valid termination of this Agreement, Seller shall not, and shall not authorize any of its Affiliates or their respective Representatives to, directly or indirectly, through any Representatives or otherwise: (a) solicit, initiate, or facilitate the making, submission or announcement of any Acquisition Proposal to any Person other than Purchaser; (b) furnish any nonpublic information regarding Seller, the Plant Assets, or the terms of or transactions contemplated by this Agreement, to any Person other than Purchaser, in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; or (c) engage in discussions or negotiations with any Person other than Purchaser with respect to any Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal. In the event Seller, any of its Affiliates, or any of its Representatives receives any Acquisition Proposal by any Person other than Purchaser, Seller shall: (i) notify Purchaser of receipt of such Acquisition Proposal; (ii) disclose the details of the Acquisition Proposal to Purchaser and provide copies of any written materials related thereto; (iii) comply with the covenants set forth in clauses (a), (b), and (c) of this Section 5.8; and (iv) inform any and all third parties making the Acquisition Proposal of the covenants and prohibitions set forth in this Section 5.8.

5.9 Tax Covenants. After the Effective Date and prior to Closing, Seller shall not make any new, or change any existing, material election with respect to Taxes, or settle any Tax liability in a manner that would reasonably be expected to have a material adverse effect on Purchaser after the Closing.

5.10 Emission Allowances. On or prior to the Closing Date, Seller shall transfer all Emission Allowances allocated or issued to Plant Daniel or to MPC as agent for the owners of Plant Daniel and shall deliver to Purchaser reasonably satisfactory evidence thereof.

5.11 Funding for Excluded Liabilities. Seller has included the revenue requirements associated with all known Excluded Liabilities as part of its cost of service in calculating its rates for service to its customers and covenants that it will continue to do so until its obligations for the Excluded Liabilities are fully satisfied. Further, Seller agrees that if, for any reason, it is prevented or limited in its ability to collect from customers the amounts needed to discharge its obligations for the Excluded Liabilities consistent with Prudent Utility Practice, it will promptly notify Purchaser in writing of such circumstance and Seller will work in good faith with Purchaser to establish a means of providing assurance that Seller will be able to fulfill its obligations associated with the Excluded Liabilities; provided, that nothing in this Section 5.11 shall be deemed to modify the retention or allocation of (or obligation of Seller to satisfy) any Excluded Liability under this Agreement.

5.12 Post-Closing Cooperation. After Closing, each Party shall use commercially reasonable efforts to cooperate with the other Party's Representatives in the preparation, filing or submission of materials related to Permit reissuance, amendment or issuance to a Governmental

Authority or in challenges to Permits, or the submission of financial, rate, economic analysis or similar post-Closing filings to a Governmental Authority. Such cooperation shall include reasonable access to Plant Daniel (on at least five (5) Business Days' advance notice of any such access, and with any such access occurring during normal business hours and in such a manner as to avoid undue disruption of Purchaser and its Affiliates) and reasonable assistance from Purchaser for Seller's personnel engaged in fulfillment of Seller's obligation to prepare and file depreciation and dismantlement reports with the FPSC on a periodic basis; provided that any information provided by Purchaser shall not include commercially sensitive or privileged information; and provided, further, all reasonable costs incurred by Purchaser or its Affiliates in cooperating with such access shall be borne by FPL.

## ARTICLE VI CONDITIONS TO CLOSING

6.1 Purchaser's Conditions Precedent. The obligations of Purchaser hereunder to execute or deliver the items it is required to deliver pursuant to Section 2.4.1 and to complete the Closing are subject to the fulfillment to the reasonable satisfaction of Purchaser, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Purchaser in its sole discretion):

6.1.1 Representations and Warranties. (a) The Fundamental Seller Representations shall be true and correct as of the Effective Date and as of the Closing as though made on and as of such date and time (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date), and (b) the other representations and warranties of Seller set forth in Article III shall be true and correct in all material respects as of the Effective Date and as of the Closing as though made on and as of such date and time (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date).

6.1.2 Performance. Seller shall have performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

6.1.3 Law. There shall not be in effect on the Closing Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement. No Action initiated by any Governmental Authority seeking an Order restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement shall be pending or threatened in writing.

6.1.4 Required Regulatory Approvals. The Required Regulatory Approvals shall have been duly obtained and shall be in full force and effect.

6.1.5 Seller's Consents. All Seller's Consents, if any, shall have been duly obtained, made, or given and shall be in full force and effect, as applicable.

6.1.6 Deliveries. Seller shall have executed and delivered to Purchaser the items set forth in Section 2.4.2 of this Agreement.



6.1.7 No Seller Material Adverse Effect. No Seller Material Adverse Effect shall exist nor shall any event(s) have occurred or circumstance(s) exist that, individually or in the aggregate, would reasonably be expected to have a Seller Material Adverse Effect, in each case, as of the Closing Date.

6.2 Seller's Conditions Precedent. The obligations of Seller hereunder to execute or deliver the items required to be delivered by Seller pursuant to Section 2.4.2 of this Agreement are subject to the fulfillment, to the reasonable satisfaction of Seller at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Seller in its sole discretion):

6.2.1 Representations and Warranties. (a) The Fundamental Purchaser Representations shall be true and correct as of the Effective Date and as of the Closing as though made on and as of such date and time (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date), and (b) the other representations and warranties of Purchaser set forth in Article IV shall be true and correct in all material respects as of the Effective Date and as of the Closing as though made on and as of such date and time (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date).

6.2.2 Performance. Purchaser shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

6.2.3 Law. There shall not be in effect on the Closing Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement. No Action initiated by any Governmental Authority seeking an Order restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement shall be pending or threatened in writing.

6.2.4 Purchaser's Consents. All Purchaser's Consents, if any, shall have been duly obtained, made, or given and shall be in full force and effect.

6.2.5 Deliveries. Purchaser shall have executed and delivered to Seller the items set forth in Section 2.4.1 of this Agreement.

6.2.6 Required Regulatory Approvals. The Required Regulatory Approvals shall have been duly obtained and shall be in full force and effect.

6.2.7 No Purchaser Material Adverse Effect. No Purchaser Material Adverse Effect shall exist, nor shall any event(s) have occurred, or circumstance(s) exist that, individually or in the aggregate, would reasonably be expected to result in a Purchaser Material Adverse Effect, in each case, as of the Closing Date.

## ARTICLE VII TERMINATION

7.1 Termination Prior to Closing. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned:

7.1.1 Mutual Consent. At any time before the Closing, by mutual written consent of the Parties.

7.1.2 Law. At any time before the Closing, by Seller or Purchaser upon written notice to the other Party, in the event that any Law becomes effective, or any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or taken any other action (including the failure to have taken an action) that has become final, which in any such case has the effect of restraining, enjoining, or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or the Ancillary Agreements; provided, however, that the right to terminate this Agreement pursuant to this Section 7.1.2 shall not be available to a Party if such Party's failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the final Governmental Authority action that has the effect of making the consummation of the transactions contemplated hereby illegal or otherwise preventing or prohibiting consummation of such transactions.

7.1.3 Seller Breach. At any time prior to the Closing, by Purchaser (a) if (i) there has been a breach by Seller of any representation, warranty, covenant, or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 6.1.1 or Section 6.1.2, as applicable and (ii) it cannot be cured within thirty (30) days of notice thereof, or (b) if Seller files any insolvency, bankruptcy, reorganization, or other similar proceeding relating to itself.

7.1.4 Purchaser Breach. At any time prior to the Closing, by Seller if (a) there has been a breach by Purchaser of any representation, warranty, covenant, or agreement contained in this Agreement which (i) would result in a failure of a condition set forth in Section 6.2.1 or Section 6.2.2, as applicable, and (ii) cannot be cured within thirty (30) days of notice thereof, or (b) if Purchaser files any insolvency, bankruptcy, reorganization, or other similar proceeding relating to itself.

7.1.5 Closing Date. At any time after the Outside Closing Date, by Purchaser or Seller, upon written notice to the other Party, if the Closing has not occurred by the Outside Closing Date; provided, however, that (a) a Party may not terminate this Agreement pursuant to this Section 7.1.5 if (i) the failure of the conditions precedent to the Closing set forth in Section 6.1 and Section 6.2 to be fulfilled by the Outside Closing Date resulted from such Party's breach of any representation, warranty, covenant, or agreement contained in this Agreement or other failure to fulfill in any material respect any obligation under this Agreement required to be fulfilled by such Party on or prior to the Closing Date, or (ii) by the date of such written notice, the conditions precedent to the Closing set forth in Section 6.1 and Section 6.2 have been fulfilled; (b) if either the MPSC Approval or the FPSC Approval has not been obtained on or prior to the Outside Closing Date, then the Outside Closing Date may be extended by (i) Purchaser (in Purchaser's sole discretion) if such reason is that the MPSC Approval has not been obtained, or (ii) by Seller (in Seller's sole discretion) if such reason is that the FPSC Approval has not been obtained, with any such extension of the Outside Closing Date pursuant to this clause (b) to be for a period of up to six (6) months; and (c) any other Required Regulatory Approval has not been obtained on or prior to the Outside Closing Date, then the Outside Closing Date may be extended by either Party (at such Party's sole discretion) by up to six (6) months by delivery of written notice to the other Party on or before the initial Outside Closing Date.

7.1.6 Material Casualty Loss. By Purchaser pursuant to Section 5.6.3.

7.1.7 Required Regulatory Approvals. By a Party with respect to a Required Regulatory Approval required to be obtained by it pursuant to Sections 5.2 and 5.3, if such Required Regulatory Approval includes or would include any qualifications or conditions that adversely affect such Party or its Affiliates, including (a) any retirement of an electric generating unit proposed or imposed by the relevant Governmental Authority as part of the Required Regulatory Approval, (b) such relevant Governmental Authority's denial or proposed denial of the retirement of any electric generating unit (if such Party is seeking such retirement separately) as part of the Required Regulatory Approval or any requirement for the continued operation of any such electric generating unit beyond such Party's retirement date that is proposed or imposed by the relevant Governmental Authority as part of the Required Regulatory Approval, (c) any condition proposed or imposed by the relevant Governmental Authority restricting, limiting, or disallowing such Party's recovery of any costs associated with the transactions contemplated by this Agreement (including the costs of acquiring, owning, operating and maintaining the Plant Assets), and (d) any qualifications, conditions or requirements related to market power or concerning the operation of such Party's generating assets or participation in, or the structure of, any markets, including markets for transmission, energy, capacity or ancillary services in each case that is not otherwise acceptable to such Party, in its sole discretion.

7.2 Effect of Termination. If this Agreement is terminated pursuant to this Article VII, this Agreement shall become void and of no effect with no Liability to any Person on the part of any Party (or of any of its representatives or Affiliates) with respect to this Agreement; provided, however, that (a) no such termination shall relieve any Party of any Liability or damages to the other Party resulting from any Fraud or Intentional Breach, (b) all filings, applications and other submissions made by a Party to any Governmental Authority with respect to the transactions contemplated by this Agreement shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made, (c) the provisions set forth in this Section 7.2 (Effect of Termination), Section 11.2 (Governing Law), Section 11.3 (Venue), Section 11.4 (Waiver of Trial by Jury), Section 12.2 (Limitation of Liability), Article XIII (Miscellaneous), and the Confidentiality Agreement shall survive the termination of this Agreement, and (d) no such termination shall relieve any Party from such Party's obligations to the other Party pursuant to the Operating Agreement.

