

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Petition for resolution of territorial uncertainty as to whether electric service should be provided to certain facilities of an industrial phosphate customer by Tampa Electric Company or by Peace River Electric Cooperative.

DOCKET NO. 910811-EU
Submitted for Filing 1/16/92

STIPULATION AND SETTLEMENT AGREEMENT

Tampa Electric Company ("Tampa Electric" or "the company"), Peace River Electric Cooperative, Inc. ("Peace River") and IMC Fertilizer, Inc. ("IMCF") stipulate as to the matters set forth below and urge the Florida Public Service Commission ("Commission") to approve this, the parties' Stipulation and Settlement Agreement ("Agreement"), for the disposition of the issues raised in Tampa Electric's petition:

1. The parties wish to amicably resolve the uncertainties raised in the Tampa Electric petition filed in this docket and to avoid the time and expense of further litigation and the uncertainties of the outcome of such litigation. The parties have met and discussed the issues in this proceeding under the guidance and supervision of the Commission's Staff. As a result, the parties have been able to settle their differences in this, their Agreement, subject to the approval of the Commission.

2. The parties, like the Commission, desire to avoid the unnecessary duplication of electric facilities and any unnecessary impairment of the generation, transmission, and distribution processes of Tampa Electric and Peace River.

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3. As part of the settlement Peace River will prepare and submit to the Commission a retail electric tariff provision pursuant to which it will provide electric service to IMCF for draglines and associated mobile facilities operating within Manatee County.

4. The parties agree that until such time as all necessary approvals have been obtained, Tampa Electric should continue providing electric service which it is currently providing to IMCF's draglines and associated mobile facilities located in Manatee County, Florida through a service point north of the Hillsborough/Manatee County lines.

5. Tampa Electric will sell to Seminole Electric Cooperative, Inc. ("Seminole"), through a wholesale contract, a sufficient amount of electricity to enable Seminole to provide the power which Peace River will need in order to satisfy all of IMCF's power requirements for its draglines and associated mobile facilities located in Manatee County for the duration of those power requirements. Tampa Electric will propose for approval by the Federal Energy Regulatory Commission ("FERC") the wholesale rate at which Tampa Electric will sell such power to Seminole. Attached hereto as Exhibit "A" and by reference made a part hereof is a copy of the December 18, 1991 letter of commitment describing Tampa Electric's proposed wholesale arrangement with Seminole. The parties to the Agreement agree to seek this Commission's approval of the Agreement, subject to Tampa Electric being afforded a reasonable period of time within which to obtain FERC approval of its proposed wholesale rate to Seminole and for Peace River to obtain approval from the Rural Electrification Administration ("REA"). If either party fails to obtain the necessary approvals within a reasonable period of time, this Agreement shall be rendered null and void. Tampa

Electric and Peace River agree to seek said approvals without delay. IMCF acknowledges Exhibit "A" but assumes no obligation with respect to it.

6. Under Peace River's proposed retail GS-INT rate, IMCF will pay to Peace River the same amount which IMCF would pay to Tampa Electric if IMCF were taking electric service in Manatee County from Tampa Electric. Should the retail rates which Peace River charges IMCF pursuant to this Agreement at any time exceed Tampa Electric's retail rates which Tampa Electric would charge if it were serving the IMCF load in Manatee County or exceed Peace River's cost of service, any of the parties to this Agreement may, upon 30 days written notice to the other parties to this Agreement, terminate this Agreement. Upon such termination, the parties hereto agree to submit to the Commission for determination, as a territorial dispute, the issue of retail electric service in N.E. Manatee County, excluding IMCF's Four Corner's plant which shall continue to be served by TECO.

7. IMCF's Four Corners plant, a fixed facility located on the Hillsborough-Manatee County line, shall continue to be served by Tampa Electric.

General Provisions

8. The settlement reached in this Agreement is based on the unique factual circumstances of this case and shall have no precedential value in any other proceeding before the Commission.

9. The parties reserve the right to assert different positions in this docket on these matters if this proposed settlement is not accepted by the Commission in its entirety.

