

**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

June 3, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

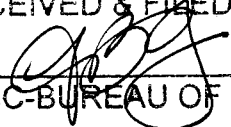
Re: Petition of Florida Power Corporation for approval
of an agreement to restructure existing cogeneration
contracts with Polk Power Partners, L.P. and Orange
Cogeneration Limited Partnership

990723-EP

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of
the Petition of Florida Power Corporation.

Please acknowledge your receipt of the above filing on the enclosed copy of
this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette
containing the above-referenced document in WordPerfect format. Thank you for
your assistance in this matter.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Very truly yours,

James A. McGee

JAM/ams
Enclosure

JUN 4 1999

DOCUMENT NUMBER-DATE

06925 JUN-4 99

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for approval of an agreement to restructure existing cogeneration contracts with Polk Power Partners, L.P. and Orange Cogeneration Limited Partnership.

Docket No. _____

Submitted for filing:
June 4, 1999

P E T I T I O N

Florida Power Corporation (Florida Power, or the Company), pursuant to Rule 25-17.0836, F.A.C., hereby petitions the Florida Public Service Commission (the Commission) for approval of an agreement between Florida Power and El Paso Power Services Company (El Paso) that would restructure and reduce the costs incurred by the Company and its customers under three existing cogeneration contracts (the Existing Contracts), two with Polk Power Partners, L.P. (Polk LP) and one with Orange Cogeneration Limited Partnership (Orange LP). After a series of extensive negotiations, Florida Power and El Paso have entered into a Master Agreement to Amend and Restate Contracts for the Purchase of Firm Capacity and Energy, dated May 19, 1999 (the Agreement), a copy of which is provided as Exhibit 1 to this petition.¹ Under the Agreement, Florida Power will significantly reduce capacity payments called for under the Existing Contracts, while retaining the

¹ Portions of the Agreement are subject to the joint request of Florida Power and El Paso for confidential classification, which is being filed contemporaneously with this petition, and are particularly sensitive to pending and prospective negotiations between El Paso and third parties. Accordingly, Exhibit 1 contains only a redacted copy of the Agreement and, of necessity, many of the Agreement's key cost characteristics and calculations based on these characteristics have been referred to only in general terms in this petition. Where this occurs, a reference to the location of this confidential information in the Agreement has been provided as an aid to Commissioners and Staff members with access to the unredacted copy.

DOCUMENT NUMBER-DATE

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contractual right to purchase energy from El Paso when needed. In exchange, under the Agreement, El Paso will obtain limited rights to sell energy (but not capacity) in the wholesale market. The Agreement will contain price protections for Florida Power in the event that Florida Power purchases replacement energy in the market from other providers at prices that exceed those stipulated in the Existing Contracts. In support of this petition, Florida Power states as follows:

1. Petitioner, Florida Power, is a public utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes. Florida Power's General Offices are located at One Progress Plaza, St. Petersburg, Florida, 33701.

2. All notices, pleadings and other communications required to be served on petitioner should be directed to:

James A. McGee, Esquire
Gary L. Sasso, Esquire
Post Office Box 14042
St. Petersburg, FL 33733-4042
Facsimile: (727) 820-5519

For express deliveries by private courier, the address is:

One Progress Plaza
Suite 1500
St. Petersburg, FL 33701

Background

3. Florida Power is a party to three Existing Contracts, previously negotiated and entered into with:

(a) Royster Phosphates, Inc. (later assigned to Polk LP), dated March 17, 1991, with a committed capacity of 30.8 megawatts (the Royster Contract),

(b) Mulberry Energy Company (later assigned to Polk LP), dated March 12, 1991, with a committed capacity of 79.2 megawatts (the Mulberry Contract), and

(c) CFR Bio-gen Corporation (later assigned to Orange LP), dated November 19, 1991, with a committed capacity of 74.0 megawatts (the Orange Contract).

By their terms, the Royster, Mulberry, and Orange Contracts will terminate on August 8, 2009, August 31, 2024, and December 31, 2025, respectively. Each of the Existing Contracts has been approved for cost recovery by the Commission.²

4. The Mulberry and Royster Contracts are both served from a single cogeneration facility located in Polk County (the Mulberry Facility). The Orange Contract is served from a cogeneration facility located in Polk County (the Orange Facility) that also serves a 23 megawatt cogeneration contract with Tampa Electric Company. El Paso will acquire the three Existing Contracts by assignment upon consummation of the transaction which is the subject of this petition.