## **ARTICLE VIII INDEMNIFICATION**

8.1 Indemnification by Seller. If the Closing occurs, Seller agrees to indemnify and hold Purchaser and its Related Persons (each, a "Purchaser Indemnified Party"), harmless from and against (and to reimburse each Purchaser Indemnified Party as the same are incurred for) any and all Losses incurred by any Purchaser Indemnified Party resulting from any of the following:

8.1.1 any inaccuracy in or breach of a representation or warranty made by Seller in this Agreement or any of the Ancillary Agreements;

8.1.2 the breach by Seller of, or default in the performance by Seller of, any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any of the Ancillary Agreements to which it is a party;

8.1.3 any Fraud or Intentional Breach by Seller in connection with this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby; or

8.1.4 the Excluded Liabilities, including the failure of Seller or any other Person to pay, perform, fulfill, discharge and, to the extent applicable, comply with, in due course and in full, any such Excluded Liabilities.

8.2 Indemnification by Purchaser. If the Closing occurs, Purchaser hereby agrees to indemnify and hold Seller and its Related Persons (each, a “Seller Indemnified Party”) harmless from and against (and to reimburse each Seller Indemnified Party as the same are incurred for) any and all Losses incurred by any Seller Indemnified Party resulting from any of the following:

8.2.1 any inaccuracy in or breach of a representation or warranty made by Purchaser in this Agreement or any of the Ancillary Agreements;

8.2.2 the breach by Purchaser of, or default in the performance by Purchaser of, any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement or any of the Ancillary Agreements to which it is a party;

8.2.3 any Fraud or Intentional Breach by Purchaser in connection with this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby; or

8.2.4 the Assumed Liabilities, including the failure of Purchaser or any other Person to pay, perform, fulfill, discharge and, to the extent applicable, comply with, in due course and in full, any such Assumed Liabilities.

8.3 Method of Asserting Claims.

8.3.1 Third Party Claims. If any Person entitled to receive indemnification under this Agreement (an “Indemnitee”) receives notice of any demand or claim by any Person who is neither a party hereto nor an Affiliate of a party hereto (a “Third Party Claim”) which has or could reasonably give rise to a right of indemnification hereunder, or for which the Indemnitee may claim a right to indemnification hereunder from the other party hereto (the “Indemnifying Party”), the Indemnitee will promptly give written notice (a “Third Party Claim Notice”) of such Third Party Claim to the Indemnifying Party; provided that the failure to provide notice of any such Third Party Claim pursuant to this sentence shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. Any such Third Party Claim Notice shall (a) describe the nature, facts and circumstances of the Third Party Claim in reasonable detail, (b) state the estimated amount of the indemnifiable Loss that has been or may be sustained by the Indemnitee, if practicable, (c) state the method and computation thereof, and (d) contain specific reference to the provision or provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The Indemnitee shall provide the Indemnifying Party with such other information known to it or in its possession with respect to the Third Party Claim as the Indemnifying Party may reasonably request.

8.3.2 Right to Assume Defense. The Indemnifying Party, at its sole cost and expense, will have the right, upon written notice to the Indemnitee within thirty (30) days (or such

earlier time as may be required by the nature of the Third Party Claim) of receiving a Third Party Claim Notice, to assume the defense of the Third Party Claim through counsel reasonably satisfactory to the Indemnitee; provided, that the Indemnitee shall be entitled to retain its own counsel and the Indemnitee may assume control of the defense of the Third Party Claim, in each case at the Indemnifying Party's expense, if (a) upon the advice of Indemnitee's counsel, a conflict of interest exists (or would reasonably be expected to arise) that would make it inappropriate for the same counsel to represent both the Indemnifying Party and Indemnitee in connection with a Third Party Claim, (b) the Indemnifying Party fails to diligently prosecute the defense of the Third Party Claim, or (c) such Third Party Claim (i) seeks non-monetary relief, or (ii) involves criminal or quasi criminal allegations, or (iii) the party making such Third Party Claim is a Governmental Authority with regulatory authority over the Indemnitee or any of its material assets.

8.3.3 Defense of Third Party Claims. If the Indemnifying Party assumes the defense of a Third Party Claim pursuant to Section 8.3.2, the Indemnifying Party will diligently pursue such defense, and will keep the Indemnitee reasonably informed with respect to such defense. The Indemnitee shall, and shall cause its Affiliates to, cooperate with the Indemnifying Party and its counsel, including making available to the Indemnifying Party all witnesses, pertinent records, materials, and information in the Indemnitee's possession or under the Indemnitee's control relating thereto as is reasonably required by the Indemnifying Party; provided, that such cooperation shall not require the Indemnitee to disclose any information the disclosure of which would, in the reasonable judgment of the Indemnitee, result in the loss of any existing attorney-client privilege, attorney work-product protection, or other applicable privilege or immunity with respect to such information or violate any applicable Law. The Indemnitee will have the right to participate in such defense, including appointing separate counsel, but the costs of such participation shall be borne solely by the Indemnitee. Subject to Section 8.3.2, the Indemnifying Party will, in consultation with the Indemnitee, make all decisions and determine all actions to be taken with respect to the defense and settlement of the Third Party Claim; provided, however, that the Indemnifying Party shall not pay, compromise, settle, or otherwise dispose of such Third Party Claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed; provided that it will not be deemed to be unreasonable for an Indemnitee to withhold its consent if (a) such payment, compromise, settlement or disposition involves an action or admission by, or restriction on, Indemnitee other than the payment of money; (b) such payment, compromise, settlement or disposition involves a finding or admission of violation of any applicable Law, Order or permit or rights of any Person by the Indemnitee or its Affiliates; or (c) such payment, compromise, settlement or disposition does not contain an unconditional release of the Indemnitee from the subject matter of such payment, compromise, settlement or disposition. In no event will the Indemnifying Party have authority to agree, without the consent of the Indemnitee, to any relief binding on the Indemnitee other than the payment of money damages by the Indemnifying Party without recourse to the Indemnitee.

8.3.4 Failure to Assume Defense. If the Indemnifying Party elects not to defend such Third Party Claim, fails to timely notify the Indemnitee in writing of its election to defend, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnitee may defend such Third Party Claim and seek indemnification for any and all indemnifiable Losses based upon, arising from or relating to such Third Party Claim; provided, however, that the Indemnitee shall not pay, compromise, settle, or otherwise dispose of such Third Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld,

conditioned or delayed). If an Indemnifying Party has failed to assume the defense of the Third Party Claim, it shall not be a defense to any obligation to pay any amount in respect of such Third Party Claim that the Indemnifying Party was not consulted in the defense thereof, that such Indemnifying Party's views or opinions as to the conduct of such defense were not accepted or adopted, that such Indemnifying Party does not approve of the quality or manner of the defense thereof or that such Third-Party Claim was incurred by reason of a settlement rather than by a judgment or other determination of liability.

8.3.5 Direct Losses. Any claim by an Indemnitee on account of an indemnifiable Loss that does not result from a Third Party Claim (a "Direct Loss Claim") will be asserted by giving the Indemnifying Party prompt written notice thereof, (a) describing the nature, facts and circumstances of such indemnifiable Loss in reasonable detail, (b) stating the amount of the indemnifiable Loss that has been or may be sustained by the Indemnitee, if practicable, (c) stating the method and computation thereof and (d) containing specific reference to the provision or provisions of this Agreement in respect of which such right of indemnification is claimed or arises; provided, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. The Indemnitee shall provide the Indemnifying Party with such other information with respect to the Direct Loss Claim as the Indemnifying Party may reasonably request and shall cooperate with the Indemnifying Party and its counsel, including permitting reasonable access to books, records, and personnel, in connection with determining the validity of any claim for indemnification by the Indemnitee and in otherwise resolving such matters. The Indemnifying Party will have a period of twenty (20) days within which to respond to such Direct Loss Claim. If the Indemnifying Party rejects such Direct Loss Claim, or does not respond within such period, the Indemnitee may seek enforcement of its rights to indemnification under this Agreement.

8.3.6 Determination of Losses. For purposes of this Article VIII and Article IX, the amount of Losses arising out of any inaccuracy in or breach of any representations or warranties of Seller or Purchaser in Article III, Article IV or Article IX shall be calculated as if the terms "material" and "Material Adverse Effect" (and variations thereof) were omitted from such representations and warranties; provided that, and for the avoidance of doubt, such qualifiers shall be taken into account initially in determining whether a breach of any representations and warranties of Seller or Purchaser has occurred.

## **ARTICLE IX TAX MATTERS**

9.1 Representations and Warranties. Seller represents and warrants to Purchaser that, with respect to the Plant Assets:

9.1.1 All Tax Returns that were required to be filed by Seller with respect to the Plant Assets have been timely filed, and such Tax Returns were prepared in compliance with applicable Law and were materially true, correct, and complete. All Taxes required to be paid by Seller with respect to the Plant Assets (whether or not shown due on any Tax Returns) have been timely paid.

9.1.2 With respect to Tax Returns that were required to be filed by Seller with

respect to the Plant Assets, there are no audits, claims, assessments, levies, administrative or judicial proceedings pending, or to Seller's Knowledge, threatened, proposed, or contemplated by any Taxing Authority.

9.1.3 Seller has not agreed to any extension or waiver of the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Plant Assets.

9.1.4 To Seller's Knowledge, there are no Tax liens on the Plant Assets, except Permitted Liens.

9.1.5 To Seller's Knowledge, within the three (3) years preceding the Effective Date, no written claim has ever been made by a Taxing Authority in a jurisdiction where a Tax Return is not filed by Seller with respect to the Plant Assets claiming that Seller is or may be subject to Tax in that jurisdiction in respect of the Plant Assets.

9.1.6 To Seller's Knowledge, the transactions contemplated in this Agreement and the Ancillary Agreements will not subject the Plant Assets to any rollback Taxes or have an adverse effect on the continuing validity and effectiveness of any Tax exemption, Tax holiday, Tax credit, Tax incentive, or similar arrangement or benefit for which the Plant Assets are currently eligible.

9.1.7 No power of attorney executed by Seller is currently in effect, and no Tax ruling has been requested by Seller from any Governmental Authority with respect to any Tax matter, relating to the Plant Assets.

9.1.8 Seller (or if Seller is a disregarded entity, the Person treated as owning Seller's assets for income Tax purposes) is not a foreign Person as defined in Section 1445(f)(3) of the Code.

9.2 Straddle Periods. For purposes of this Agreement, in the case of any Straddle Period, Taxes (other than property Taxes) with respect to the Plant Assets allocable to the Pre-Closing Period shall be computed as if such taxable period ended as of the end of the day on the Closing Date.