10. The parties, in recognition of this Commission's jurisdiction in territorial matters, agree that this Agreement will be submitted to the

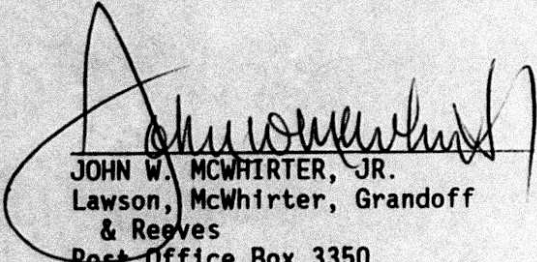
Commission for approval and that the Agreement is enforceable only upon the approval by the Commission. If the Agreement is not accepted by the Commission, the Agreement shall be null and void and of no binding effect on the parties.

11. Upon final execution of this Agreement, the parties will jointly move the Commission to approve the Agreement.

12. This Agreement shall be executed in triplicate with a separate original being provided to each of the parties hereto.

DATED this 15th day of January, 1992.

Respectfully submitted,



JOHN W. MCWHIRTER, JR.
Lawson, McWhirter, Grandoff
& Reeves
Post Office Box 3350
Tampa, Florida 33601
(813) 224-0866

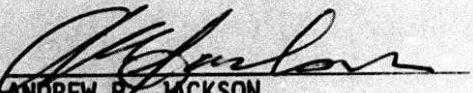
VICKI G. KAUFMAN
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Attorneys for IMC Fertilizer, Inc.



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January 16, 1992

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Mr. Steve C. Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Petition for resolution of territorial uncertainty
as to whether electric service should be provided
to certain facilities of an industrial phosphate
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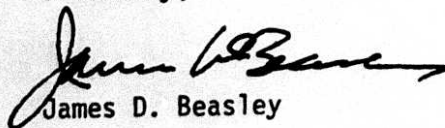
Enclosed for filing in the above-styled matter are the original and fifteen (15) copies of each of the following:

1. Joint Motion for Approval of Stipulation and Settlement Agreement.
2. Stipulation and Settlement Agreement.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
encls.

cc: John W. McWhirter, Jr. (w/encls.)
Andrew B. Jackson (w/encls.)

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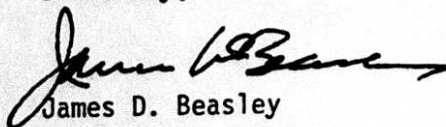
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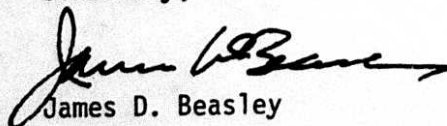
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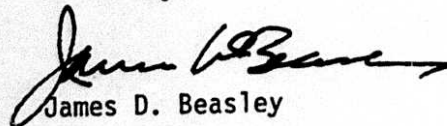
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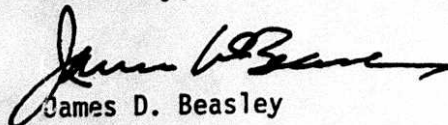
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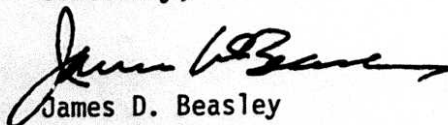
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Andrew B. Jackson (w/encls.)

ATTACHMENT A



December 18, 1991

Mr. Robert R. Ross
 Director of Operations
 Seminole Electric Cooperative, Inc.
 P. O. Box 272000
 16313 N. Dale Mabry
 Tampa, Florida 33618

Dear Mr. Ross: FROM ANDREW B JACKSON

TO 19042227952

This letter will confirm the commitment of TAMPA ELECTRIC COMPANY (TAMPA ELECTRIC) to provide long-term interchange service to SEMINOLE ELECTRIC COOPERATIVE, INC. (SEMINOLE) in accordance with the terms of the Agreement for Interchange Service between SEMINOLE and TAMPA ELECTRIC dated February 15, 1983, as supplemented by Service Schedule D (Long-Term Interchange Service) dated December 18, 1991, and this Letter of Commitment. This letter will also confirm SEMINOLE's obligation relative to the purchase, receipt, and utilization of the Schedule D service.

The specific terms and conditions of this commitment are as follows:

1. Services: TAMPA ELECTRIC will provide the capacity and energy from its coal-fired resources, when available, to be followed by capacity and energy from non-coal-fired resources owned by TAMPA ELECTRIC or capacity and/or energy contractually committed to TAMPA ELECTRIC and not acquired in whole or in part specifically to serve this commitment, if necessary and available (the above sources of capacity and energy to be deemed hereinafter cumulatively as "TAMPA ELECTRIC Resources"), to be followed by Special Purchases, as defined in Item 2 herein, as necessary and available.

