

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition For Approval )  
Of Contract For The Purchase )  
Of Firm Capacity And Energy )  
From Seminole Fertilizer Corp. )

Docket No. 900917-EQ  
Filed: 11/9/90

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FLORIDA POWER CORPORATION PETITION  
FOR APPROVAL OF CONTRACT FOR PURCHASE  
OF FIRM CAPACITY AND ENERGY FROM  
SEMINOLE FERTILIZER CORPORATION

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Pursuant to Commission Rule 25-22.036(4), F.A.C., Florida Power Corporation (FPC) petitions the Commission for approval of the Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility, between Seminole Fertilizer Corporation (Seminole) and FPC. A copy of the executed contract is contained in Attachment A to this Petition. This filing satisfies Commission Rule 25-17.0832(1)(b), F.A.C., which requires the filing of a copy of the contract and a summary of its terms and conditions. In support of this Petition, FPC submits the following.

1. Florida Power Corporation is the name of the utility, and Seminole Fertilizer Corporation is name of the owner of the qualifying facility (QF) that are signatories of the contract.

2. The amount of committed capacity specified in the contract shall not be less than 15 megawatts (MW) nor more than 47 MW. The size of the facility is up to 102 MW. The facility will consist of two (2) 37 MW steam turbine generators which will utilize process waste heat and may also include one 28 MW gas

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turbine generator which will be natural gas-fired. The final committed capacity must be established by July 1, 1991 and the largest single factor in establishing the final megawatt value will be Seminole's decision regarding the installation of the gas turbine. The facility will be a qualifying cogeneration facility. The facility is to be located near Bartow, Florida. Interconnection or transmission service arrangements are to be completed by July 1, 1991.

3. The amount of annual and on-peak and off-peak energy expected to be delivered to FPC is 358,309 MWH, 163,611 MWH, and 194,698 MWH, respectively based upon a 47 MW committed capacity.

4. The type of unit being avoided is a coal-fired unit.

5. The in-service date, and the date by which delivery of firm capacity and energy is expected to commence, is October 1, 1992. However, Seminole has a one-time option to accelerate the in-service date by up to six months.

6. In considering the impact of the purchase from Seminole on FPC's general body or ratepayers, pursuant to Commission Rule 25-17.0832 (a) through (d), the Commission should consider the following:

(a) The additional firm capacity and energy is needed by FPC and by Florida utilities from a statewide perspective.

(b) As shown is the Attachment B to this Petition, the cumulative present worth of firm capacity and energy payments to be made to Seminole over the term of the



contract are projected to be no greater than the cumulative present worth of the value of a year-by-year deferral of the construction and operation of the generation or parts thereof by FPC over the term of the contract.

(c) To the extent that annual firm capacity and energy payments made to Seminole in any year exceed that year's annual value of deferring the construction and operation of generation by FPC, the contract contains security provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that Seminole fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract.

(d) Based upon the technical reliability, viability, and financial stability of the facility and Seminole, the contract contains security to protect FPC in the event Seminole fails to deliver firm capacity and energy in the amount and times specified in the contract. Seminole is a wholly owned subsidiary of Tosco Corporation and is the nation's fifth largest producer of phosphate fertilizers. It has successfully operated one 37 megawatt (MW) steam turbine generator since 1985. Its proposed expansion will become an integral part of its Bartow chemical complex. The contract contains several performance milestone dates which, if not achieved, would permit FPC to terminate the contract and procure other capacity.

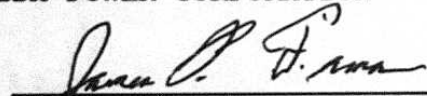
The most significant milestone date is the Deadline Date of July 1, 1991. By this date, Seminole must achieve seven Conditions Precedent including securing all necessary environmental permits, executing appropriate interconnection and transmission service agreements, and closing on the financing arrangement, which will enable Seminole to construct the facility.

WHEREFORE, for all of the reasons stated above, FPC petitions this Commission for an order approving this contract pursuant to Commission Rule 25-17.0832(8), F.A.C.

Respectfully submitted this 8th day of November, 1990.

OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION

By:

  
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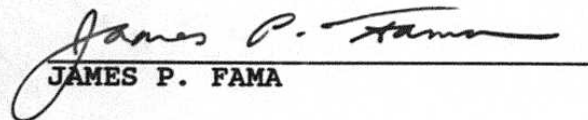


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by U. S. Mail this 8th day of November, 1990, to:

Manager of Engineering  
Seminole Fertilizer Company  
Post Office Box 471  
Bartow, Florida 33831

Mr. James Dean  
Bureau Chief of System Planning  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0872

  
JAMES P. FAMA

**CONTRACT FOR THE  
PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM A QUALIFYING FACILITY**

**between**

**SEMINOLE FERTILIZER CORPORATION**

**and**

**FLORIDA POWER CORPORATION**

**ATTACHMENT A TO FLORIDA POWER CORPORATION PETITION**



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**CONTRACT FOR THE PURCHASE OF  
FIRM CAPACITY AND ENERGY  
FROM A QUALIFYING FACILITY**

This Agreement ("Agreement") is made and entered into this 30th day of October, 1990, by and between Seminole Fertilizer Corporation, a Delaware corporation having its principal place of business near Bartow, Florida (hereinafter referred to as the "QF"), and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida, having its principal place of business at St. Petersburg, Florida (hereinafter referred to as the "Company"). The QF and the Company may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS, the QF desires to sell, and the Company desires to purchase electricity made available for sale to the Company, consistent with Florida Public Service Commission Rule 25-17.0832(2) Florida Administrative Code, and as provided for pursuant to this Agreement; and**

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

## **ARTICLE I: DEFINITIONS**

As used in this Agreement and in the Appendices hereto, the following capitalized terms shall have the following meanings:

1.1 Appendix or Appendices means the schedules, exhibits and attachments which are appended hereto and are hereby incorporated in by reference and made a part of this Agreement.