9.3 Transfer Taxes. Seller and Purchaser shall each be responsible for fifty percent (50%) of the amount any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer or other similar Taxes or governmental fees (including any interest or penalties related thereto) that may be payable with respect to the transfer of the Plant Assets pursuant to this Agreement ("Transfer Taxes"). Seller shall file all Tax Returns with respect to any Transfer Taxes and shall timely pay such Transfer Taxes, and Purchaser shall promptly reimburse Seller for Purchaser's portion of such Transfer Taxes promptly upon Seller's presentation to Purchaser of documentation of such payment. The Parties shall cooperate to comply with all Tax Return requirements for any and all Transfer Taxes.

9.4 Seller's Tax Indemnification. Seller shall indemnify and hold harmless Purchaser, in an amount not to exceed the Transfer Amount, from and against (a) any Seller Income Taxes, (b) any Taxes imposed on Seller with respect to the Plant Assets attributable to any Pre-Closing

Tax Period (“Pre-Closing Taxes”), and (c) any Taxes or other Losses arising from a breach by Seller of its representations, warranties, and covenants in this Article IX. For the avoidance of doubt, the limitations of liability contained in Article X shall not apply with respect to any indemnification claim under this Section 9.4.

9.5 Purchaser’s Tax Indemnification. Purchaser shall indemnify and hold harmless Seller from and against (a) any Purchaser Income Taxes, (b) any Taxes imposed on Purchaser with respect to the Plant Assets attributable to any Post-Closing Tax Period (“Post-Closing Taxes”), and (c) any Taxes or other Losses arising from a breach by Purchaser of its representations, warranties, and covenants in this Article IX. For the avoidance of doubt, the limitations of liability contained in Article X shall not apply with respect to any indemnification claim under this Section 9.5.

9.6 Cooperation. After the Closing Date, Seller and Purchaser shall use commercially reasonable efforts to (and to cause their respective Affiliates to): (a) assist the other Party in preparing any Tax Returns which such other Party is responsible for preparing and filing in accordance with the terms of this Agreement, (b) cooperate fully in preparing for any audits of, or disputes with any Taxing Authority regarding, any Tax Returns of Seller with respect to the Plant Assets and (c) make available to each other as reasonably requested all information, records or documents relating to liability or potential liability for Pre-Closing Taxes, Straddle Period Taxes, Transfer Taxes, Post-Closing Taxes, and 2025 property Taxes (if the Closing occurs after December 31, 2024), and will preserve such information, records or documents until thirty (30) days after the expiration of the applicable statute of limitations (including extensions or waivers thereof) with respect to the particular Tax to which the information, records or documents relate. For the avoidance of doubt, this Section 9.6 does not require either Party to share with the other Party its consolidated, unitary, or combined Tax Returns.

9.7 Covenants. Seller and any applicable Affiliates thereof will, in accordance with applicable Law, duly and timely prepare and file all Tax Returns for which Seller and any applicable Affiliates thereof have filing responsibility with respect to the Plant Assets that relate to, arise out of, or are attributable to the Pre-Closing Tax Period, and all such Tax Returns shall correctly and accurately set forth the amount of any Taxes relating to the applicable Tax period and Seller, shall pay within the time and manner prescribed by applicable Law all Taxes due and payable with respect to any such Tax period.

9.8 Tax Contests. Notwithstanding anything herein to the contrary, as between Purchaser and Seller, Purchaser shall have exclusive control of (a) any income Tax audit, litigation, or other proceeding of Purchaser (or any affiliated, combined, consolidated or unitary group of which Purchaser is a member) and (b) any Tax audit, litigation, or other proceeding with respect to the Plant Assets insofar as it relates to any period after the Closing Date or to any Taxes for which Purchaser (and not Seller) is liable under this Agreement. Conversely, Seller shall have exclusive control of (c) any income Tax audit, litigation, or other proceeding of Seller (or any affiliated, combined, consolidated or unitary group of which Seller is a member) and (d) any Tax audit, litigation, or other proceeding with respect to Taxes for which Seller (and not Purchaser) is liable under this Agreement.

9.9 Survival of Obligations. The representations, warranties and obligations of the Parties set forth in this Article IX shall remain in effect until the expiration of the applicable



statutes of limitation (giving effect to any extensions or waivers thereof) relating to the Tax or Tax Return in question.

9.10 Adjustments to Transfer Amount. The Parties hereby agree that any and all indemnity payments made pursuant to this Agreement shall, to the maximum extent permitted by applicable Law, be treated for all Tax purposes as an adjustment to the Transfer Amount.

9.11 Conflict. In the event of a conflict between this Article IX and any other provision of this Agreement, the provisions of this Article IX shall govern.

## **ARTICLE X**

### **SURVIVAL PERIODS; INDEMNITY LIMITATIONS; NO OTHER REPRESENTATIONS**

10.1 Survival of Representations, Warranties, Covenants and Agreements. All representations and warranties contained in this Agreement shall survive, and thus a claim may be brought in respect of a breach thereof, until the day that is eighteen (18) months after the Closing Date (the “Expiration Date”); provided, however, that (a) the Fundamental Seller Representations and the Fundamental Purchaser Representations shall survive until the expiration of the applicable statute of limitations (giving effect to any extensions or waivers thereof); (b) the representations and warranties contained in Section 3.14 (Environmental Matters) shall survive until the day that is five (5) years after the Closing Date; (c) the representations and warranties in Section 3.15 (No Employees) shall survive until the expiration of the applicable statute of limitations (giving effect to any extensions or waivers thereof); and (d) representations and warranties of Seller in Article IX (Tax Matters) shall survive the Closing in accordance with Section 9.9 (Survival of Obligations). The covenants and agreements contained in this Agreement shall survive, and thus a claim may be brought in respect of a breach thereof, until the day that is eighteen (18) months following the last day of the applicable period for which such covenant or agreement is required to be performed or, if no such period is set forth herein, until the day that is eighteen (18) months following the last day such covenant or agreement is fully performed; provided, however, that the covenants and agreements contained in Article IX (Tax Matters) shall be governed solely by the terms therein; provided, further, that Seller’s obligations under Section 2.1.2 (Excluded Liabilities) and Section 8.1.4 (Indemnification Regarding Excluded Liabilities) and Purchaser’s obligations under Section 2.1.3 (Assumed Liabilities) and Section 8.2.4 (Indemnification Regarding Assumed Liabilities) shall survive indefinitely after Closing. The rights and obligations of each of Seller and Purchaser and their respective Indemnified Parties under Article VIII (Indemnification) shall survive the sale or other transfer by any Party of any assets or businesses or the permitted assignment of any Liabilities.

10.2 No Other Representations. Notwithstanding anything in this Agreement to the contrary, except those express representations and warranties contained in Article III (Representations and Warranties of Seller), Article IV (Representations and Warranties of Purchaser), and Article IX (Tax Matters), as applicable to a Party, neither Party nor its Affiliates or Representatives has made or is making any representation or warranty of any kind, whether express or implied, written, or oral, with respect to the Plant Site and Plant Assets, or any part thereof.

10.3 No Personal Liability. Notwithstanding anything to the contrary contained in this Agreement, no Related Person of Seller will have any personal liability to Purchaser or any other

Person as a result of this Agreement or the breach of any representation, warranty, covenant or agreement of Seller contained in this Agreement, and no Related Person of Purchaser will have any personal liability to Seller or any other Person as a result of this Agreement or the breach of any representation, warranty, covenant or agreement of Purchaser contained in this Agreement.

10.4 Limitations on Seller's Indemnification. The indemnification of a Purchaser Indemnified Party provided under Section 8.1.1 (Inaccuracy or Breach of Representation or Warranty) shall be limited in certain respects as follows:

10.4.1 Deductible. Seller shall not be liable to a Purchaser Indemnified Party for Losses under Section 8.1.1 (Inaccuracy or Breach of Representation or Warranty) until the aggregate amount of Losses under such Section 8.1.1 (Inaccuracy or Breach of Representation or Warranty) exceeds one million dollars (\$1,000,000) (the "Deductible Amount"), in which case Seller shall only be responsible to a Purchaser Indemnified Party for Losses under Section 8.1.1 in excess of the Deductible; provided, however, that the Deductible Amount shall not apply with respect to any Losses resulting from or relating to any breach or inaccuracy of the Fundamental Seller Representations.

10.4.2 Cap. Seller's aggregate liability to Purchaser Indemnified Parties for all Losses under Section 8.1.1 (Inaccuracy or Breach of Representation or Warranty) in excess of the Deductible Amount, will in no event exceed an aggregate amount equal to seven million three hundred thousand dollars (\$7,300,000) (the "Cap"); provided, however, that the Cap shall not apply with respect to any Losses resulting from or relating to any breach or inaccuracy of the Fundamental Seller Representations. Seller's aggregate liability to Purchaser Indemnified Parties for all Losses under Section 8.1.1 (Inaccuracy or Breach of Representation or Warranty) including with respect to Fundamental Seller Representations will in no event exceed an aggregate amount equal to the Transfer Amount.

10.5 General Limitations on Indemnification.

10.5.1 Other Recoveries. Any Direct Loss Claim or Third Party Claim for which an Indemnified Party hereto seeks indemnification under Article VIII (Indemnification) shall take into account the proceeds actually received from any insurance policies by which such Indemnified Party is entitled to proceeds with respect to such Claims net of the Indemnified Party's cost of recovery, including any increase in premiums resulting therefrom (the "Insurance Recovery Amount"). Any indemnification payment made under Article VIII (Indemnification) shall initially be made without regard to this Section 10.5.1 (General Limitations on Indemnification – Other Recoveries), and the Indemnified Party shall remit to the Indemnifying Party the Insurance Recovery Amount when the Indemnified Party actually receives such amount. The Indemnified Party shall, and shall cause its Affiliates to, use commercially reasonable efforts to pursue all available remedies and causes of action to recover the amount of its Claim as may be available under any insurance policy or from any third party; provided that the Indemnified Party shall not be obligated to institute any lawsuit to recover any such amount. If the Indemnified Party or its Affiliates actually recovers from a third party any part of a Claim that had been paid in full by the Indemnifying Party pursuant to its indemnification obligations hereunder, the Indemnified Party shall promptly remit to the Indemnifying Party the amount of such recovery (net of the cost of such recovery) without regard to the time limitations imposed under this Article X (Survival Periods; Indemnification Limitations; No Other Representations).

10.5.2 No Double-Recovery. No Indemnified Party shall be entitled to recover any Losses relating to any matter arising under a provision of this Agreement to the extent that an Indemnified Party has already recovered such Losses under another provision of this Agreement other than Section 2.2 (Transfer Amount) and the payment of the Transfer Amount.

10.5.3 Mitigation. The Indemnified Party shall use commercially reasonable efforts to mitigate any Losses in accordance with applicable Law.

10.5.4 Knowledge of Breach. Seller shall not be liable under Section 8.1.1 (Inaccuracy or Breach of Representation or Warranty) for any Losses based upon or arising out any inaccuracy or breach of the representations or warranties of Seller contained in this Agreement if Purchaser had actual knowledge of such inaccuracies or breach prior to the Closing. Purchaser shall not be liable under Section 8.2.1 (Inaccuracy or Breach of Representation or Warranty) for any Losses based upon or arising out any inaccuracy or breach of the representations of Purchaser contained in this Agreement if Seller had actual knowledge of such inaccuracies or breach prior to the Closing.