TAMPA ELECTRIC COMPANY

P.O. Box 111 Tampa, Florida 33601-0111 (813) 298-4111

P.O. Box 271 Winter Haven, Florida 33880-0271 (813) 294-4171

P.O. Drawer N Plant City, Florida 33564-9009 (813) 798-1115

P.O. Box 385 Dade City, Florida 33526-0385 (904) 567-5101

P.O. Box 907 Ruston, Florida 33570-0907 (813) 648-6461

(Rustlin Engineering & All Other Inquiries (813) 641-1411)

137 S. Parsons Av. Brandon, Florida 33511-5284 (813) 681-4451

P.O. Box 215 Mulberry, Florida 33860-0215 (813) 425-4988

An Equal Opportunity Company

2. **Availability:** TAMPA ELECTRIC shall make capacity and energy available to SEMINOLE except to the extent that capacity and energy from TAMPA ELECTRIC Resources from time to time may be insufficient to serve SEMINOLE under this Letter of Commitment after provision for: (1) commitments for the sale of firm capacity and associated energy from a unit and/or station; (2) firm retail load and spinning reserve requirements; or (3) firm wholesale full and/or partial requirements service commitments, if any.

Should it be necessary to curtail service to customers, including SEMINOLE, that are entitled to receive service at the level of availability afforded to SEMINOLE for the instant service, as described in the previous paragraph, TAMPA ELECTRIC shall make reasonable efforts to specially purchase the lowest priced capacity and energy available to satisfy the requirements of said customer(s), including the requirement of SEMINOLE defined in Item 3. The portion of any purchase of capacity and energy that is made specifically to satisfy those requirements shall be deemed hereafter a "Special Purchase." The incremental unit cost per MWh of a Special Purchase shall be allocated to any customer(s) receiving service at the level of availability described in the previous paragraph, including SEMINOLE, in the proportion that the customer's consumption of the Special Purchase bears to the whole of the Special Purchase. Said incremental cost of the Special Purchase, as thus allocated, plus \$1.00/MWh, shall be billed to SEMINOLE for reimbursement to TAMPA ELECTRIC in accordance with the provisions of Item 9 herein.

3. **Amount:** Subject to the availability provisions of Item 2 herein, TAMPA ELECTRIC agrees to provide capacity and energy to SEMINOLE at the delivery points described in item 10 herein at a level not to exceed fifty megawatts (50 MW) per hour, unless increased by mutual agreement of the parties. Any such increase(s) shall be considered part of the amount of committed capacity established in this Letter of Commitment.

4. Term: The Effective Date of this Letter of Commitment shall be the later of: (a) February 31, 1992; (b) the date that installation of the metering equipment referred to in Item 11 herein is completed; (c) the date of the Florida Public Service Commission's ("FPSC's") final order in Docket No. 910811-EU; or (d) the date of any other final regulatory approval(s), including Rural Electrification Administration ("REA") approval, that is necessary for SEMINOLE to purchase and resell power delivered by TAMPA ELECTRIC pursuant to this commitment, or for a SEMINOLE member to resell such power at retail. This Letter of Commitment shall continue in effect for an initial period of ten (10) years from the Effective Date, and shall continue in effect thereafter unless terminated in accordance with the provisions hereof. This Letter of Commitment may be terminated at the end of such ten (10) year period, or thereafter, by TAMPA ELECTRIC or SEMINOLE upon written notice delivered to the other party at least three (3) years in advance of the proposed date of termination.

5. Energy Charge: The Energy Charge for energy delivered to SEMINOLE in dollars per megawatt-hour, shall be the sum of:

(a) the fuel cost, in \$/MWh, equal to the hourly system incremental fuel expense adjusted for losses utilizing the transmission loss percentage as updated each year prior to May 1 and filed with the Federal Energy Regulatory Commission ("Incremental Fuel Expense"), plus

(b) ten percent (10%) of the fuel cost, as described in Item 5(a) hereof, to cover operation and maintenance and other expenses.