5. Because Florida Power's various cogeneration contracts, including the three Existing Contracts, have proven to be relatively high-cost sources of generation, the Company has adopted a mitigation strategy under which a number of initiatives have been undertaken to reduce the adverse impact of these contracts on Florida Power and its customers. These initiatives have included the establishment of curtailment provisions for minimum load conditions, strict enforcement of contractual pricing provisions, early termination (buydown) agreements, and the

² The Royster and Mulberry Contracts were approved by Order No. 24734, issued July 1, 1991 in Docket No. 910401-EQ. The Orange Contract was approved by Order No. PSC-92-0129, issued March, 1992 in Docket No. 90-0383-EQ.

outright purchase of a large cogeneration facility and termination of the associated purchase power agreements. The agreement to restructure the Existing Contracts that is the subject matter of this petition is another, innovative example of this ongoing strategy to mitigate the cost of cogeneration purchases to Florida Power's customers.

The Restructuring Agreement

6. The Agreement contains the following key provisions:

- The three Existing Contracts will be amended and restated in their entirety by the Agreement and will no longer require the Orange and Mulberry Facilities to maintain their status as qualifying facilities under the Public Utilities Regulatory Policy Act of 1978 (PURPA).
- The capacity of the Orange and Mulberry Facilities currently committed to Florida Power under the Existing Contracts will remain committed to Florida Power for the full term of each Contract and will be reserved and available to the Company on an absolute first call basis.
- Payments for the committed capacity will be substantially discounted from those specified in the Existing Contracts and account for the ratepayer savings provided by the Agreement. The discounted capacity charges for each of the Existing Contracts are listed year-by-year in Exhibit A of the Agreement and the discount percentages are stated in Section 6.1.
- Subject to Florida Power's absolute first right call option, El Paso will be entitled to sell the energy, but not the capacity, from the Orange and Mulberry Facilities currently available under the Existing Contracts in the wholesale market, in which event Florida Power will either generate or purchase replacement energy.

- As a safeguard against the possibility that replacement energy prices may exceed the energy prices that would have been paid under the Existing Contracts, Florida Power will receive a “make whole” credit from El Paso for the difference between Florida Power’s as-available energy prices and the energy prices under the Existing Contracts. The make whole credit is subject to Contract-specific maximum and minimum energy price differences and a Contract-specific maximum number of hours of replacement energy purchases per year. The make whole credit and the method of its calculation are described in Exhibit H of the Agreement.
- El Paso will be liable for meaningful liquidated damages in the event it fails to provide the committed capacity required by the Agreement when called upon by Florida Power. The liquidated damages provide an incentive to perform during peak demand periods that Florida Power believes will be more effective than the performance incentive provisions of the Existing Contracts. The Agreement’s liquidated damages provisions are found in Section 10.3.
- The effectiveness of the Agreement is subject to the issuance of a final, non-appealable order by the Commission approving the amendment of the Existing Contracts as contemplated by the Agreement for cost recovery purposes, and confirming that the Agreement will be accorded the same treatment as an agreement entered into pursuant to PURPA in any Commission proceeding regarding Florida Power’s stranded costs.

7. The benefit of the Agreement’s discounted capacity payments will be received by all of Florida Power’s customers, it will begin immediately upon the Commencement Date of the Agreement, and it will continue with certainty in each

year throughout the lives of the Existing Contracts. Moreover, this benefit will be gained without compromising the availability of the capacity provided by the Existing Contracts to meet peak demand conditions. Finally, as Exhibit 2 to this petition demonstrates,³ the amount of savings from the discounted capacity payments is substantial compared to the capacity payments that would otherwise be made under the Existing Contracts.

8. Florida Power also anticipates that the Agreement will provide energy savings, particularly with the protection against high replacement energy costs offered by the “make whole” credit provision. These savings, however, are expected to be relatively small compared to the magnitude of the Agreement’s capacity savings. Florida Power is currently performing an updated PROMOD study and sensitivity analyses to produce the expected energy savings and will file the results shortly as a supplemental exhibit to this petition.