10.5.5 Tax Benefits. All indemnification claims will initially be made without regard to any federal, state, and local income tax benefits (less tax detriments) inuring to the Party making the claim for indemnification, provided that, to the extent that the Indemnified Party recognizes a Tax benefit with respect to Losses with respect to which indemnification payments are made by the Indemnifying Party hereunder, the Indemnifying Party shall be entitled to such Tax benefit and the Indemnified Party shall pay to the Indemnifying Party the amount of such Tax benefit (but not in excess of the indemnification payment or payments actually received from the Indemnifying Party with respect to such Losses) at such time or times as and to the extent that the Indemnified Party actually realizes such benefit through a refund of Tax or reduction in the actual amount of Taxes which the Indemnified Party would otherwise have had to pay if such payment for Losses had not been made, calculated by computing the amount of Taxes before and after inclusion of any Tax items attributable to such Losses for which indemnification was made and treating such Tax items as the last items claimed for any taxable year; provided that, any such Tax benefit shall be reduced by the amount of Tax detriment (including any Taxes resulting from the indemnification payment and the tax effect of any item of income or gain or other item (including any decrease in Tax basis) which increases any amounts paid or payable with respect to Taxes, any reduction in the amount of any refund of Tax which would otherwise have been available, the utilization of any net operating loss or capital loss or the utilization of any Tax credits or other Tax attributes) that the Indemnified Party suffers.

10.5.6 No Application to Certain Liabilities. Other than Section 10.5.2 (General Limitations on Indemnification – No Double Recovery), this Section 10.5 (General Limitations on Indemnification) shall not apply to Assumed Liabilities or Excluded Liabilities.

## **ARTICLE XI DISPUTE RESOLUTION**

11.1 Dispute Resolution. Any dispute or claim arising under this Agreement which is not resolved in the ordinary course of business shall be referred in writing (an “Escalation Notice”) to a panel consisting of a senior executive of Purchaser and Seller, with authority to decide or resolve the matter in dispute, for review and resolution. A copy of any such Escalation Notice shall

be given to the General Counsel, or like officer or official, of each Party (which copy shall state it is an Escalation Notice pursuant to this Agreement). Such senior executives shall meet and in good faith attempt to resolve the dispute within thirty (30) days. If the Parties are unable to resolve a dispute pursuant to this Section 11.1, then any Party may exercise any right or remedy available under this Agreement or applicable Law.

11.2 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF MISSISSIPPI WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

11.3 VENUE. EXCEPT AS SET FORTH IN SECTION 11.1, DISPUTES SHALL BE HEARD AND DETERMINED EXCLUSIVELY IN EITHER THE HARRISON COUNTY CIRCUIT COURT (FIRST JUDICIAL DISTRICT) IN GULFPORT, MISSISSIPPI OR THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION, AS APPROPRIATE, EXCEPT INsofar AS SUCH DISPUTE FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE MPSC. CONSISTENT WITH THE PRECEDING SENTENCE AND EXCEPT AS TO MATTERS WITHIN THE EXCLUSIVE JURISDICTION OF THE MPSC, THE PARTIES HERETO HEREBY IRREVOCABLY SUBMIT AND CONSENT TO THE EXCLUSIVE JURISDICTION OF THE HARRISON COUNTY CIRCUIT COURT (FIRST JUDICIAL DISTRICT) IN GULFPORT, MISSISSIPPI, OR THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION, AND IRREVOCABLY WAIVE, AND AGREE NOT TO ASSERT BY WAY OF MOTION, DEFENSE OR OTHERWISE, IN ANY SUCH DISPUTE, ANY CLAIM THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF THE ABOVE-NAMED COURTS, THAT THE DISPUTE IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE IS IMPROPER OR THAT THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT MAY NOT BE ENFORCED IN OR BY ANY OF THE ABOVE-NAMED COURTS. A FINAL JUDGMENT MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAWS.

11.4 WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

## **ARTICLE XII LIMITED REMEDIES AND DAMAGES**

12.1 EXCLUSIVE REMEDIES. FROM AND AFTER THE CLOSING DATE, THE EXPRESS REMEDIES SET FORTH IN SECTION 12.3, AND THE INDEMNITIES SET FORTH IN ARTICLE VIII AND ARTICLE IX, ARE THE SOLE AND EXCLUSIVE

REMEDIES FOR A PARTY UNDER OR RELATING TO THIS AGREEMENT, WHETHER BASED ON STATUTE, IN TORT, COMMON LAW, STRICT LIABILITY, CONTRACT OR OTHERWISE; PROVIDED, HOWEVER, AND NOTWITHSTANDING THE FOREGOING, THIS SECTION 12.1 SHALL NOT APPLY TO, AND NOTHING IN THIS SECTION 12.1 SHALL LIMIT A PARTY'S REMEDIES FOR, CLAIMS ARISING UNDER ARTICLE II AND CLAIMS FOR FRAUD OR CRIMINAL OR INTENTIONAL BREACH WITH RESPECT TO A PARTY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THIS SECTION 12.1 DOES NOT APPLY TO OR OTHERWISE LIMIT A PARTY'S RIGHT TO SEEK AND OBTAIN EQUITABLE OR MONETARY RELIEF PRIOR TO CLOSING (INCLUDING UNDER SECTION 12.3).

12.2 LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST PROFITS), INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER BY STATUTE, IN TORT, COMMON LAW, STRICT LIABILITY OR CONTRACT OR OTHERWISE; PROVIDED, HOWEVER, THAT THIS SECTION 12.2 SHALL NOT RELIEVE SELLER OR PURCHASER, AS THE CASE MAY BE, OF ANY LIABILITY SUCH PARTY MAY HAVE TO INDEMNIFY THE OTHER SUCH PARTY AND ITS RELATED PERSONS PURSUANT TO ARTICLE VIII FOR ANY OTHERWISE INDEMNIFIABLE DAMAGES SOUGHT OR AWARDED AGAINST SUCH OTHER PARTY AND ITS RELATED PERSONS IN A THIRD PARTY CLAIM, REGARDLESS OF THE NATURE OF SUCH DAMAGES. THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES SHALL BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OF ANY PARTY, AND WHETHER LIABILITY IS BASED ON CONTRACT, TORT, STATUTE, COMMON LAW, STRICT LIABILITY OR OTHERWISE. IN ADDITION, THIS SECTION 12.2 SHALL NOT LIMIT A PARTY'S OBLIGATIONS WITH RESPECT TO THE EXCLUDED LIABILITIES OR ASSUMED LIABILITIES.

12.3 Specific Performance. The Parties to this Agreement agree that, upon a Party's breach or threatened breach of this Agreement, the remedies at law of the other Party may not be a sufficient remedy and that such Party shall be entitled to seek specific performance of the terms of this Agreement and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or in equity. The Parties further agree that (a) a Party seeking the remedies provided for in this Section 12.3 shall not be required to provide any bond or other security in connection with such Order or injunction and in seeking such remedies shall not be deemed to have waived its right to seek any other form of relief that may be available to such Party under this Agreement and (b) nothing set forth in this Agreement shall require a Party to institute any proceeding for (or limit such Party's right to institute any proceeding for) specific performance under this Section 12.3 prior or as a condition to exercising any termination right under Article VII or pursuing the indemnities set forth in Article VIII, nor shall the commencement of any legal proceeding pursuant to this Section 12.3 restrict or limit a Party's right to terminate this Agreement in accordance with the terms of Article VII or pursue any other remedies under this Agreement that may be available then or thereafter.

**ARTICLE XIII  
MISCELLANEOUS****13.1 Notices.**

13.1.1 Notice Addresses. All notices, requests, claims, demands and other communications among the Parties under this Agreement shall be in writing and shall be deemed to have been duly given (a) when delivered in person, (b) when delivered after posting in the national mail having been sent registered or certified mail return receipt requested, postage prepaid, (c) when delivered by FedEx or other internationally recognized overnight delivery service or (d) when delivered by email (provided that no notice is received by the email sender within one (1) hour thereafter indicating that such electronic mail was undeliverable or otherwise not delivered), addressed as follows (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 13.1.1):

If to Purchaser, to:

Mississippi Power Company  
2992 West Beach Boulevard  
Gulfport, Mississippi 39501  
Attention: Shawn S. Shurden, General Counsel  
Email: ssshurde@southernco.com

with a copy to (which shall not constitute notice):

Balch & Bingham LLP  
1310 Twenty Fifth Street  
Gulfport, MS 39501  
Attention: Ricky J. Cox  
Email: rcox@balch.com

If to Seller, to:

Florida Power & Light Company  
700 Universe Blvd  
Juno Beach, Florida, 33408  
Attention: John Burnett, General Counsel  
Email: john.t.burnett@fpl.com

with a copy to (which shall not constitute notice):

Shutts & Bowen, LLP  
200 S, Biscayne Blvd, Suite 4100  
Miami, FL 33131  
Attention: William G. McCullough  
Email: wgm@shutts.com

13.2 Payments. Except for payments due at Closing, if a Party is required to make any payment under this Agreement on a day other than a Business Day, the date of payment shall be

extended to the next Business Day. In the event a Party does not make any payment required or approved by the Parties under this Agreement on or before the due date, interest on the unpaid amount shall be due and paid at the Default Rate from the date such payment is due until the date such payment is made in full. Any payment of such interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest.

13.3 Entire Agreement. This Agreement, the Ancillary Agreements, and the Confidentiality Agreement, including, in each case, all annexes, Schedules and exhibits thereto, supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof, and contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof and thereof.

13.4 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are completed, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution, and performance under this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

13.5 Public Announcements. Except as otherwise expressly provided in this Agreement, Seller and Purchaser shall not, and shall cause their respective Affiliates (in the case of any Affiliates they control) or shall use commercially reasonable efforts to cause their respective Affiliates (in the case of any Affiliates they do not control) not to, issue or make any reports, statements, releases or other disclosures to the public or to the press (whether or not for attribution) or generally to the customers, suppliers or other Persons to whom the Seller sells goods or provides services or with whom the Seller otherwise has significant business relationships, in each case with respect to this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby without the consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. If either Party is unable to obtain the approval of its report, statement, release, or other disclosure from the other Party and such report, statement, release or other disclosure is, in the opinion of outside legal counsel to the first Party, required by Law, any Governmental Authority or any rule or other requirement of any applicable securities exchange, then such first Party may make or issue such report, statement, release or other disclosure provided that such first Party has provided the other Party with a reasonable opportunity to review such report, statement, release or other disclosure prior to its making or issuance. Nothing contained in this Agreement will limit any Party's (or any Party's Affiliates') rights to (a) disclose the existence of this Agreement and the general nature of the transactions described herein on any earnings call or in similar discussions with financial media or analysts, stockholders and other members of the investment community, and in the case of either Party, the expected savings and other benefits to its customers resulting from the transactions contemplated herein, or (b) issue or make any reports, statements, releases or other disclosures that are consistent with the previous public statements or press releases made jointly by the Parties.