1.2 BTU means British thermal unit.

1.3 Capacity Account means that account which complies with the procedure in section 7.3 hereof.

1.4 Commercial In-Service Status means (i) that the Facility has maintained an hourly KW output, as metered at the Point of Delivery, equal to or greater than the Committed Capacity for a twenty-four (24) hour period; and (ii) that such twenty-four (24) hour period is reasonably reflective of the Facility's day to day operations.

1.5 Committed Capacity means the KW capacity, as defined in Article VI hereof, which the QF has agreed to make available on a firm basis at the Point of Delivery.

1.6 Conditions Precedent means the following events: (i) an order issued by the FPSC approving this Agreement, without change, finding that it is reasonable and prudent, and authorizing the Company to recover from its ratepayers all payments for capacity and energy made to the QF during the Term of this Agreement becomes final. (For purposes of this provision, such an order will be considered final when all opportunities for requesting a hearing, requesting reconsideration, requesting clarification and filing for judicial review have expired or are barred by law, and all such requests or filings are concluded and further opportunity for challenge have likewise expired); (ii) the QF receives all necessary approvals from its board of directors and the board



of its parent; (iii) the QF receives necessary environmental permits to allow construction of the Facility; (iv) the QF receives certification of qualifying facility status for the Facility from the FERC; (v) the QF has executed appropriate interconnection and transmission service agreements which are acceptable to the Company by which the QF will make its Committed Capacity available to the Company; (vi) the QF designates an initial Committed Capacity within the range specified in section 6.1 hereof; and (vii) the QF closes on the financing arrangements enabling it to construct the Facility.

1.7 Contract In-Service Date means the date, as specified in section 3.2 hereof, by which the QF has agreed to achieve Commercial In-Service Status.

1.8 Construction Commencement Date means the date on which work on the concrete foundation for the turbine generator begins and substantial construction activity at the Facility site thereafter continues.

1.9 Deadline Date means the date by which the Effective Date must have occurred for the Agreement to continue.

1.10 Effective Date means the date upon which all the Conditions Precedent have occurred or been achieved.

1.11 Facility means all equipment used to produce electric energy, as described in Article II hereof, and all equipment used to produce useful thermal energy through the sequential use of energy.

1.12 FERC means the Federal Energy Regulatory Commission and any successor.

1.13 FPSC means the Florida Public Service Commission and any successor.

1.14 Force Majeure Event means an event or occurrence that is not reasonably foreseeable by a Party, is beyond its reasonable control, and is not caused by its negligence or lack of due diligence, including, but not limited to, natural disasters, fire, lightning, wind, perils of the sea, flood, explosions, acts of God or the public enemy, strikes, lockouts, vandalism, blockages, insurrections, riots, war, sabotage, action of a court or public authority, or accidents to or failure of equipment or machinery, or similar occurrences.

1.15 KW means one (1) kilowatt of electric capacity.

1.16 KWH means one (1) kilowatthour of electric energy.

1.17 KVA means one (1) kilovoltampere of real and reactive electric power.

1.18 On-Peak Hour(s) means those daily time period(s) specified in Appendix B.

1.19 On-Peak Capacity Factor means the ratio calculated pursuant to section 7.2 hereof.

1.20 Point of Delivery means the point(s) where energy delivered to the Company pursuant to this Agreement enters the Company's system.

1.21 Post-Operational Event of Default means an event or circumstance defined as such in Article XI hereof.

1.22 Pre-Operational Event of Default means an event or circumstance defined as such in Article XI hereof.

1.23 Term means the duration of this Agreement as specified in Article III hereof.



## **ARTICLE II: FACILITY**

2.1 QF contemplates installing and operating additional generating capacity at the QF's plant near Bartow, Florida. This additional capacity, together with existing generation, is designed to result in a total generating capacity of up to 102,000 KW of electric power at an 0.85 or lower lagging power factor.

2.2 From the first date on which the QF delivers energy to the Point of Delivery through the remaining Term of this Agreement, the QF shall maintain in force and effect a valid certification from the FERC that the Facility is a qualifying cogeneration facility pursuant to applicable FERC regulations.

2.3 The Facility's ability to deliver its Committed Capacity shall not be encumbered by interruptions to its natural gas fuel supply when such fuel is being purchased under a non-firm tariff.

2.4 The QF shall either (i) arrange for and maintain standby electrical service under a firm tariff, or (ii) maintain the ability to restart and/or continue operations during interruptions of electric service or (iii) maintain multiple independent sources of generation.

2.5 From the date the Company submits this Agreement to the FPSC for approval through the Contract In-Service Date, the QF shall provide the Company with monthly progress reports which describe the current status of Facility development in such detail as the Company may reasonably require.

## **ARTICLE III: TERM OF THE AGREEMENT**

3.1 The Term of this Agreement shall begin on the Effective Date and shall expire at 24:00 hours on the last day of December, 2007 unless extended pursuant to section 3.2.4 hereof or terminated in accordance with the provisions of this Agreement. Upon termination or expiration of this Agreement, the Parties

shall each be relieved of their obligations under this Agreement except the obligation to pay each other all monies owed under this Agreement, which obligation shall survive termination or expiration. Each Party shall use its best efforts to enforce the validity of this Agreement and to expedite FPSC action on the Company's request for FPSC approval of this Agreement. If the Effective Date does not occur on or before the Deadline Date, this Agreement shall terminate.