6. Capacity Charge: The Capacity Charge for the capacity delivered to SEMINOLE shall be \$6.12/KW/month.

7. Transmission Service Charge: The Transmission Service Charge, for transmission service through the TAMPA ELECTRIC system, shall be \$1.482/KW/month.

8. Amendment of Charges: TAMPA ELECTRIC shall have the right to seek to amend the Capacity Charge and/or the Transmission Service Charge, defined in Items 6 and 7 herein, to be effective at any time on or after May 1, 1992, by furnishing a statement of such amendment to SEMINOLE and unilaterally filing the same with the Federal Energy Regulatory Commission ("FERC") or any successor agency pursuant to the provisions of Section 205 of the Federal Power Act.

If, at any time after December 31, 1996, TAMPA ELECTRIC's monthly fuel cost, as defined in Item 5(a) herein, exceeds TAMPA ELECTRIC's average system fuel cost during the most recent completed six-month fuel adjustment period applicable to TAMPA ELECTRIC's Rate Schedule IST-1, as effective in TAMPA ELECTRIC's retail Tariff, then TAMPA ELECTRIC shall have the right to seek to amend the Energy Charge defined in Item 5 herein, to be effective at any time on or after the first day of the month following the month in which the above condition is met, by furnishing a statement of such amendment to SEMINOLE and unilaterally filing the same with the FERC or successor agency pursuant to the provisions of Section 205 of the Federal Power Act; provided, that the Energy Charge, as amended, shall not exceed one hundred ten percent (110%) of the Incremental Fuel Expense, and provided further, that if the above condition is met prior to January 1, 1997, TAMPA ELECTRIC shall have the right to seek an amendment to the Energy Charge that is effective on or after January 1, 1997, in the manner described above.

9. Payments: Each month, SEMINOLE shall pay for Schedule D Interchange Service under this Letter of Commitment the amount described in Item 9.1 below, as itemized and adjusted in the invoice described in Item 9.2 below.

9.1. For capacity and energy delivered to SEMINOLE during the calendar month, an amount based on the sum of (a), (b), and (c) below, and adjusted in accordance with (d) below:

- (a) the cumulative Energy Charge for the month, as described in Item 5 herein;

- (b) the Transmission Service Charge, as described in Item 7 herein or as amended pursuant to Item 8 herein, applied to the 30-minute kilowatt demand on each delivery point's sub-meter coincident with the highest monthly 30-minute kilowatt demand at each respective delivery point's next upstream meter delivered during the month; and
- (c) the Capacity Charge, as described in Item 6 herein or as amended pursuant to Item 8 herein, applied to the 30-minute kilowatt demand on each delivery point's sub-meter coincident with the highest monthly 30-minute kilowatt demand at each respective delivery point's next upstream meter delivered during the month.
- (d) the sum of Item 9.1 (b) and (c) shall be adjusted on a month-by-month basis, such that the total amount of Item 9.1 (a), (b), and (c) shall not exceed the amount that would be billed by (i) applying the same monthly billing determinants (kW, KVAR, and kWh) to TAMPA ELECTRIC's Rate Schedule IST-1 (with Rate Schedule MFI reduction, if any) exclusive of gross receipts tax, as reflected in TAMPA ELECTRIC's retail Tariff during the month in question, and (ii) subtracting \$0.35 per kilowatt of demand; provided that the amount invoiced shall not be less than the amount specified in Item 9.1 (a) above or more than the amount calculated in accordance with Item 9.1 (a), (b), and (c) above without giving effect to the adjustment provided in this paragraph (d); provided further, that when the monthly billing determinants (kW, KVAR, and kWh) are zero, there shall be no charges invoiced for that month except for any prior month adjustments due to MFI and/or Special Purchases pursuant to Item 9.2, and provided further, if TAMPA ELECTRIC's Rate Schedule IST-1 is amended or replaced during the term of this Letter of Commitment, then the calculation under this Item 9.1 (d) shall utilize such amended or replacement schedule.