13.6 Confidentiality. Each of Purchaser and Seller hereby agrees that it shall be bound in all respects by the Confidentiality Agreement. The Confidentiality Agreement shall continue to be in full force and effect for the term set forth therein notwithstanding the execution and delivery of this Agreement or the occurrence of the Closing, except that following the Closing the Confidentiality Agreement shall not apply to information concerning any of the Plant Assets which is available to Purchaser as owner of the Plant Assets after the Closing.

### 13.7 Waivers.

13.7.1 Grant of Waivers. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

13.7.2 Exercise of Remedies. No failure or delay of any Party, in any one or more instances, (a) in exercising any power, right or remedy (other than failure or unreasonable delay in giving notice of default) under this Agreement or (b) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. Subject to Section 10.1, the covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

13.8 Amendment. This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by the Parties.

13.9 No Construction Against Drafting Party. The language used in this Agreement is the product of the Parties' efforts and each Party hereby irrevocably waives the benefits of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific words in a contract.

13.10 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

13.11 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

13.12 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) Purchaser and Seller shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.



13.13 Assignment. Neither this Agreement nor any of the rights or obligations hereunder shall be assigned by a Party, including by operation of Law, without the prior written consent of the other Party, which may be withheld in such Party's reasonable discretion. Without limiting the foregoing, in the case of an assignment by operation of Law, the non-assigning Party's consent shall not be required if, at least sixty (60) days prior to the effective date of the proposed assignment, the assigning Party provides or causes the proposed assignee to provide evidence reasonably satisfactory to the non-assigning Party concerning the proposed assignee's financial and legal capability of fulfilling the assigning Party's obligations under this Agreement. Any assignment of this Agreement in violation of the foregoing shall be null and void ab initio.

13.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A validly executed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original validly executed copy of this Agreement. This Agreement may be executed by any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docuSign.com) and any such electronic signature shall be valid and effective for all purposes.

13.15 Time of Essence. Time is of the essence with respect to all obligations of the Parties hereunder.

[Signature page follows.]

**IN WITNESS WHEREOF**, this Agreement has been executed by the Parties as of the Effective Date.

**SELLER:**

**FLORIDA POWER & LIGHT COMPANY**

Signed by:  
By:   
7C25F2109AF1418...  
Thomas Broad, VP PGD Fossil Operations and Pipelines

**PURCHASER:**

**MISSISSIPPI POWER COMPANY**


Signed by:  
By:   
BFD59BBB95CE4E9...  
Matthew Grice, VP, Treasurer and CFO

EXHIBIT AFORM OF BILL OF SALEBILL OF SALE

This BILL OF SALE (this “Bill of Sale”) is made as of [●], 202[●] (the “Closing Date”), by FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the state of Florida (“Seller” or “FPL”), for the benefit of MISSISSIPPI POWER COMPANY, a corporation organized and existing under the laws of the state of Mississippi (“Purchaser” or “MPC”). Seller and Purchaser are sometimes referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used but not defined in this Bill of Sale shall have the meanings given to such terms in the Purchase and Sale Agreement (defined below).

RECITALS

**WHEREAS**, Seller and Purchaser have entered into a Purchase and Sale Agreement, dated as of [●], 2023 (the “Purchase and Sale Agreement”), pursuant to which, among other things, Seller has agreed to sell, transfer, convey, assign and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Purchaser free and clear of all Liens (other than Permitted Liens), and Purchaser has agreed to purchase and acquire all of Seller’s right, title, and interest in, to and under the Plant Assets, including the FPL Ownership Interest in certain of the Plant Assets, and Plant Assets not included as part of the FPL Ownership Interest, if any, all on the terms and subject to the conditions set forth in the Purchase and Sale Agreement.

**WHEREAS**, the execution and delivery of this Bill of Sale by Seller and Purchaser is a condition to the obligations of the Parties to complete the transactions contemplated by the Purchase and Sale Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Bill of Sale and in the Purchase and Sale Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. Sale and Transfer of Plant Assets. Effective as of the Closing Date, Seller hereby sells, assigns, transfers, grants, conveys and delivers to Purchaser and its successors and assigns, free and clear of all Liens (other than Permitted Liens and Permitted Encumbrances), all of Seller’s right, title and interest in, to and under the Plant Assets.

2. Further Assurances. At any time from and after the date of this Bill of Sale, at either Party’s request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information, and take such other actions as may be required to carry

out the provisions of this Bill of Sale and complete and make effective the transactions contemplated by this Bill of Sale.

3. Miscellaneous.

(a) Interpretation. Nothing in this Bill of Sale, whether express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Purchase and Sale Agreement. This Bill of Sale is in all respects subject to and governed by the Purchase and Sale Agreement. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the Purchase and Sale Agreement, the Purchase and Sale Agreement will govern.

(b) Amendment. This Bill of Sale may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

(c) No Third Party Beneficiary. The terms and provisions of this Bill of Sale are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

(d) Headings. The headings used in this Bill of Sale have been inserted for convenience of reference only and do not define or limit the provisions hereof.

(e) Governing Law. THIS BILL OF SALE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

(f) Submission to Jurisdiction; Venue. Except as to matters within the exclusive jurisdiction of the MPSC, each of the Parties hereby irrevocably submits and consents to the exclusive jurisdiction of the Circuit Court of Harrison County, Mississippi (First Judicial District) in Gulfport, Mississippi, and the U.S. District Court for the Southern District of Mississippi (Southern Division), Gulfport, Mississippi, as appropriate. Further, each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert by way of motion, defense or otherwise, in any such dispute, any claim that it is not subject personally to the jurisdiction of the above-named courts, that the dispute is brought in an inconvenient forum, that the venue is improper or that the Purchase and Sale Agreement or the transactions contemplated thereby may not be enforced in or by any of the above-named courts. The Parties agree that any or all of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement among the Parties irrevocably to waive any objections to venue or to convenience of forum. Each of the Parties (on behalf of itself and its Affiliates) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(g) Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS BILL OF SALE. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(h) Binding Effect. This Bill of Sale is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

(i) Counterparts. This Bill of Sale may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A validly executed copy of this Bill of Sale delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original validly executed copy of this Bill of Sale.

[Signature page follows.]

**IN WITNESS WHEREOF**, each of the Parties has caused this Bill of Sale to be duly executed on its behalf as of the date first written above.

**SELLER:**

**FLORIDA POWER & LIGHT COMPANY**,  
a corporation organized and existing under the laws  
of the state of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PURCHASER:**

**MISSISSIPPI POWER COMPANY**,  
a corporation organized and existing under the laws  
of the state of Mississippi

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B-1FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT (GENERAL)ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made and entered into as of [●], 202[●] (the “Closing Date”), by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the state of Florida (“Assignor”), and MISSISSIPPI POWER COMPANY, a corporation organized and existing under the laws of the state of Mississippi (“Assignee”). Assignor and Assignee are sometimes referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used but not defined in this Assignment shall have the meanings given to such terms in the Purchase and Sale Agreement (defined below).

**RECITALS**

**WHEREAS**, Assignor and Assignee have entered into a Purchase and Sale Agreement, dated as of [●], 202[●] (the “Purchase and Sale Agreement”), pursuant to which, among other things, Assignor has agreed to sell, transfer, convey, assign and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Assignee free and clear of all Liens (other than Permitted Liens and Permitted Encumbrances), and Assignee has agreed to purchase and acquire all of Assignor’s right, title, and interest in, to and under the Plant Assets, including the FPL Ownership Interest in certain of the Plant Assets, and Plant Assets not included as part of the FPL Ownership Interest, if any, all on the terms and subject to the conditions set forth in the Purchase and Sale Agreement.

**WHEREAS**, the execution and delivery of this Assignment by Assignor and Assignee is a condition to the obligations of the Parties to complete the transactions contemplated by the Purchase and Sale Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Assignment and in the Purchase and Sale Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

**AGREEMENT**

1. Assignment. Effective as of the Closing Date, Assignor hereby conveys and assigns to Assignee, and Assignee hereby accepts the assignment of, all of Assignor’s or any of its Affiliates’ right, title and interest in, to and under the Plant Contracts belonging to Assignor, the Plant Intellectual Property, the Plant Permits, the Emission Allowances for the Plant Assets, the Project Permits, and any claims, rights, causes of actions, warranties, prepayments, and insurance proceeds that are not otherwise included in the Excluded Liabilities (the “Assigned Assets”).

2. Assumption of Assumed Liabilities. Effective as of the Closing Date, Assignor hereby transfers and delegates to Assignee, and Assignee does hereby assume, accept and agree to

pay, perform or discharge, as applicable, the Assumed Liabilities. Assignee does not assume and shall have no obligation in respect of any of the Excluded Liabilities, which will remain the sole responsibility of the Assignor, as set forth in the Purchase and Sale Agreement.

3. Further Assurances. At any time from and after the date of this Assignment, at either Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information, and take such other actions as may be required to carry out the provisions of this Assignment and complete and make effective the transactions contemplated by this Assignment.

4. Miscellaneous.

(a) Interpretation. Nothing in this Assignment, whether express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Purchase and Sale Agreement. This Assignment is in all respects subject to and governed by the Purchase and Sale Agreement. To the extent that any provision of this Assignment conflicts or is inconsistent with the terms of the Purchase and Sale Agreement, the Purchase and Sale Agreement will govern.

(b) Amendment. This Assignment may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

(c) No Third Party Beneficiary. The terms and provisions of this Assignment are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

(d) Headings. The headings used in this Assignment have been inserted for convenience of reference only and do not define or limit the provisions hereof.

(e) Governing Law. THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

(f) Submission to Jurisdiction; Venue. Except as to matters within the exclusive jurisdiction of the MPSC, each of the Parties hereby irrevocably submits and consents to the exclusive jurisdiction of the Circuit Court of Harrison County, Mississippi (First Judicial District) in Gulfport, Mississippi, and the U.S. District Court for the Southern District of Mississippi (Southern Division), Gulfport, Mississippi, as appropriate. Further, each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert by way of motion, defense or otherwise, in any such dispute, any claim that it is not subject personally to the jurisdiction of the above-named courts, that the dispute is brought in an inconvenient forum, that the venue is improper or that the Purchase and Sale Agreement or the transactions contemplated thereby may



not be enforced in or by any of the above-named courts. The Parties agree that any or all of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement among the Parties irrevocably to waive any objections to venue or to convenience of forum. Each of the Parties (on behalf of itself and its Affiliates) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(g) Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(h) Binding Effect. This Assignment is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

(i) Counterparts. This Assignment may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A validly executed copy of this Assignment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original validly executed copy of this Assignment.

[Signature page follows.]

**IN WITNESS WHEREOF**, each of the Parties has caused this Assignment to be duly executed on its behalf as of the date first written above.