3.2 The Parties agree that time is of the essence and that: (i) the Deadline Date shall be July 1, 1991, and (ii) the Construction Commencement Date shall occur on or before the first day of January, 1992 and (iii) the Facility shall achieve Commercial In-Service Status on or before the first day of October, 1992, which date shall constitute the Contract In-Service Date. The Deadline Date, the Construction Commencement Date and the Contract In-Service Date shall not be modified except in accordance with sections 3.2.1, 3.2.2 or 3.2.4 hereof.

3.2.1 Upon written request by the QF the Deadline Date, the Construction Commencement Date and the Contract In-Service Date each may be extended on a day-for-day basis for each day that the date on which an order pursuant to section 1.6(i) becomes final exceeds one hundred twenty (120) days after the date the Company submits this Agreement and related documentation to the FPSC for approval; provided, however, that the QF's notice shall specifically identify the date and duration for which extension is being requested; and provided further, that the maximum extension of the Deadline Date, the Construction Commencement Date, or the Contract In-Service Date pursuant to this section 3.2 shall in no event exceed a total of one hundred and eighty (180) days. Such delay shall not be considered a Force Majeure Event for purposes of this Agreement.



3.2.2 After the Effective Date and upon written request by the QF not more than sixty (60) days after the declaration of a Force Majeure Event by the QF, which event contributes proximately and materially to a delay in the QF's schedule, the Construction Commencement Date and the Contract In-Service Date each may be extended on a day-for-day basis for each day of delay so caused by the Force Majeure Event; provided, however, that the QF shall specifically identify: (i) each date for which extension is being requested; and (ii) the expected duration of the Force Majeure Event; and provided further, that the maximum extension of either the Construction Commencement Date or the Contract In-Service Date pursuant to this section 3.2.2 shall in no event exceed a total of one hundred and eighty (180) days, irrespective of the nature or number of Force Majeure Events.

3.2.3 If the Contract In-Service Date is extended pursuant to sections 3.2.1 or 3.2.2 hereof, then the Term of the Agreement may be extended for the same number of days upon separate written request by the QF not more than thirty (30) days after the Contract In-Service Date.

3.2.4 The QF shall have the one-time option of accelerating the Contract In-Service Date by up to six (6) months upon written notice to the Company not less than thirty (30) days before the accelerated Contract In-Service Date; provided, however, that (i) the earlier Contract In-Service Date shall be on the first day of a calendar month; (ii) the QF shall be in compliance with all applicable requirements of the appropriate interconnection and transmission service agreements; and (iii) the Company's facilities required to receive electric energy can reasonably be expected to be operational as of such earlier date.

**ARTICLE IV: OF OPERATING RESPONSIBILITIES**

During the Term of this Agreement, the QF agrees to:

4.1 Provide the Company prior to October 1 of each calendar year an estimate of the amount of electricity to be generated by the Facility and delivered to the Company for each month of the following calendar year, including the time, duration and magnitude of any planned outages or reductions in capacity;

4.2 Promptly update the yearly generation schedule and maintenance schedule as and when any changes may be determined necessary;

4.3 Coordinate its scheduled Facility outages with the Company to the extent reasonably practicable; and

4.4 Comply with reasonable requirements of the Company regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Agreement.

**ARTICLE V: PURCHASE AND SALE OF CAPACITY AND ENERGY**

5.1 Commencing on the Contract In-Service Date, the QF shall commit, sell and arrange for delivery of the Committed Capacity to the Company and the Company agrees to purchase, accept and pay for the Committed Capacity made available at the Point of Delivery in accordance with the terms and conditions of this Agreement. The QF also shall sell and arrange for delivery of electric energy to the Company and the Company agrees to purchase, accept, and pay for such electric energy as is made available for sale to and received by the Company at the Point of Delivery.



5.2 If the Company is unable to receive the Committed Capacity which the QF has made available for sale to the Company at the Point of Delivery by reason of (i) a Force Majeure Event or (ii) pursuant to FPSC Rule 25-17.086, Florida Administrative Code, in effect as of the date of this Agreement, the notice and procedural requirements of Article XIII shall apply and the Company will nevertheless be obligated to make capacity payments which the QF would be otherwise qualified to receive, and to pay for energy actually received, if any. The Company shall not be obligated to pay for energy which the QF would have delivered but for such occurrences and QF shall be entitled to sell or otherwise dispose of such energy in any lawful manner; provided, however, such entitlement to sell shall not be construed to require the Company to transmit such energy to another entity.

5.3 The QF shall not commence initial deliveries of energy to the Point of Delivery without the prior written consent of the Company, which consent shall not be unreasonably withheld. The QF shall provide the Company not less than thirty (30) days written notice before any testing to establish the Facility's Commercial In-Service Status. Representatives of the Company shall have the right to be present during any testing.

#### **ARTICLE VI: CAPACITY COMMITMENT**

6.1 The Committed Capacity shall be not less than 15,000 KW nor more than 47,000 KW and shall be specified by the QF within this range pursuant to section 1.5 (vi), unless modified in accordance with this Article VI. The Committed Capacity shall be made available to the Company from the Contract In-Service Date through the remaining Term of this Agreement.

6.2 For the period ending one (1) year immediately after the Contract In-Service Date, the QF may, on one occasion only, increase or decrease the initial Committed Capacity by no more than 10,000 KW upon written notice to the Company before such change is to be effective.