9. As described in Commission Rule 25-17.0836, F.A.C., the Agreement constitutes a material modification of the Existing Contracts “that affects the overall efficiency, cost-effectiveness or nature of the project[s].” Pursuant to subsection (2) of the Rule, Commission approval of such modifications is required “[i]n order for the utility to recover its costs.” Accordingly, Florida Power seeks Commission approval of the modified Existing Contracts, as amended and restated by the Agreement, for cost recovery purposes.

10. In addition, Florida Power requests that the Commission include language in its order approving the Agreement providing a reasonable assurance that the

³ As was described in Footnote 2 with respect to the Agreement, Exhibit 2 also contains sensitive competitive information and is subject to the joint request for confidential classification. Accordingly, a redacted copy of Exhibit 2 has been provided with this petition.

restructuring of the Existing Contracts, which were entered into pursuant to the mandate of PURPA, will not impair Florida Power's ability to recover any stranded costs associated with the Existing Contracts that may remain under the Agreement. Absent such an assurance, Florida Power would be exposed to an unwarranted and unacceptable risk of being penalized for an action taken on behalf of its customers. In Florida Power's judgment, a strong likelihood exists that the recovery of future stranded costs associated with QF contracts will receive a high priority because of the PURPA mandate to enter into these contracts. Since the Agreement will lose its status as a QF contract subject to PURPA, Florida Power would face the possibility of being denied the same cost recovery priority for any remaining stranded costs associated with the Agreement that, in all likelihood, it would have received for the Existing Contracts had the Company not entered into the Agreement. While Florida Power does not expect to be rewarded for the benefit the Agreement will provide to its customers, it asks the Commission for protection against the risk of being penalized by according the Agreement the same treatment with respect to stranded cost recovery as the Existing Contracts would have received.

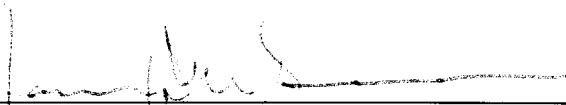
11. Finally, Florida Power requests that the Commission act upon this petition at the earliest practicable date. The Commission's approval is an essential condition precedent to the Commencement Date of the Agreement, at which time its benefits will immediately begin flowing through to Florida Power's customers. Florida Power pledges its full cooperation in working with Staff to facilitate the expeditious preparation of its recommendation.

WHEREFORE, Florida Power Corporation respectfully requests that the Commission (a) grant this petition and approve the modification of the Existing

Contracts, as amended and restated by the Agreement, for cost recovery purposes, (b) grant the Company's request to provide an assurance that the Agreement will be accorded the same treatment as a contract entered into pursuant to PURPA in any proceeding regarding Florida Power's stranded costs, and (c) establish an expedited schedule for reaching a decision on the petition.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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Attorneys for Florida Power Corporation

EXHIBIT 1

**MASTER AGREEMENT TO AMEND
AND RESTATE CONTRACTS FOR THE
PURCHASE OF FIRM CAPACITY AND ENERGY,
DATED MAY 19, 1999, BETWEEN
FLORIDA POWER CORPORATION AND
EL PASO POWER SERVICES
(redacted copy)**

**MASTER AGREEMENT TO AMEND AND RESTATE CONTRACTS FOR THE
PURCHASE OF FIRM CAPACITY AND ENERGY**

BETWEEN

FLORIDA POWER CORPORATION

AND

EL PASO POWER SERVICES COMPANY

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MASTER AGREEMENT TO AMEND AND RESTATE CONTRACTS

FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY

THIS MASTER AGREEMENT TO AMEND AND RESTATE CONTRACTS FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY ("Agreement"), dated as of May 19, 1999, is entered into by and between FLORIDA POWER CORPORATION, a corporation organized and existing under the laws of the State of Florida ("Buyer"), and EL PASO POWER SERVICES COMPANY ("El Paso"), a corporation organized and existing under the laws of the State of Delaware,

WITNESSETH:

WHEREAS, Buyer engages in the generation, transmission, sale and distribution of electricity for heat, light and power to the public in the State of Florida; and

WHEREAS, El Paso is engaged in the business of marketing electric energy and capacity in North America and owns and operates natural gas-fired electric generating facilities; and