**ASSIGNOR:**

**FLORIDA POWER & LIGHT COMPANY,**  
a corporation organized and existing under the laws  
of the state of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**MISSISSIPPI POWER COMPANY,**  
a corporation organized and existing under the laws  
of the state of Mississippi

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B-2

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT  
(REAL PROPERTY RIGHTS)

Recording requested by and  
when recorded return to:

[ ]

[ ]

[ ]

ATTENTION: [\_\_\_\_\_]

INDEXING INSTRUCTIONS: [TBD]

MARGINA NOTATIONS: [TBD]

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(SPACE ABOVE RESERVED FOR RECORDING INFORMATION)

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**(REAL PROPERTY RIGHTS)**

GRANTOR/ASSIGNOR: FLORIDA POWER & LIGHT COMPANY,

A CORPORATION ORGANIZED AND EXISTING UNDER  
THE LAWS OF THE STATE OF FLORIDA

GRANTEE/ASSIGNEE: MISSISSIPPI POWER COMPANY,

A CORPORATION ORGANIZED AND EXISTING UNDER  
THE LAWS OF THE STATE OF MISSISSIPPI

REFERENCE  
NUMBERS:

APN(S) [\_\_\_\_\_]

**ASSIGNMENT AND ASSUMPTION AGREEMENT****(REAL PROPERTY RIGHTS)**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made and entered into as of [●], 202[●] (the “Closing Date”), by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the state of Florida (“Assignor”), and MISSISSIPPI POWER COMPANY, a corporation organized and existing under the laws of the state of Mississippi (“Assignee”). Assignor and Assignee are sometimes referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used but not defined in this Assignment shall have the meanings given to such terms in the Purchase and Sale Agreement (defined below).

**RECITALS**

**WHEREAS**, Assignor and Assignee have entered into a Purchase and Sale Agreement, dated as of [●], 202[●] (the “Purchase and Sale Agreement”), pursuant to which, among other things, Assignor has agreed to sell, transfer, convey, assign and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Assignee free and clear of all Liens (other than Permitted Liens and Permitted Encumbrances), and Assignee has agreed to purchase and acquire all of Assignor’s right, title, and interest in, to and under the Plant Assets (including all of Assignor’s real property interests), including the FPL Ownership Interest in certain of the Plant Assets, and Plant Assets not included as part of the FPL Ownership Interest, if any, all on the terms and subject to the conditions set forth in the Purchase and Sale Agreement. The “Plant Assets” being located on that certain real property in Jackson County, Mississippi (the “Plant Site”), as further described and depicted on Exhibit “A” attached hereto and fully incorporated herein by this reference.

**WHEREAS**, contemporaneous with the execution and delivery of this Assignment, Assignor has executed and delivered unto Assignee a special warranty deed conveying all right, title and interest to all real property owned in fee by Assignor or any of its Affiliates’ right related to the Plant Site.

**WHEREAS**, the execution and delivery of this Assignment by Assignor and Assignee is a condition to the obligations of the Parties to complete the transactions contemplated by the Purchase and Sale Agreement for the purpose of transferring all right, title and interest to all other real property interests owned by Assignor related to the Plant Site.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Assignment and in the Purchase and Sale Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## AGREEMENT

1. Assignment of Plant Real Property Agreements. Effective as of the Closing Date, Assignor hereby conveys and assigns to Assignee, and Assignee hereby accepts the assignment of, all of Assignor's or any of its Affiliates' right, title and interest in, to and under all leasehold or sub-leasehold agreements, easements, rights-of-way, licenses, occupancy, or encroachment permits, or similar entitlements which are used, or to be used, for or in the development, construction, ownership, operation, use, or maintenance of the Plant Assets, together with any other interest in real property, including, but not limited to, any Contracts for real property rights granted by the state of Mississippi or any other Governmental Authority (including any option to acquire the same), and all amendments, assignments, and modifications thereto and all schedules and exhibits attached thereto, which comprise, encumber or relate to the Plant Site, to which Assignor or any of its Affiliates is a party or by which Assignor or any of its Affiliates or any of the Plant Assets are bound, and that grant, convey, assign or otherwise affect real property interests relating to the Plant Site (collectively, the "Plant Real Property Agreements"), subject to the terms, covenants, conditions and provisions of the Purchase and Sale Agreement. It being the intent of Assignor to convey and assign unto Assignee all of Assignor's right, title and interest to any and all Plant Real Property Agreements (not otherwise conveyed in fee by the aforementioned special warranty deed), whether recorded or unrecorded, and whether or not identified on Exhibit "B" attached hereto and fully incorporated herein by this reference.

2. Assumption of Assumed Liabilities. Effective as of the Closing Date, Assignor hereby transfers and delegates to Assignee, and Assignee does hereby assume, accept and agree to pay, perform or discharge, as applicable, the Assumed Liabilities with respect to the Plant Real Property Agreements. Assignee does not assume and shall have no obligation in respect of any of the Excluded Liabilities, which shall remain the sole responsibility of the Assignor, as set forth in the Purchase and Sale Agreement.

3. Further Assurances. At any time from and after the date of this Assignment, at either Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information, and take such other actions as may be required to carry out the provisions of this Assignment and complete and make effective the transactions contemplated by this Assignment.

4. Miscellaneous.

(a) Interpretation. Nothing in this Assignment, whether express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Purchase and Sale Agreement. This Assignment is in all respects subject to and governed by the Purchase and Sale Agreement. To the extent that any provision of this Assignment conflicts or is inconsistent with the terms of the Purchase and Sale Agreement, the Purchase and Sale Agreement will govern.

(b) Amendment. This Assignment may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

(c) No Third Party Beneficiary. The terms and provisions of this Assignment are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person.

(d) Headings. The headings used in this Assignment have been inserted for convenience of reference only and do not define or limit the provisions hereof.

(e) Governing Law. THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

(f) Submission to Jurisdiction; Venue. Except as to matters within the exclusive jurisdiction of the MPSC, each of the Parties hereby irrevocably submits and consents to the exclusive jurisdiction of the Circuit Court of Harrison County, Mississippi (First Judicial District) in Gulfport, Mississippi, and the U.S. District Court for the Southern District of Mississippi (Southern Division), Gulfport, Mississippi, as appropriate. Further, each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert by way of motion, defense or otherwise, in any such dispute, any claim that it is not subject personally to the jurisdiction of the above-named courts, that the dispute is brought in an inconvenient forum, that the venue is improper or that the Purchase and Sale Agreement or the transactions contemplated thereby may not be enforced in or by any of the above-named courts. The Parties agree that any or all of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement among the Parties irrevocably to waive any objections to venue or to convenience of forum. Each of the Parties (on behalf of itself and its Affiliates) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(g) Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(h) Binding Effect. This Assignment is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

(i) Counterparts. This Assignment may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A validly executed copy of this Assignment delivered by

facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original validly executed copy of this Assignment.

[Signature pages follow.]



**IN WITNESS WHEREOF**, each of the Parties has caused this Assignment to be duly executed on its behalf as of the date first written above.

**ASSIGNOR:**

**FLORIDA POWER & LIGHT COMPANY**,  
a corporation organized and existing under the laws  
of the state of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

This instrument was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
Florida Power & Light Company, a corporation organized and existing under the laws of the state of  
Florida, on behalf of the corporation.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

**ASSIGNEE:**

**MISSISSIPPI POWER COMPANY,**  
a corporation organized and existing under the laws  
of the state of Mississippi

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

This instrument was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
Mississippi Power Company, a corporation organized and existing under the laws of the state of  
Mississippi, on behalf of the corporation.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

**EXHIBIT A**  
**TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(REAL PROPERTY RIGHTS)**

**LEGAL DESCRIPTION OF THE PLANT SITE**

S-115 JACKSON COUNTY STEAM PLANT SITE DESCRIBED AS FOLLOWS:

SECTION 2, T 6 S., R 6 W., ALL THAT PART OF THE SW 1/4 OF SECTION 2 LYING WEST OF HIGHWAY 63 AS RECORDED IN BOOK 417, PAGE 468; BOOK 419, PAGE 57; BOOK 444, PAGE 36; BOOK 414, PAGE 163; BOOK 419, PAGE 577; BOOK 423, PAGE 160; BOOK 448, PAGE 282; BOOK 455, PAGE 401; AND BOOK 455, PAGE 400. SECTION 4, T 6 S., R 6 W., ALL THAT PART E OF PASCAGOULA RIVER AND S OF VAUGHN BAYOU, AS RECORDED IN BOOK 428, PAGE 259. SECTION 9, T 6 S., R 6 W., ALL OF SECTION EAST OF PASCAGOULA RIVER AS RECORDED IN BOOK 428, PAGE 259. SECTION 10, T 6 S., R 6 W., ALL OF SECTION AS RECORDED IN BOOK 428, PAGE 259; BOOK 448, PAGE 288; BOOK 449, PAGE 418; BOOK 449, PAGE 507. SECTION 11, T 6 S., R 6 W., ALL THAT PART OF THE SE 1/4 OF SE 1/4 EAST OF MISS. STATE HIGHWAY 63; ALL OF SECTION 11 WEST OF HIGHWAY 63; ALL BEING RECORDED IN BOOK 439, PAGES 467-70; BOOK 434, PAGES 601-5; BOOK 434, PAGE 600; BOOK 442, PAGE 155; AND BOOK 441, PAGE 327. SECTION 13, T 6 S., R 6 W., A TRACT OR PARCEL OF LAND SITUATED AS BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW 1/4 OF NW 1/4) OF SECTION THIRTEEN (13) TOWNSHIP SIX (6) SOUTH, RANGE SIX (6) WEST, JACKSON COUNTY, MISSISSIPPI, AND FROM SAID POINT RUN NORTH ALONG THE WEST LINE OF SAID SECTION THIRTEEN A DISTANCE OF 1186 FEET, MORE OR LESS, TO THE WEST MARGIN OF THE RIGHT-OF-WAY FOR PRESENT STATE HIGHWAY NO. 63, RUN THENCE SOUTH 27° 01' EAST ALONG THE WEST MARGIN OF SAID HIGHWAY RIGHT-OF-WAY TO THE SOUTH LINE OF SAID NW 1/4 OF NW 1/4, AND FROM SAID POINT RUN WEST ALONG THE SOUTH LINE OF SAID NW 1/4 OF NW 1/4 A DISTANCE OF 561 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 7.637 ACRES, MORE OR LESS, AS RECORDED IN BOOK 521, PAGES 230-33. SECTION 14, T 6 S., R 6 W., BEGINNING AT THE NORTHEAST CORNER OF SECTION 14, T 6 S., R 6 W., AND RUN THENCE SOUTH, ALONG THE E LINE OF SAID SECTION 14, A DISTANCE OF 2030' TO A POINT, RUN THENCE W A DISTANCE OF 380' TO A POINT, THENCE SOUTH 3 DEGREES 30 MIN. EAST A DISTANCE OF 125 FEET TO A POINT, RUN THENCE WEST A DISTANCE OF 730 FEET TO CLARK BAYOU, RUN THENCE SLWY ALONG THE MEANDERINGS OF CLARK BAYOU 6,560 FEET, MORE OR LESS, TO THE SW CORNER OF SEC 14, THENCE N ALONG THE W SECTION LINE OF SEC. 14 TO THE NW CORNER OF SAID SECTION, THENCE RUN E ALONG THE NORTH LINE OF SECTION 14 A DISTANCE OF 5251 FEET, MORE OR LESS, TO THE NE CORNER OF SAID SEC. 14 AND THE POB, LESS AND EXCEPT THAT PART TO MISS. STATE HIGHWAY DEPARTMENT RECORDED IN BOOK 172, PAGES 585-6, AND THAT PART TO LUM CUMBEST, ET AL, CONTAINING 1.77 ACRES, ALL AS RECORDED IN BOOK 439, PAGES 467-70, BOOK 495, PAGES 91-92. SECTION 15, T 6 S., R 6 W., LOTS 1 & 2 AS RECORDED IN BOOK 416, PAGE 299; AND BOOK 428, PAGE 259.