6.3 After the one (1) year period specified in section 6.2, and except as provided in section 6.5, the QF may decrease its Committed Capacity over the Term of this Agreement by amounts not to exceed in the aggregate more than 10,000 KW. Notwithstanding any other provision of this Agreement, if less than three (3) years prior written notice is provided for any such decrease, the QF shall be subject to an adjustment to the otherwise applicable payments (except as provided in section 6.5) which shall begin when the Committed Capacity is decreased and which shall end three (3) years after notice of such decrease is provided. For each month, this adjustment shall be equal to the lesser of (i) the estimated increased costs incurred by the Company to generate or purchase an equivalent amount of replacement capacity and energy; and (ii) the reduction in Committed Capacity times the Normal Capacity Credit from Appendix A. For purposes of calculating any such adjustment, the replacement capacity shall be based on the difference between the original Committed Capacity and the redesignated Committed Capacity, and the replacement energy shall be calculated on the assumption that, during the period of replacement, the replacement capacity would operate at the rolling average capacity factor, at the Point of Delivery, for the immediately prior twelve (12) months.

6.4 After the one (1) year period specified in section 6.2, the QF may increase its Committed Capacity upon not less than sixty (60) days prior written notice. Energy associated with the increase in Committed Capacity shall be paid for pursuant to section 8.1.2 hereof. Capacity payments for the increased amount of Committed Capacity shall be calculated separately so that the forecasted payments to the QF for the additional capacity and energy associated with the increase in Committed Capacity are equal to the Company's forecast of its avoided capacity and energy costs (at the time notice is given) for like amounts of capacity and energy. The capacity payment schedule in Appendix A shall be revised to reflect a weighted average capacity payment level to be effective on the date the increased Committed Capacity is made available for sale to the Company.

6.5 During a Force Majeure Event declared by the QF, the QF may temporarily redesignate the Committed Capacity for up to twenty-four (24)

consecutive months; provided, however, that no more than one such temporary redesignation may be made within any twenty-four (24) month period unless otherwise agreed by the Company in writing. Within three (3) months after such Force Majeure Event is cured, the QF may, on one occasion, without penalty, designate a new Committed Capacity to apply for the remaining Term. Any temporary or final redesignation of the Committed Capacity pursuant to this section 6.5 must, in the Company's judgment, be directly attributable to the Force Majeure Event and of a magnitude commensurate with the scope of the Force Majeure Event. Redesignations of Committed Capacity pursuant to this section shall not be subject to the payment adjustment provisions of section 6.3.

6.6 A redesignated Committed Capacity pursuant to this Article VI shall be stated to the nearest whole KW and shall be effective only on the commencement of a full billing period.

#### **ARTICLE VII: CAPACITY PAYMENTS**

7.1 Capacity payments shall be calculated in accordance with the methodology described in Appendix A and shall not commence before the Contract In-Service Date and until the QF has achieved Commercial In-Service Status.

7.2 At the end of each billing month, beginning with the first full month following the Contract In-Service Date, the Company will calculate the rolling average On-Peak Capacity Factor for the most recent twelve (12) month period, including such month, or for the actual number of full months since the Contract In-Service Date if less than twelve (12) months, based on the On-Peak Hours defined in Appendix B. The On-Peak Capacity Factor shall be calculated as the electric energy actually received by the Company during the On-Peak Hours divided by the product of the Committed Capacity and the number of On-Peak Hours during the applicable period. In calculating the On-Peak Capacity Factor, the Company shall exclude hours and electric energy delivered by the QF during periods in which: (i) the Company does not or cannot perform its obligations to receive all the electric energy which the QF has made available for sale to the



Company at the Point of Delivery; or (ii) the QF's payments for electric energy are being calculated pursuant to section 8.1.1 hereof.

7.3 The Parties recognize that accelerated capacity payments are in the nature of "early payment" for a future capacity benefit to the Company. To ensure that the Company will receive a capacity benefit for which accelerated capacity payments have been made, or alternatively, that the QF will repay the amount of accelerated payments received to the extent the capacity benefit has not been conferred, the following provisions will apply:

7.3.1 When the QF is first entitled to an accelerated capacity payment, the Company shall establish a Capacity Account. Each month the Capacity Account shall be credited in the amount of the Company's capacity payments made to the QF pursuant to the Accelerated Capacity Credit schedule from Appendix A and shall be debited in the amount which the Company would have paid for capacity in the month pursuant to the Normal Capacity Credit schedule from Appendix A.

7.3.2 The monthly balance in the Capacity Account shall accrue interest at the annual rate of 9.96%.

7.3.3 The QF shall owe the Company and be liable for the credit balance in the Capacity Account. The Company agrees to notify QF monthly as to the current Capacity Account balance. Prior to receipt of accelerated capacity payments the QF shall execute a promise to repay any credit balance in the Capacity Account. The specific repayment assurance selected for purposes of this Agreement is a letter of credit of sufficient magnitude to secure the current balance of the Capacity Account.

7.3.4 The QF's obligation to pay the credit balance in the Capacity Account shall survive termination or expiration of this Agreement.



7.4 If the Contract In-Service Date differs from the date initially specified pursuant to Article III, the Accelerated Capacity Credit schedule shall be recalculated from the Contract In-Service Date through the Term of the Agreement so that the recalculated Accelerated Capacity Credit schedule has the same net present value as the Normal Capacity Credit schedule less the Company's estimated income tax liability associated with its payments based upon the Accelerated Capacity Credit schedule at the interest rate specified pursuant to section 7.3.2 hereof

**ARTICLE VIII:**

**ENERGY PAYMENTS**

8.1 For that energy received by the Company at the Point of Delivery each month, the Company will pay the QF an amount computed as follows:

8.1.1 Prior to the Contract In-Service Date and for the duration of a Post-Operational Event of Default or a Force Majeure Event prior to a permitted redesignation of the Committed Capacity by the QF, the QF will receive energy payments based on one hundred percent (100%) of the Company's actual avoided energy costs as calculated on an hour-by-hour basis using the same method as the Company uses to make such calculations for other qualifying facilities.