9.2 Each month, TAMPA ELECTRIC shall provide SEMINOLE with an invoice for Schedule D Interchange Service rendered under this Letter of Commitment during the preceding month. Each monthly invoice will include a statement of the energy delivered at the points of delivery described in Item 10 herein and the 30-minute kilowatt capacity as described in Item 9.1 delivered at such points of delivery, and an itemized calculation of the applicable charges for such service under Item 9.1, with any adjustment. At SEMINOLE's reasonable request, TAMPA ELECTRIC will provide documentation, and records that may be necessary to establish the correctness of TAMPA ELECTRIC's billings and performance under this Letter of Commitment. The NFI Rate Schedule credit for any given month, if applicable, shall be applied to the next following month's invoice. The initial invoice for any given month will be calculated in accordance with Item 9.1 above, regardless of whether any of the energy delivered during that month was provided from a Special Purchase as described in Item 2 herein. If energy was delivered from such a Special Purchase, adjustment for any estimated cost of the Special Purchase that was not covered by the amount billed in the initial invoice shall be first made, as an estimate, to the next following month's invoice, with a true-up adjustment applied to the month's invoice immediately following receipt by TAMPA ELECTRIC of the actual costs of the Special Purchase(s).

10. Points of Delivery: Service under this Letter of Commitment shall be provided directly at the points of delivery described in Exhibit A, attached hereto and made a part hereof.
11. Metering: TAMPA ELECTRIC shall construct, own, and maintain equipment for the sub-metering of service under this Letter of Commitment at the points of delivery described in item 10 herein. Upon execution of this Letter of Commitment, TAMPA ELECTRIC shall exert reasonable efforts to install said sub-metering equipment by February 21, 1992. SEMINOLE shall have the option to request and receive a data pulse from TAMPA

ELECTRIC's sub-metering equipment and shall pay any direct cost of installation of the necessary equipment for SEMINOLE to receive such data pulse.

SEMINOLE, upon notice to TAMPA ELECTRIC, shall have the right, in the presence of an officer, agent or designated employee of TAMPA ELECTRIC, to read and check TAMPA ELECTRIC's sub-meters and/or sub-metering equipment, should it so desire. SEMINOLE, upon notice to TAMPA ELECTRIC, shall have the right, in the presence of an officer, agent or designated employee of TAMPA ELECTRIC, to read and check TAMPA ELECTRIC's upstream meters and/or upstream metering equipment, should it so desire. Should there be any disagreement as to the correctness of the readings and/or accuracy of either the said sub-meters and/or sub-metering equipment or said upstream meters and/or upstream metering equipment, TAMPA ELECTRIC and SEMINOLE shall jointly test said meters in question. In the event of disagreement as to the tests and/or the accuracy of same, TAMPA ELECTRIC and SEMINOLE shall have the right to have the said meters and metering equipment tested by a competent and impartial engineer mutually acceptable to TAMPA ELECTRIC and SEMINOLE, and the decision of said engineer shall be considered final as to the accuracy of the said meters and/or metering equipment, provided, however, that the said meters and metering equipment shall be considered accurate if calibration is within a deadband of plus or minus two percent (2%) of accuracy. Should any of said meters be beyond the said range of accuracy, an adjustment shall be made for the period of known inaccuracy, based on the average of the three (3) months' demand and energy consumption prior to the period in question, or other method as agreed upon by mutual agreement, but no adjustment shall extend beyond a period of more than three (3) months. Any such adjustment shall disregard that portion of any inaccurate measurement falling within the above-described plus or minus two percent (2%) deadband. If the outcome of the tests does not compel an adjustment as provided above, the out-of-pocket costs and fees associated with the tests performed by the impartial engineer shall be borne by whichever of TAMPA ELECTRIC or SEMINOLE ordered the tests. If the outcome of the tests

compels an adjustment as provided above, the out-of-pocket costs and fees associated with the tests performed by the impartial engineer shall be borne by TAMPA ELECTRIC.

12. Regulation Service: The Parties agree that TAMPA ELECTRIC will provide regulation service for loads metered at the delivery points served under this Letter of Commitment, as necessary, and that SEMINOLE will not be responsible for providing any schedules or forecasts related to such loads.
13. Limitation of Liability: In any action arising out of any claimed breach of this Letter of Commitment, neither party shall be liable for loss of profits, loss of operation time, or loss of or reduction in use of any facilities or any portion thereof, increased expense of construction, operation, or maintenance, or for any special, indirect, incidental, or consequential damages.
14. Parties in Interest: Nothing in this Letter of Commitment is intended to confer any rights or remedies on anyone other than TAMPA ELECTRIC and SEMINOLE.
15. Special Agreement: The parties agree that this Letter of Commitment is for a special service upon which the parties have agreed, and shall not establish any other services or be relied upon by either party or any third party for any purpose other than for services and payments provided for hereunder.
16. Regulation: The provisions of this Letter of Commitment including the attached Exhibit A are subject to the regulatory authority of the Federal Energy Regulatory Commission (FERC) or its successor and acceptance for filing by the FERC shall be prerequisite to its validity. The provisions of this Letter of Commitment including the attached Exhibit A are also subject to the approval of the Administrator of the Rural Electrification Administration.
17. Entire Agreement: This Letter of Commitment, together with the Agreement for Interchange Service dated February 15, 1983, as supplemented by Service Schedule D dated December