WHEREAS, Buyer is a party to certain Contracts (as hereinafter defined) with Orange Cogeneration Limited Partnership ("Orange LP") and Polk Power Partners, L.P. ("Polk LP") (together the "Partnerships"), pursuant to which Buyer purchases one-hundred-eighty-four (184) megawatts of capacity and associated energy generated at the Mulberry Facility (as hereinafter defined) and the Orange Facility (as hereinafter defined); and

WHEREAS, El Paso intends to acquire control of the Partnerships pursuant to the Project Restructuring, as hereinafter defined, and;

WHEREAS, upon assuming control of the Partnerships, El Paso intends to succeed to the interests of the Partnerships in the Contracts with the consent of Buyer, or in the

alternative to cause the Partnerships to execute and become signatories to this Agreement, and in either case to cause the Contracts to be amended and restated by this Agreement; and

WHEREAS, Buyer desires to reduce the cost of capacity under the Contracts, and El Paso has agreed to accept lower prices for such capacity in return for Buyer's agreement to (i) provide Seller increased flexibility to source capacity and energy sold to Buyer, and (ii) cooperate with respect to the Project Restructuring.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, all of the signatories to this Agreement, each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Certain Definitions. In addition to the capitalized terms and phrases defined in the preamble of this Agreement, the following capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below:

“Affiliate” - of any specified entity means any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified entity.

For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Aggregate Committed Capacity” - has the meaning ascribed to this term as reflected by Exhibit A hereto, adjusted, if required, pursuant to the provisions of Article 5.5

hereof.

“Annual Adjustment Factor” - means, an annual inflation adjustment used herein.

The Annual Adjustment Factor for any year shall be equal to the increase in the CPI-U (as hereinafter defined) of the most recently completed calendar year over the second preceding calendar year, i.e. the percentage difference between the CPI-U for 1998 and the CPI-U for 1999 to determine the Annual Adjustment Factor for the year 2000, and so on, plus a Historical Adjustment (as hereinafter defined), provided that in no year shall the Annual Adjustment Factor be less than [REDACTED] or more than 4.5%. By example, if the CPI-U for 1998 is 100, the CPI-U for 1999 is 102, then the Annual Adjustment Factor for the year 2000 is 2%.

“As Available Energy Price” - means Buyer's price for as available Energy calculated in accordance with FPSC Rule 25-17.0825, as in effect from time to time during the Term, provided that if neither FPSC Rule-25-17.0825 nor any successor rule or regulation of the FPSC to the same purpose (such current or successor regulation the “As Available Price Rule”) is in effect, the Parties shall promptly meet and attempt to agree upon a price reference (including the pricing point and a methodology to account for differences, if any, in the location of the selected pricing point and the Delivery Point as hereinafter defined), which shall thereafter be the As Available Energy Price. If the Parties cannot agree upon an As Available Energy Price within thirty (30) Days after the expiration of the As Available Price Rule (such period the “Negotiation Period”), then within five (5) Business Days after the expiration of the Negotiation Period each Party shall submit to the other Party a prioritized list of up to five (5) price references. The first listed price reference listed in Buyer's list that also appears in Seller's list shall become the As Available Energy Price. If no common price reference appears in both Parties' lists, each Party shall submit a new list to the other Party within five (5) Business Days, and the foregoing selection

procedure shall apply. If after three (3) such exchanges of lists no common price reference appears in both Parties' lists, the determination of the price reference to be used to calculate the As Available Energy Price shall be submitted to binding arbitration in accordance with the procedure set out in Exhibit J hereto, unless the Parties otherwise agree upon an As Available Energy Price.

If either Party fails to timely submit a price reference list, such Party's list shall not be considered and the first price reference from the other Party's list shall become the As Available Energy Price. During the period from and including the first date the As Available Price Rule is no longer in effect, until the date that a substitute As Available Energy Price is determined (such period the "Interim Pricing Period"), the As Available Energy Price shall be determined by application of the As Available Price Rule last in effect. Upon first determination of a new As Available Energy Price following expiration of the As Available Price Rule, the price for Energy delivered during the Interim Pricing Period until the earlier of the anniversary of the first date the As Available Price Rule is no longer in effect and the end of the Interim Pricing Period, shall be recalculated in accordance with the new As Available Energy Price, and any net difference shall be paid by the Party having benefitted by such difference to the other Party, such payment being due upon the next monthly billing statement following said recalculations. During any period in which a rule or regulation of the FPSC to the same effect as the As Available Price Rule is again effective, the As Available Energy Price shall be calculated in accordance with such rule or regulation.