8.1.2 Except as otherwise provided in section 8.1.1 hereof, for each billing month beginning with the first full month following the Contract In-Service Date, the QF will receive energy payments calculated on an hour-by-hour basis as follows: (1) the product of (a) eighty percent (80%) of the average monthly inventory chargeout price of fuel burned at the Company's Crystal River Units 1 and 2 in cents per million BTU, and (b) an average annual heat rate of 9.83 million BTU per megawatt hour, for each hour that the Company would have had

a unit with these characteristics operating; and (ii) during all other hours, the Company's actual avoided energy cost calculated in accordance with section 8.1.1.

8.1.3 Energy payments shall be equal to the sum, over all hours of the month, of the product of each hour's energy cost as determined pursuant to section 8.1.1 hereof or section 8.1.2 hereof, whichever is applicable, times the energy received by the Company at the Point of Delivery.

8.1.4 After the Contract In-Service Date, energy payments shall be adjusted as appropriate in accordance with the formulae set forth in Appendix C.

8.2 Energy payments pursuant to sections 8.1.1 and 8.1.2 hereof shall be subject to one hundred percent (100%) of the delivery voltage adjustment value applicable to the Facility on the same basis that the Company makes such adjustments for other qualifying facilities; provided, however, that such voltage adjustment shall apply even if the Facility is not directly interconnected to the Company's system.

#### **ARTICLE IX: CHARGES TO THE QF**

9.1 The Company shall bill and the QF shall pay charges for billing, interconnections costs, if any, and other costs, as applicable, which charges shall be determined on the same basis as the Company charges other qualifying facilities.

9.2 To the extent not otherwise included in the charges under section 9.1 hereof, the Company shall bill and the QF shall pay a monthly charge equal to any taxes, assessments or other impositions, if any, for which the Company is liable as a result of its purchases of Committed Capacity and electric energy from the QF. Such amounts billed shall not include any amounts for which the Company would have been liable had it generated or purchased an equivalent



amount of Committed Capacity and electric energy or any amounts the Company would be liable for as a result of payments based upon the Accelerated Capacity Credit schedule.

**ARTICLE X: PAYMENT PROCEDURE**

Bills shall be issued and payments shall be made monthly to the QF and by the QF in accordance with the following procedures:

10.1 The capacity payment, if any, calculated for a given month pursuant to Article VII hereof shall be added to the electric energy payment, if any, calculated for such month pursuant to Article VIII hereof, and the total shall be reduced by the amount of any payment adjustments pursuant to section 6.3 hereof. The net amount, if any, shall be tendered, with cost tabulations showing the basis for payment, by the Company to the QF as a single payment. Such payments to the QF shall be due and payable twenty (20) business days following the date the meters are read.

10.2 When any amount is owing from the QF, the Company shall issue a monthly bill to the QF with cost tabulations showing the basis for the charges. All amounts owing to the Company from the QF shall be due and payable twenty (20) business days after the date of the Company's billing statement.

10.3 Any amount due and payable from either Party to the other pursuant to this Agreement that is not received by the due date shall accrue interest at a rate equal to the thirty (30) day highest grade commercial paper rate as published in the Wall Street Journal on the first business day of each month.



**ARTICLE XI:**

**EVENTS OF DEFAULT: REMEDIES**

**11.1 PRE-OPERATIONAL EVENTS OF DEFAULT BY THE QF**

Any one or more of the following events occurring before the Contract In-Service Date for any reason, except Force Majeure Events declared by the Company, shall constitute a Pre-Operational Event of Default by the QF and shall give the Company the right, without limitation, to exercise the remedies specified under section 11.2 hereof:

11.1.1 The QF, without a prior assignment permitted pursuant to section 14.4 hereof, becomes insolvent, becomes subject to bankruptcy or receivership proceedings, or dissolves as a legal business entity.

11.1.2 The Construction Commencement Date has not occurred on or before the date specified in Article III hereof, as extended only pursuant to said Article III.

11.1.3 The QF fails to achieve Commercial In-Service Status on or before the Contract In-Service Date, as such date may be extended only pursuant to Article III hereof.

11.1.4 The QF fails to comply with any other material terms and conditions of this Agreement, including non-payment of monies owing to the Company or any other material breach of any obligation, condition, or agreement contained herein and the QF does not cure such failure to comply within thirty (30) days after written notice by the Company demanding that such failure to comply be cured.

11.2 **REMEDIES FOR PRE-OPERATIONAL EVENTS OF  
DEFAULT BY THE QF**

For any Pre-Operational Event of Default specified under section 11.1 hereof, the Company may, in its sole discretion and without an election of one remedy to the exclusion of the other remedy, take any of the following actions:

11.2.1 Renegotiate any applicable provisions of this Agreement with the QF when necessary to preserve its validity.

11.2.2 Immediately terminate this Agreement.

11.3 **POST-OPERATIONAL EVENTS OF DEFAULT  
BY THE QF**

Any one or more of the following events except events which are caused by Force Majeure Events, unless otherwise stated, occurring on or after the Contract In-Service Date shall constitute a Post-Operational Event of Default by the QF and shall give the Company the right, without limitation, to exercise the remedies under section 11.4 hereof:

11.3.1 The QF ceases all energy deliveries to the Company for twelve (12) consecutive months.

11.3.2 The QF fails, upon request by the Company, to re-demonstrate its Commercial In-Service Status within sixty (60) days after its refusal or inability to deliver its Committed Capacity for reasons other than maintenance; provided that the Facility shall not be required to re-demonstrate its Commercial In-Service Status more than once in any twelve (12) month period.