A TRACT OF LAND IN THE A. GOODWIN CLAIM SEC. 35 AND THE KIRKWOOD CLAIM, SEC. 42, BOTH IN T 5 S., R 6 W., JACKSON COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 75 FEET WEST OF THE SOUTHEAST CORNER OF THE A. GOODWIN CLAIM SECTION 35, T 5 S., R 6 W., ON THE WEST MARGIN OF THE COUNTY ROAD KNOWN AS "RIVER ROAD" (NOW MISS. HIGHWAY 63) AND FROM THENCE RUNNING WEST ALONG THE SOUTH BOUNDARY LINE OF THE AFORESAID A. GOODWIN CLAIM NO. 35, 1575 FEET; THENCE NORTH 1609.50 FEET; THENCE EAST 295 FEET; THENCE SOUTH 69 DEGREES AND 19 MINUTES EAST 885 FEET TO THE WEST MARGIN OF THE COUNTY ROAD KNOWN AS "RIVER ROAD" (NOW MISS. HIGHWAY NO. 63); THENCE SLY ALONG THE W MARGIN OF SAID ROAD SOUTH 6 DEGREES AND 24 MINUTES WEST 100 FEET; THENCE SOUTH 1 DEGREE AND 34 MINUTES EAST 100 FEET; THENCE SOUTH 7 DEGREES AND 44 MINUTES EAST 100 FEET; THENCE SOUTH 9 DEGREES AND 33 MINUTES EAST 100 FEET; THENCE

SOUTH 12 DEGREES AND 46 MINUTES EAST 200 FEET; THENCE SOUTH 16 DEGREES AND 30 MINUTES EAST 100 FEET; THENCE SOUTH 25 DEGREES AND 12 MINUTES EAST 100 FEET; THENCE SOUTH 30 DEGREES AND 45 MINUTES EAST 200 FEET; THENCE SOUTH 34 DEGREES AND 22 MINUTES EAST 300 FEET; THENCE SOUTH 23 DEGREES AND 20 MINUTES EAST 108.7 FEET TO THE POB. LESS AND EXCEPT THOSE CERTAIN PARCELS SOLD TO DAVID THOMAS PINTER AND SOLD TO ERBIE GENE BAILEY AND WIFE ALL AS RECORDED IN DEED BOOK 250, PAGE 336; BOOK 394, PAGE 168; BOOK 394, PAGE 171; BOOK 399, PAGE 420; BOOK 407, PAGE 170; LESS AND EXCEPT ANY PART OF THE ABOVE DESCRIBED LAND WHICH LIES EAST OF THE NEW MISS. HIGHWAY NO. 63 AS NOW LAID OUT AND USED. AS RECORDED IN BOOK 423, PAGE 157. THAT PORTION OF CLAIM SECTIONS 35 AND 42, T 5 S., R 6 W., DESCRIBED AS COMMENCING AT THE SE CORNER OF WHAT WOULD BE THE SE CORNER OF SECTION 34, T 5 S., R 6 W., IF SAID SECTION WAS SURVEYED INTO A REGULAR GOVERNMENTAL SECTION AND ALSO BEING THE SE CORNER OF CLAIM SEC. 35, T 5 S., R 6 W., AND FROM THENCE RUNNING W ALONG THE SOUTH MARGIN OF SAID CLAIM SEC. 35 A DISTANCE OF 1650 FEET TO THE POB; THENCE CONTINUING W A DISTANCE OF 541.65 FEET; THENCE RUNNING N A DISTANCE OF 1,116; THENCE RUNNING E A DISTANCE OF 541.65'; THENCE RUNNING S A DISTANCE OF 1,116' TO THE POB, CONTAINING 13.876 ACRES, MORE OR LESS, AS RECORDED IN BOOK 471, PAGES 598-600, SECTION 37 T 6 S., R 6 W., ALL THAT PART OF ALLEN GOODWIN PRIVATE CLAIM 37 THAT WOULD HAVE BEEN THE S 1/2 OF REGULAR SECTION 3, IF REGULARLY SURVEYED, LESS AND EXCEPT THAT PART LYING NW OF VAUGHN BAYOU AS RECORDED IN BOOK 428, PAGE 259, AND ALSO A TRACT OF LAND LOCATED IN CLAIM SECTION 37, TOWNSHIP 6 SOUTH, RANGE 6 WEST, JACKSON COUNTY, MISS., DESCRIBED AS BEGINNING AT A POINT WHICH IS THE NORTHWEST CORNER OF LOT THREE (3), FRACTIONAL SECTION TWO (2), OF SAID TOWNSHIP AND RANGE, AND FROM SAID POINT OF BEGINNING RUN NORTH ALONG THE WEST BOUNDARY OF THE PROPERTY OF COULSON A DISTANCE OF 2225 FEET, MORE OR LESS, TO THE WEST RIGHT-OF-WAY OF MISS. HWY. 63; RUN THENCE NORTHWESTERLY ALONG THE WEST RIGHT-OF-WAY LINE OF SAID HIGHWAY A DISTANCE OF 522 FEET TO THE NORTH BOUNDARY OF SAID CLAIM SECTION 37; THENCE RUN WEST ALONG THE NORTH BOUNDARY OF SAID CLAIM SECTION 37 A DISTANCE OF 1939 FEET, TO A POINT; THENCE RUN SOUTHWESTERLY A DISTANCE OF 2410 FEET, MORE OR LESS, TO THE INTERSECTION OF THE WEST BOUNDARY OF SAID CLAIM SECTION 37 AND THE MEANDERING CENTERLINE OF VAUGHN BAYOU; RUN THENCE EAST AND SOUTHEAST ALONG THE MEANDERING CENTERLINE OF SAID BAYOU A DISTANCE OF 560 FEET, MORE OR LESS, TO A POINT WHICH IS DUE WEST OF THE POINT OF BEGINNING; RUN THENCE EAST ALONG THE NORTH PROPERTY LINE OF MISS. POWER COMPANY, A DISTANCE OF 2295 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, AS RECORDED IN BOOK 510, PAGE 397-410 AND BOOK 530, PAGE 493.

**EXHIBIT B**  
**TO ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(REAL PROPERTY INTERESTS)**

1. There are no Plant Real Property Agreements to which Florida Power & Light Company (or its predecessor—Gulf Power Company) separately entered into in connection with the Plant Site or any of the Plant Assets.

EXHIBIT CTRANSFER AMOUNT

The Transfer Amount shall be a single amount determined by reference to the timing of the Closing Date, as follows:

<u>Closing Date</u>	<u>Transfer Amount</u>
December 31, 2024 (or earlier)	\$45,000,000
<i>January 1, 2025 -- Holiday, No Closing</i>	
January 2, 2025	\$38,100,000
January 31, 2025	\$37,809,000
February 28, 2025	\$37,516,000
March 31, 2025	\$37,220,000
April 30, 2025	\$36,923,000
May 31, 2025	\$36,624,000
June 30, 2025	\$36,323,000
July 31, 2025	\$36,020,000
August 31, 2025	\$35,715,000
September 30, 2025	\$35,407,000

Notes:

- 1) Florida Power & Light is responsible for payment of the Tax Year\* 2024 Ad Valorem taxes associated with its 50% pre-closing interest regardless of transaction outcome.
- 2) Florida Power & Light will be responsible for payment of the Tax Year\* 2025 Ad Valorem taxes associated with its 50% pre-closing interest for all closing dates that occur after December 31, 2024.
- 3) Simple interpolation is to be used to arrive at the Transfer Amount for actual closing dates that are between the listed closing dates.

\* Tax Year means the year in which the Ad Valorem Tax Assessment is completed by the Mississippi Department of Revenue with payment due to the taxing authority by February 1 of the following year.

## SCHEDULES

These Schedules relate to this Agreement. Capitalized terms used but not defined in these Schedules will have the respective meanings ascribed to such terms in this Agreement.

Inclusion of an item herein as an exception to a representation, warranty, covenant, or agreement will not be deemed an admission by a Party that such item represents a material exception or fact, event, or circumstance. The Schedules are not intended to constitute, and shall not be construed as constituting, separate representations or warranties of Seller or Purchaser.

Items and matters disclosed in these Schedules are arranged in sections corresponding to the sections of this Agreement to which such items and matters relate; provided, the disclosure in any one of these Schedules shall be deemed to qualify or apply to other Schedules to the extent that it is reasonably apparent on its face without further investigation that such disclosure also qualifies or applies to such other Schedules.

Headings and summary descriptions have been inserted for the convenience of reference only and will not, to any extent, have the effect of amending or changing the express description of the Schedules as set forth in this Agreement.

**Schedule 1.1 (b) – Permitted Liens**

None



**Schedule 1.1 (c) – Plant Contracts**

Letter Agreement dated July 28, 1976, between Mississippi Power Company (Victor J. Daniel) and Gulf Power Company (Robert F. Ellis).

The Second Amended and Restated Plant Daniel Operating Agreement between Mississippi Power company and Florida Power & Light Company dated as of July 8, 2022.

The August 24, 2004, Memorandum executed by Michael W. Southern of MPC and Ronnie R. Labrato of Gulf regarding allocation of Common Operations and Maintenance.

That certain Bill of Sale dated and made effective as of February 15, 2024, conveying FPL's right, title, and interest in and to the Coal Stockpile and Associated Limestone as defined therein to MPC.

That certain Bill of Sale dated and made effective as of February 15, 2024, conveying FPL's right, title, and interest in and to the Oil Inventory as defined therein to MPC.