"Business Day" - means any Day excluding Saturday, Sunday and any Day on which banking institutions in Florida are closed because of a federal holiday.

"Call Energy" - has the meaning ascribed to this term in Article 5.2.1 hereof.

"Capacity Charge" - means the Aggregate Capacity Charge, expressed in dollars per kW of Committed Capacity per month, as adjusted if required pursuant to Article 5.5 hereof,

all as set forth in Exhibit A hereto.

“Capacity Test” - means a test of the ability of a Committed Facility to generate Energy in quantities equivalent to the aggregate of all firm capacity sales commitments of such Committed Facility, conducted in accordance with the procedures set forth on Exhibit C hereto or other procedures established in writing by Buyer acting in accordance with Good Utility Practices, that are consistent with FRCC guidelines and procedures and not materially different than procedures used by Buyer to test the capacity of its own generating facilities.

“Claims” - means any and all claims, demands, actions, causes of action, responsibilities, damages, fines, penalties, deficiencies, losses, expenses, costs, disbursements, liabilities and obligations, including, without limitation, liability in tort (including negligence and strict liability), 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 and whether at law or in equity.

“Commencement Date” - has the meaning ascribed to this term in Article 2.1.2 hereof.

“Committed Capacity” - has the meaning ascribed to this term in Article 4.1.1 hereof.

“Committed Facility” - means one or more electric generating facilities located in the FRCC control area, and more fully described in Exhibit G hereto, some or all of the capacity of which is committed to Buyer in accordance with the provisions of Article 4.1.1 hereof.

“Contracts” - means (i) that certain Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated November 19, 1991, between Buyer and CFR Bio-gen Corporation (predecessor in interest to Orange LP), covering 74 MW of the capacity

and energy of the Orange Facility, as hereinafter defined (the "Orange Contract"), (ii) that certain Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated March 12, 1991, between Buyer and Mulberry Energy Company (predecessor in interest to Polk LP), covering 79.2 MW of the capacity and energy of the Mulberry Facility, as hereinafter defined (the "Mulberry Contract"), and (iii) that certain Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated March 17, 1991, between Buyer and Royster Phosphates, Inc. (predecessor in interest to Polk LP), covering 30.8 MW of the capacity and energy of the Mulberry Facility (the "Royster Contract"), as each shall have been amended, including, without limitation, amendments in connection with the Project Restructuring but not including the Amendment contemplated by this Agreement.

"CPI-U" - means the Annual Consumer Price Index figure shown for all items in the Consumer Price Index for All Urban Consumers-South Urban (Not Seasonally Adjusted), Series I.D. CUUR0300SA0 as published by the United States Department of Labor, Bureau of Labor Statistics, or such other relevant index of consumer prices in the Florida region as the Parties may mutually agree in the event the CPI-U is substantially modified or no longer published in the future.

"Day" - means a calendar day.

"Delivered Energy" - means all of the Energy delivered to Buyer pursuant to this Agreement at a Delivery Point.

"Delivery Point" - means any point on Buyer's electric transmission system designated for the delivery of Energy to Buyer in accordance with the provisions of this Agreement, as identified on Exhibit B, provided that any of such Delivery Points may be changed by mutual agreement of the Parties, such agreement not to be unreasonably withheld, and provided

further, that any such change in Delivery Points shall be reflected by an amendment to Exhibit B to be attached hereto.

“Energy” - means electric energy of the character commonly known as three-phase, sixty-hertz, alternating current, and otherwise as required by FRCC practices, at the nominal voltage of the Delivery Point.

“EPT” - means Eastern Prevailing Time which, for purposes of this Agreement, means Eastern Standard Time or Eastern Daylight Time, whichever is in effect at the time of any obligation under this Agreement.

“FERC” - means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to some or all of the jurisdiction currently vested in the FERC.