11.3.3 The QF fails for any reason, including Force Majeure Events, to qualify for capacity payments under Article VII hereof for any twenty-four (24) month period.

11.3.4 The QF fails to comply with any other material terms and conditions of this Agreement, including non-payment of undisputed monies owing to the Company or any other material breach of any obligation, condition, or agreement contained herein and the QF does not cure such failure to comply within thirty (30) days after written notice by the Company demanding that such failure to comply be cured.

11.4 REMEDIES FOR POST-OPERATIONAL EVENTS OF DEFAULT BY THE QF

For any Post-Operational Event of Default specified under section 11.3 hereof, the Company may, in its sole discretion, and without an election of any remedies to the exclusion of any other remedies, take any of the following actions:

11.4.1 Terminate this Agreement upon prior written notice, if the Post-Operational Event of Default is not remedied within twelve (12) months after the Company notifies the QF pursuant to section 11.4.3; provided, however, that this remedy period shall be extended day-for-day for up to an additional twelve (12) months for Force Majeure Events during this remedy period.

11.4.2 Immediately terminate this Agreement upon prior written notice for the Post-Operational Event of Default specified pursuant to section 11.3.3 hereof.

11.4.3 Suspend its capacity payment obligations upon written notice whereupon the QF shall be entitled only to energy payments calculated pursuant to section 8.1.1 hereof. Thereafter, if the Post-Operational Event of Default is cured and the Company does not elect to terminate this Agreement: (i) capacity payments shall resume and subsequent energy payments shall be paid pursuant to section 8.1.2 hereof; and (ii) the On-Peak Capacity Factor performance criteria shall be calculated on the assumption that the first full month after the Post-Operational Event of Default is cured is the first month that the performance criteria are imposed.

#### **ARTICLE XII: AMENDMENTS DUE TO REGULATORY CHANGE**

12.1 Notwithstanding any other provision of this Agreement, should the Company at any time during the Term of this Agreement be denied the FPSC's or the FERC's authorization, or the authorization of any other regulatory bodies which now have or in the future may have jurisdiction over the Company's rates and charges, to recover from its customers all payments required to be made to the QF under the terms of this Agreement or any subsequent amendment to this Agreement, the Parties agree that they shall amend this Agreement and any applicable amendment hereto so as to modify capacity and energy prices, QF performance criteria, or other factors related to the QF's payment to permit the highest level of payments for which recovery by the FPSC or the FERC is authorized. Neither Party shall initiate any action to deny recovery of payments under this Agreement and each Party shall participate in defending all terms and conditions of this Agreement, including, without limitation, the payment levels specified in this Agreement. The Parties intend and agree that the Company's payment obligations under this Agreement or any amendment hereto are expressly conditioned upon the mutual commitments set forth in this Agreement and upon the Company's being fully reimbursed for all payments to the QF through the Fuel and Purchased Power Costs Recovery Clause or other authorized rates or charges. Any amounts initially recovered by the Company from its ratepayers but for which recovery is subsequently disallowed by the FPSC or the FERC and charged back to



the Company may be off-set or credited against subsequent payments made by the Company for purchases from the QF, or alternatively, shall be repaid by the QF.

12.2 Notwithstanding any amendments pursuant to section 12.1 hereof, if the QF's payments are reduced pursuant to section 12.1 hereof, the QF may terminate this Agreement upon thirty (30) days written notice after the effective date of such reduction in the QF's payments; provided that the QF gives the Company written notice of said termination within eighteen (18) months after the effective date of such reduction in the QF's payments.

**ARTICLE XIII: FORCE MAJEURE**

13.1 If either Party because of Force Majeure Event is rendered wholly or partly unable to perform its obligations under this Agreement, other than the obligation of that Party to make payments of money, that Party shall, except as otherwise provided in this Agreement, be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, provided that:

13.1.1 The non-performing Party, as soon as possible after it becomes aware of its inability to perform, shall give the other Party written notice of the particulars of the occurrence(s), including without limitation, the nature, cause, and date and time of commencement of the occurrence(s), the anticipated scope and duration of any delay, and any date(s) that may be affected thereby.

13.1.2 The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event.

13.1.3 Payment obligations of either Party which arose before the occurrence causing the suspension of performance are not excused as a result of the occurrence.

13.1.4 The non-performing Party uses its best efforts to remedy its inability to perform with all reasonable dispatch; provided, however, that nothing contained herein shall require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the affected Party, are contrary to its interests. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the affected Party.

13.1.5 When the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall so notify the other Party in writing.

13.2 Unless and until the QF temporarily redesignates the Committed Capacity pursuant to section 6.5 hereof, no capacity payment obligation pursuant to Article VII hereof shall accrue during any period of Force Majeure Event. During any such period, the Company will pay for such energy as may be received and accepted pursuant to section 8.1.1 hereof.

13.3 If the QF temporarily or permanently redesignates the Committed Capacity pursuant to section 6.5 hereof, then capacity payment obligations shall thereafter resume at the applicable redesignated level and the Company will resume energy payments pursuant to section 8.1.2 hereof.