18, 1991, reflect the entire understanding of TAMPA ELECTRIC and SEMINOLE with respect to this commitment. In the event of any inconsistency between the terms and conditions of this Letter of Commitment and the terms and conditions of Service Schedule D or the Agreement for Interchange Service dated February 15, 1983, the terms and conditions of this Letter of Commitment shall control. The term "Letter of Commitment," as used herein (other than as used in the previous sentence), shall be understood to mean this Letter of Commitment, together with the Agreement for Interchange Service dated February 15, 1983, as supplemented by Service Schedule D dated December 18, 1991.

ATTEST:

TAMPA ELECTRIC COMPANY

12/28/1991 10:18 FROM ANDREW B JACKSON

12/17/1991 10:27:58

By: [Signature]
Secretary

By: [Signature]
Vice President
Energy Resources Planning

ATTEST:

SEMINOLE ELECTRIC COOPERATIVE, INC.

By: [Signature]
Asst Secretary

By: [Signature]
Executive Vice President and
General Manager

LOC419.002
12/18/91

EXHIBIT A

The capacity and energy supplied will be delivered to two (2) delivery points.

1. Delivery point number one (1) will be located immediately north of the intersection of IMC Fertilizer, Inc.'s transmission line and the Hillsborough/Manatee County line, located in Hillsborough County's Township 32 South, Range 22 East, Section 34. This first described delivery point is hereafter referred to as the Taylor-Gill Road Delivery Point.

2. Delivery point number two (2) will be located immediately north of the intersection of IMC Fertilizer, Inc.'s transmission line and the Polk/Manatee County line, located in Polk County's Township 32 South, Range 23 East, Section 31. This second described delivery point is hereafter referred to as the State Road 37 Delivery Point.

**SERVICE SCHEDULE D
LONG-TERM INTERCHANGE SERVICE**

IT IS AGREED this Service Schedule D will be effective under, and part of, the Agreement for Interchange Service dated February 15, 1983, between TAMPA ELECTRIC COMPANY and SEMINOLS ELECTRIC COOPERATIVE, INC. hereinafter referred to as the AGREEMENT.

SECTION D.1 - Term: The term of this Service Schedule D shall commence on February 21, 1992, and shall continue in effect for the term stipulated in SECTION 1.1 of the AGREEMENT, provided, however, that the term of this Service Schedule shall not be for a period less than the term of any Letter of Commitment hereunder.

SECTION D.1 - Long-Term Interchange Service: Long-Term Interchange Service shall mean that quantity of capacity and/or energy supplied by one party (Seller) to the other party (Buyer) in accordance with a specific negotiated commitment set forth in a Letter of Commitment. The Buyer will provide the Seller during the commitment period, an advance daily forecast of capacity and accompanying energy to be delivered. It is understood that any Reserve requirement associated with this long-term delivery shall be the responsibility of the Buyer. The Buyer shall make a reasonable effort to conform to the forecast and notify the Seller, as soon as possible, of any revisions. The forecast will be coordinated by 1500 hours of the date prior to the day capacity and energy are needed. On the delivery date, Seller will have 30 minutes to initiate scheduled amounts within the forecast period or lose the daily demand charge. The Seller shall exert reasonable efforts to conform to the Buyer's daily forecast, up to the amount of the Long-Term Interchange Service commitment set forth in the Letter of Commitment, from all normally available generating resources not previously otherwise committed, to the extent that adequate transmission capacity is available in system interconnections and in affected internal transmission after allowing for its prior obligations to supply capacity and/or energy. If the Buyer does not purchase the energy scheduled for a given day, any actual additional costs incurred by the Seller in having the scheduled capacity available shall, at the option of the Seller, be paid for by the Buyer.

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