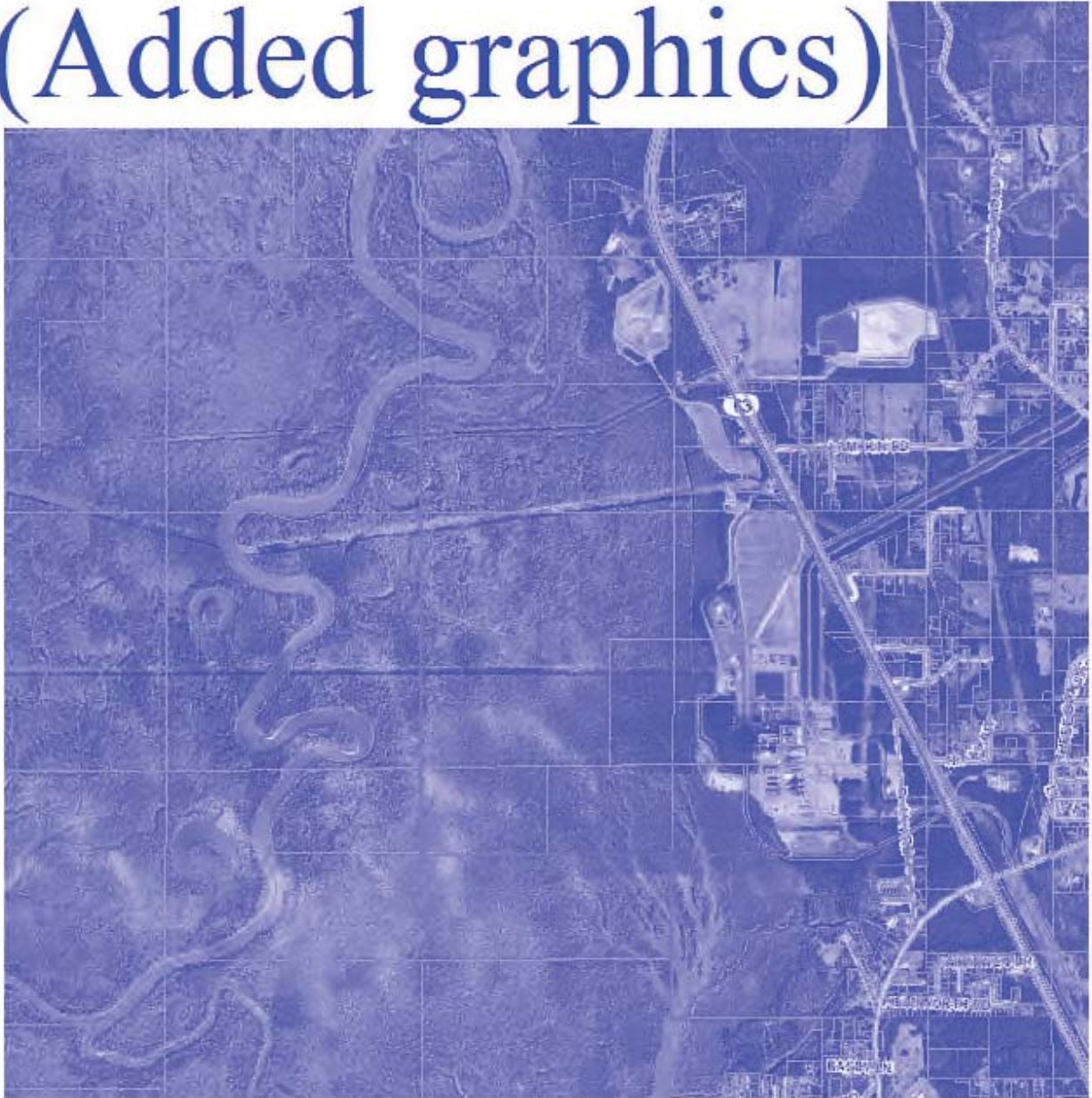
**Schedule 1.1 (h) – Plant Real Property Agreements**

There are no Plant Real Property Agreements to which Florida Power & Light Company (or its predecessor—Gulf Power Company) separately entered into in connection with the Plant Site or any of the Plant Assets.

**Schedule 1.1 (i) – Plant Site**

Aerial Depiction of Plant Site and List of Tax Parcel Numbers

**(Added graphics)**



**[Note: Approximate boundary of the Plant Site is depicted by the blue line. This depiction is provided for convenience and identification purposes only and is not a substitute for a complete and accurate survey of the Plant Site. Vesting Deed descriptions will be included in the Special Warranty Deed delivered in connection with Closing.]**

**Schedule 1.1 (i) – Plant Site continued**

## List of Tax Parcel Numbers for Plant Site

	<b>GISP</b>	<b>PIDN</b>	<b>Owner Information</b>	<b>Deed Bk</b>	<b>Page</b>	<b>Acres</b>
1	666.14-00-0113.00	1714110.000	Mississippi Power Co & Gulf Power Co	439	467	396.75
2	661.11-00-0048.00	1711270.000	Mississippi Power Co & Gulf Power Co	439	467	156
3	661.11-00-0049.00	1711270.050	Mississippi Power Co & Gulf Power Co	439	467	2.03
4	661.11-00-0050.00	1711270.100	Gulf Power Co & Mississippi Power Co	574	71	2.03
5	665.15-00-0001.00	1715010.000	Mississippi Power Co, et al	416	299	107.59
6	665.15-00-0002.00	1715020.000	Mississippi Power Co, et al	428	259	107.59
7	662.10-00-0001.00	1710020.000	Gulf Power Co & Mississippi Power Co	448	288	80
8	662.10-00-0002.00	1710010.000	Mississippi Power Co & Gulf Power Co	574	71	538.69
9	662.09-00-0001.00	1709020.000	Mississippi Power Co & Gulf Power Co	428	259	281.82
10	662.04-00-0001.00	1704060.000	Mississippi Power Co, et al	428	259	54
11	662.03-00-0001.00	1737050.000	Mississippi Power Co, et al	428	259	272
12	662.03-00-0002.00	1737010.050	Mississippi Power Co, et al	510	397	146
13	661.02-00-0051.00M	1702175.000	Mississippi Power Co, et al	455	401	37.91
14	661.02-00-0053.00	1702210.000	Mississippi Power Co, et al	455	400	5
15	661.02-00-0054.00	1702220.000	Mississippi Power Co, et al	577	71	10.97
16	661.02-00-0055.00	1702225.000	Mississippi Power Co, et al	419	57	3.05
17	661.02-00-0058.00	1702350.000	Mississippi Power Co, et al	414	163	2
18	661.02-00-0056.00	1702360.000	Mississippi Power Co, et al	417	468	40
19	661.11-00-0043.00M	1711280.000	Mississippi Power Co & Gulf Power Co	441	327	148
20	661.11-00-0041.00	1711020.000	Mississippi Power Co & Gulf Power Co	434	601	18.5
21	661.11-00-0044.00	1711240.100	Mississippi Power Co & Gulf Power Co	434	604	40
22	661.11-00-0045.00	1711240.000	Mississippi Power Co & Gulf Power Co	434	601	115
23	661.11-00-0046.00	1711250.000	Mississippi Power Co & Gulf Power Co	442	155	1.1
24	661.11-00-0047.00	1711260.000	Mississippi Power Co & Gulf Power Co	434	599	2.6
25	666.13-00-0104.00	1713045.000	Mississippi Power Co & Gulf Power Co	521	230	7.63
26	661.02-00-0059.00	1702160.000	Mississippi Power Company	444	36	2.6
27	661.02-00-0060.00	1702150.100	Mississippi Power Company	423	160	5.08
28	661.02-00-0057.00	1702320.000	Mississippi Power Company	419	577	1
29	568.35-00-0034.00	01635060.0NU	Mississippi Power Co & Gulf Power Co	423	157	40.13
30	568.42-00-0033.00	01642064.000	Mississippi Power Co & Gulf Power Co	423	157	9.76
31	661.02-00-0050.00	01702380.000	Mississippi Power Co, et al	448	282	2.98

**[Note: The above list of Tax Parcel Numbers is provided for convenience and identification purposes only and is not a substitute for a complete and accurate title examination of the Plant Site. This list is not exhaustive of all real property interests being transferred under this Agreement. Vesting Deed descriptions will be included in the Special Warranty Deed delivered in connection with Closing]**

**Schedule 1.1 (j) – Purchaser’s Knowledge**

Shawn S. Shurden, General Counsel

**Schedule 1.1 (m) – Seller’s Knowledge**

John Burnett, General Counsel

**Schedule 3.4 – Seller’s Consents**

None

**Schedule 3.5 – Seller’s Governmental Approvals and Filings**

FPSC Approval



**Schedule 3.6 – Litigation**

Rail fuel surcharge antitrust case in the United States District Court for the District of Columbia on October 2, 2019, case number: 1:19-cv-02963.

**Schedule 3.14 – Environmental Matters**

Seller has no knowledge of any matters includible on this schedule other than any such matters communicated to it by or on behalf of, or jointly with, Purchaser.

Emission Allowances:

<u>Account Number</u>	<u>Account Name</u>	<u>Facility ID</u>	<u>Program Code</u>	<u>Allow Vintage Year</u>	<u>Allow Block Total</u>	<u>SN Start</u>	<u>SN End</u>
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2017	108	386405	386512
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2023	61	189721	189781
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2023	14	189797	189810
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2024	563	100303	100865
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2024	556	100866	101421
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2024	23	101422	101444
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2024	22	101445	101466
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2024	27	101467	101493
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2024	23	101494	101516
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2025	563	24142	24704
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2025	556	24705	25260
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2025	23	25261	25283
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2025	22	25284	25305
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2025	27	25306	25332
006073FACLY	Daniel Electric Generating Plant	6073	CSOSG2	2025	23	25333	25355

**Schedule 4.4 – Purchaser’s Consents**

None

**Schedule 4.5 – Purchaser’s Governmental Approvals and Filings**

MPSC Approval

**Certificate Of Completion**

Envelope Id: 394E9D1E049848D28200D08491376D81	Status: Completed
Subject: Execute Plant Daniel PSA	
Source Envelope:	
Document Pages: 92	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Tracy Augustyni
Time Zone: (UTC-05:00) Eastern Time (US & Canada)	200 S. Biscayne Blvd., Suite 4100
	Miami, FL 33131
	ORLsign1@shutts.com
	IP Address: 38.104.89.250

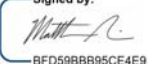
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Status: Original 11/8/2024 9:43:30 AM	Holder: Tracy Augustyni ORLsign1@shutts.com	Location: DocuSign
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**Signer Events**

Matthew Grice  
mpgrice@southernco.com  
Comptroller  
Security Level: Email, Account Authentication (None)

**Signature**

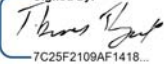
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Thomas Broad  
thomas.broad@fpl.com  
Security Level: Email, Account Authentication (None)

Signed by:  
  
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Signature Adoption: Drawn on Device  
Using IP Address: 166.199.100.108  
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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Frank Schiller  
FASCHILL@SOUTHERNCO.COM  
Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 11/8/2024 10:23:56 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
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<p>Paul Hechenberger phechenberger@shutts.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 10/28/2024 9:10:50 PM ID: f37232d4-a486-4b60-bcac-fe750704f8ad</p>	<b>COPIED</b>	<p>Sent: 11/8/2024 10:23:57 AM Viewed: 11/8/2024 11:40:52 AM</p>
<p>Ricky Cox rcox@balch.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	<p>Sent: 11/8/2024 10:23:57 AM Viewed: 11/8/2024 10:30:34 AM</p>
<p>Russell Badders Russell.Badders@fpl.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	<p>Sent: 11/8/2024 10:23:57 AM Viewed: 11/8/2024 12:28:16 PM</p>
<p>Shawn Shurden SSSHURDE@SOUTHERNCO.COM Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	<p>Sent: 11/8/2024 10:23:58 AM Viewed: 11/8/2024 10:40:01 AM</p>
<p>William McCullough wgm@shutts.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 12/29/2020 2:50:53 PM ID: 4e377779-1737-4858-a04c-6c14995a82fe</p>	<b>COPIED</b>	<p>Sent: 11/8/2024 10:23:58 AM</p>

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	11/8/2024 12:23:16 PM
Completed	Security Checked	11/8/2024 12:23:16 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Shutts & Bowen LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

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