#### **ARTICLE XIV: GENERAL PROVISIONS**

##### **14.1 Permits.**

QF hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority QF is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement. The Company hereby agrees, at QF's expense, to seek to obtain any and all governmental permits, certifications or other authority the Company is required



to obtain as a prerequisite to engaging in the activities provided for in this Agreement.

**14.2 Indemnification.**

QF agrees to indemnify and save harmless the Company and its employees, officers, and directors against any and all liability, loss, damage, cost or expense which the Company, its employees, officers and directors may hereafter incur, suffer or be required to pay by reason of negligence or willful or wanton conduct on the part of QF in performing its obligations pursuant to this Agreement or QF's failure to abide by the provision of this Agreement. The Company agrees to indemnify and save harmless QF and its employees, officers, and directors against any and all liability, loss damage, cost or expense which QF, its employees, officers, and directors may hereafter incur, suffer, or be required to pay by reason of negligence or willful or wanton conduct on the part of the Company in performing its obligations pursuant to this Agreement or the Company's failure to abide by the provisions of this Agreement. QF agrees to include the Company as an additional insured in any liability insurance policy or policies QF obtains to protect QF's interests with respect to QF's indemnity and hold harmless insurances to the Company contained in this Section.

**14.3 Exclusion of Incidental and Consequential Damages.**

Neither party shall be liable to the other for incidental, consequential, or indirect damages including, but not limited to, the cost of replacement power (except as provided pursuant to section 6.3 hereof), whether arising in contract, tort, or otherwise.

**14.4 Assignment.**

Neither Party shall have the right to assign its obligations, benefits and duties without the consent of the other Party, which shall not be unreasonably withheld.

**14.5 Disclaimer.**

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

**14.6 Notification.**

For purpose of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Agreement, the Parties designate the following to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions to contact another individual.

For QF:

MANAGER OF ENGINEERING  
SEMINOLE FERTILIZER COMPANY  
P.O. BOX 471  
BA. TOW, FL 33830

Phone (813) 533-2171

For the Company

Manager, Energy Projects  
Florida Power Corporation  
3201 34th St. South  
St. Petersburg, FL 33711

Phone (813) 866-4205

**14.7 Applicable Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**14.8 Complete Agreement and Amendments.**

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Agreement are hereby abrogated. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by both Parties to this Agreement.



**14.9 Survival of Agreement.**

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

**14.10 Counterparts.**

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

IN WITNESS WHEREOF, the QF and the Company have executed this Agreement the day and year first above written.

The Qualifying Facility:

Albert S. Vondrasek  
Vice President

Witnesses:

Victoria Lynch  
EM Lyden

The Company:

[Signature]

Witnesses:

John L. Beebe Jr.  
James P. Fama





**APPENDIX A**  
**CAPACITY PAYMENT METHODOLOGY**

Monthly capacity payments for each monthly billing period following the Contract In-Service Date shall be computed according to the following:

$$\text{MCP} = \text{ACC} \times \text{CCM} \times \text{CC} \times \text{R}$$

Where:

**MCP** = Monthly Capacity Payment in dollars

**ACC** = Accelerated Capacity Credit in \$/KW - mo. from Table A-1

**CCM** = Capacity Credit Multiplier

**CC** = Committed Capacity in KW

**R** = The ratio of the total number of hours in the month reduced by the hours during which the QF is being paid for energy pursuant to section 8.1.1 to the total number of hours in the month.

**TABLE A-1**

			<b>Accelerated Capacity Credit <u>(\$/KW-mo.)</u></b>	<b>Normal Capacity Credit <u>(\$/KW-mo.)</u></b>
<b>Oct. 1, 1992</b>	<b>Through</b>	<b>Dec. 31, 1992</b>	<b>20.64</b>	<b>17.58</b>
<b>Jan. 1, 1993</b>	"	<b>Dec. 31, 1993</b>	<b>21.15</b>	<b>18.46</b>
"	1994	"	1994	<b>21.68</b>
			1995	<b>21.39</b>
			1995	<b>22.21</b>
			1996	<b>20.38</b>
			1996	<b>22.76</b>
			1997	<b>21.41</b>
			1997	<b>23.33</b>
			1998	<b>22.50</b>
			1998	<b>23.91</b>
			1999	<b>23.66</b>
			1999	<b>24.50</b>
			2000	<b>24.86</b>
			2000	<b>25.10</b>
			2001	<b>26.13</b>
			2001	<b>25.73</b>
			2002	<b>27.47</b>
			2002	<b>26.39</b>
			2003	<b>28.85</b>
			2003	<b>27.02</b>
			2004	<b>30.33</b>
			2004	<b>27.69</b>
			2005	<b>31.88</b>
			2005	<b>28.37</b>
			2006	<b>33.51</b>
			2006	<b>29.08</b>
			2007	<b>35.22</b>
			2007	<b>29.80</b>
				<b>37.01*</b>

\*If the Term of the Agreement is extended beyond 2007 pursuant to Article III, the Normal Capacity Credit schedule will be escalated at 5.1% per year.