“FPSC” - means the Florida Public Service Commission or any Governmental Authority succeeding to some or all of the jurisdiction currently vested in the FPSC.

“FRCC” - means the Florida Reliability Coordinating Council and any successor entity.

“Force Majeure Event” - has the meaning ascribed to this term set forth in Article 9.1 hereof.

“Full Actual Output” - means an amount of Energy equal to the net Energy generated by any or all of the Committed Facilities, as the case may be, when operated consistent with Good Utility Practices, as hereinafter defined, taking into account then prevailing weather conditions, house power requirements, restrictions imposed by environmental permits and type of fuel then in use.

“Good Utility Practices” - means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry

prior to such time, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers' warranties, Legal Requirement of any Governmental Authority, (as defined hereinafter), and the requirements of this Agreement.

“Governmental Authority” - means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity, but excluding any such agency, court, commission, department or other such entity acting in its capacity as lender, guarantor or mortgagee.

“Historical Adjustment” - means, for each calendar year, an amount equal to the lesser of (i) the balance of the Holdover Account (as hereinafter defined) and (ii) an amount necessary to bring the Annual Adjustment Factor to 4.5%.

“Holdover Account” - means a notional account used to calculate the Historical Adjustment. The balance of the Holdover Account shall be equal to 0 on the date hereof. The balance of the Holdover Account shall be increased annually by the amount (expressed as a numeral) by which the CPI-U of the most recently completed calendar year increased more than 4.5% over the CPI-U of the second preceding calendar year. (For example, if the CPI-U increased 7% from 1998 to 1999, the Holdover Account would increase 2.5 (7 - 4.5) in year 2000.) The balance of the Holdover Account shall be decreased by the amount of each Historical Adjustment.

“Interest Rate” - means an annual rate equal to the sum of: (a) one percent (1%) and (b) the thirty (30) day highest grade commercial paper rate as published in the *Wall Street Journal* on the first Business Day of each Month.

“kW” - means one (1) kilowatt.

“kWh” - means one (1) kilowatt hour.

“Legal Requirement” - means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question.

“Lenders” - means any or all lenders, but not equity investors, except to the extent and in the capacity that such equity investors are also lenders as of the date of this Agreement, providing any financing or refinancing to El Paso or one or more Affiliates of El Paso in connection with any of the Committed Facilities or the Project Restructuring.

“Make Whole Credit” - has the meaning ascribed to this term set forth in Article 6.3 hereof.

“Month” - means a calendar month, commencing at the beginning of the first Day of such calendar month.

“Monthly” - means each Month.

“Monthly Capacity Payment” - means, for any Month, an amount of money to be paid by Buyer to Seller determined by multiplying the applicable Aggregate Capacity Charge by the Aggregate Committed Capacity in kW, as set forth in said Exhibit A (reduced in accordance with Article 4.2.3 hereof, if applicable), provided that the Monthly Capacity Payment shall be prorated on a daily basis if the Term (as hereinafter defined) shall commence or expire, or the Agreement be terminated, during a Month. By example, because the Term expires after August

9, 2009, with respect to 30.8 MW of Committed Capacity, as provided in Article 2.3.1 hereof, the Monthly Capacity Payment for the month of August, 2009 is equal to [REDACTED] X 184,000 kW X 9 days/31 days + [REDACTED] X 153,200 kW X 22 days/31 days, or [REDACTED], less any reductions in accordance with Article 4.2.3, if applicable.

“Monthly Energy Payment” - means, for any Month, the amount of money to be paid by Buyer to Seller for Buyer's purchase of Delivered Energy, if any, in accordance with this Agreement, which amount shall be equal to the sum of (i) the product of (A) the Strike Price (as hereinafter defined), multiplied by (B) the number of MWh of Call Energy delivered to the Delivery Points during such Month, plus (ii) payments due for Put Energy and Optional Energy as each is hereinafter defined.

“Mulberry Facility” - means the natural gas fired electric cogeneration facility, having a nominal electric generating capacity of 110 MW, located in Polk County, Florida, owned as of the date of this Agreement by Polk LP.

“Mulberry Contract” - has the meaning ascribed to this term within the above definition of “Contracts”.

“MW” - one (1) megawatt, or one thousand (1,000) kW.