**APPENDIX B**  
**ON-PEAK PERIODS**

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<b>MONTH</b>	<b>HOURS</b>	<b>TOTAL HOURS</b>
<b>JANUARY</b>	<b>7-12 &amp; 17-22</b>	<b>10</b>
<b>FEBRUARY</b>	<b>7-12 &amp; 17-22</b>	<b>10</b>
<b>MARCH</b>	<b>7-12 &amp; 17-22</b>	<b>10</b>
<b>APRIL</b>	<b>11-21</b>	<b>11</b>
<b>MAY</b>	<b>11-21</b>	<b>11</b>
<b>JUNE</b>	<b>11-22</b>	<b>12</b>
<b>JULY</b>	<b>11-22</b>	<b>12</b>
<b>AUGUST</b>	<b>11-22</b>	<b>12</b>
<b>SEPTEMBER</b>	<b>11-22</b>	<b>12</b>
<b>OCTOBER</b>	<b>11-21</b>	<b>11</b>
<b>NOVEMBER</b>	<b>11-21</b>	<b>11</b>
<b>DECEMBER</b>	<b>7-12 &amp; 17-22</b>	<b>10</b>

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**Note: No On-Peak Hours occur on Thanksgiving and Easter holidays.**

**TABLE A-2**

The Capacity Credit Multiplier ("CCM") shall be calculated as follows:

- a. If the On-Peak Capacity Factor ("ONPCF") is equal to or greater than 85.0%, the Capacity Credit Multiplier shall be equal to 1.0.
- b. If the ONPCF is less than 85.0% but greater than or equal to 50%, the Capacity Credit Multiplier shall be calculated per the following formula:

$$(ONPCF + 85.0)^{1.5}$$

- c. If the ONPCF is less than 50%, the Capacity Credit Multiplier shall be equal to 0.0.

Where:

ONPCF = The most recent twelve month rolling average On-Peak Capacity Factor calculated pursuant to sections 7.2 and 11.4.3 of the Agreement.



## APPENDIX C

### PERFORMANCE ADJUSTMENT

1. Each month after the Contract In-Service Date, a performance adjustment shall be calculated using the following definitions:

- (a) CC = Committed Capacity in KW.
- (b) CF = The lesser of the 85.0% or the ONPCF utilized in Table A-2 if ONPCF is 50% or greater; otherwise, CF shall be equal to 0.0.
- (c) COG-1<sub>i</sub> = The energy price for hour i in dollars per KWH pursuant to section 8.1.1.
- (d) KWH<sub>i</sub> = The hourly energy delivered to the Company by the QF during hour i.
- (e) PAY<sub>i</sub> = The energy price for hour i in dollars per KWH pursuant to section 8.1.2.

2. The hourly performance adjustment factor applicable to hour i, (PERADJ<sub>i</sub>), shall be calculated as follows:

$$\text{PERADJ}_i = [\text{KWH}_i - (\text{CC} \times 1.0 \text{ hr.} \times \text{CF} \times 0.01)] \\ \times (\text{COG-1}_i - \text{PAY}_i)$$

3. The monthly performance adjustment shall equal the sum of the hourly performance adjustment factors over all hours in the month excluding all hours in which:

(i) the QF is paid for energy pursuant to section 8.1.1; and

(ii) the Company does not or cannot perform its obligation to receive all the energy which the QF has made available for sale to the Company at the Point of Delivery.

APPENDIX B

SEMINOLE FERTILIZER 47 MW  
0.85 CAPACITY FACTOR

FILE:SEMAPPBO	ACCEL	ENERGY	TOTAL	NORMAL	85/83 NORMAL	ENERGY	TOTAL				
11/08/90	ACCEL CAPACITY	FIRM PAYMENTS	PAYMENT	BASE	OF BASE CAPACITY	PAYMENTS	NORMAL				
PERIOD	ENHANCED CREDITS	CDAL @ 0.85CF	TD	CAPACITY	CAPACITY CREDITS	@ 0.85	PAYMENT				
	CAP_CR TOTAL	ENERGY @0.8 MULT	SEMINOLE	CREDIT	CREDIT TOTAL	CAP FACT	SEMINOLE				
	\$/KM/MO	\$	\$	\$/KM/MO	\$/KM/MO	\$	\$				
OCT-DEC	1992	20.64	11640960	21.82	1586702	13227662	14.47	14.82	8357733	1983377	10341110
	1993	21.15	11929422	22.75	6618264	18547687	15.21	15.58	8785149	8272830	17057980
	1994	21.68	12225034	23.86	6941150	19166184	15.98	16.37	9229894	8676438	17906332
	1995	22.21	12527970	25.08	7296500	19824470	16.80	17.20	9703518	9120624	18824143
	1996	22.76	12838413	26.37	7669593	20508007	17.65	18.08	10194470	9586991	19781461
	1997	23.33	13156549	27.71	8059354	21215904	18.55	19.00	16714301	10074193	20788494
	1998	23.91	13482568	29.11	8468576	21951145	19.50	19.97	11263012	10585720	21848732
	1999	24.50	13816666	30.61	8902960	22719627	20.49	20.98	11834827	11128700	22963526
	2000	25.10	14159043	32.17	9357880	23516924	21.54	22.06	12441296	11697350	24138647
	2001	25.73	14509904	33.81	9834908	24344813	22.64	23.19	13076646	12293635	25370281
	2002	26.36	14869460	35.41	10299166	25168626	23.79	24.36	13740875	12873958	26614832
	2003	27.02	15237925	37.35	10864653	26102579	25.00	25.60	14439759	13580816	28020576
	2004	27.6	15615521	39.26	11420221	27035742	26.28	26.91	15179075	14275276	29454351
	2005	28.37	16002473	41.26	12001998	28004472	27.62	28.29	15953046	15002497	30955543
	2006	29.08	16399015	43.36	12614100	29013115	29.03	29.73	16767448	15767625	32535073
	2007	29.80	16805382	45.58	13257419	30062802	30.51	31.25	17622282	16571773	34194055

NPV 1/93 189.62  
NPV#12 2275.49

174271335  
2091256016

175226510  
2102718125

SEMINOLE PAYMENTS NPV 1/93= 0.99454