“MWh” - means one (1) megawatt - hour, or one thousand (1,000) kWh.

“Native Load” - means retail customers Buyer is obliged to serve by law or by contract and wholesale customers Buyer is obliged to serve pursuant to full or partial requirements contracts on a firm service basis.

“Optional Energy” - means Energy sold to Buyer in accordance with Article 5.3.3 hereof.

“Orange Contract” - has the meaning ascribed to this term within the above

definition of "Contracts".

"Orange Facility" - means the natural gas fired electric cogeneration facility, having a nominal electric generating capacity of 103 MW, located in Polk County, Florida, owned as of the date of this Agreement by Orange LP.

"Party" or "Parties" - means any of, or all of, the Persons who are or become the Buyer or the Sellers under this Agreement, as the case may require.

"Person" - means any natural person or any corporation, association, partnership, trust, limited liability company, estate, Governmental Authority or other legal entity.

"Project Restructuring" - means the restructuring of ownership, financing arrangements, fuel supply and other project and partnership agreements related to the Orange Facility and the Mulberry Facility.

"Proprietary Information" - of a Party means information rightfully in the possession of such Party, which information derives economic value from not being generally known to, and not being readily ascertainable by proper means by, another Person who can obtain economic value from its disclosure and use, and that is the subject of reasonable efforts to maintain its secrecy.

"PURPA" - means the Public Utility Regulatory Policies Act of 1978, as amended, and the implementing regulations promulgated by the FERC and the FPSC from time to time.

"Put Energy" - means Energy sold to Buyer in accordance with Articles 5.3.1 and 5.3.2 hereof.

"QF Energy Rate" - has the meaning ascribed to this term in Exhibit I.

"Ramp Period" - means the period of time when a Committed Facility is starting up or shutting down, as mutually agreed upon by Seller and Buyer, each negotiating in good faith,

with respect to each Committed Facility; provided, that with respect to the Mulberry Facility and the Orange Facility, the Ramp Period shall not exceed three (3) hours with respect to a start-up in Energy output (which shall be deemed to have terminated at the end of the hour in which such increase is completed), and shall not exceed two (2) hours with respect to a shut down in Energy output (which shall be deemed to have started at the beginning of the hour in which such reduction is commenced).

“Royster Contract” - has the meaning ascribed to this term within the above definition of “Contracts”

“Schedule” or “Scheduling” - means, when used in reference to Seller, as hereinafter defined, to contractually arrange for Energy to be made available at a Delivery Point for delivery to or for the account of Buyer, and means, when used in reference to Buyer, (i) with respect to Call Energy, to notify Seller that the Call Energy is to be made available by Seller to Buyer at a Delivery Point during any hour or hours during the Term, and (ii) with respect to Call Energy, Put Energy and Optional Energy, to have available transmission capacity sufficient to permit Buyer to receive the Delivered Energy made available at the Delivery Point.

“Scheduled Energy” - means Energy Scheduled in accordance with Articles 5.2.1 through 5.3.3 hereof, inclusive.

“Seller” - means El Paso and Affiliates of El Paso that become Parties to this Agreement, their successors and assigns as may be permitted under this Agreement, acting and having rights and obligations under this Agreement jointly and severally.

“Strike Price” - means [REDACTED] per MWh for Call Energy sold in accordance with this Agreement during 1999, adjusted by the Annual Adjustment Factor in accordance with this Agreement during each subsequent calendar year.

“Taxes” - means any and all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments, other than taxes based on net income or net worth.

“TECO” - means the Tampa Electric Company, a Florida electric utility.

“TECO Contract” means that certain Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility, dated the 17th of April, 1989, by and between Polk Power Project (predecessor in interest to Orange LP) and TECO, as amended.

“Term” - means the term of this Agreement as specified in Article 2.3.1 hereof.

1.2 Interpretation. In this Agreement and the Exhibits hereto, unless the context otherwise requires:

1.2.1 words generally importing the singular shall include the plural, and words generally importing the plural shall include the singular;

1.2.2 all Exhibits attached hereto are incorporated by reference herein; and

1.2.3 to the extent that any term or provision of this Agreement is inconsistent with any term or provision of any of the Contracts, the terms and provisions of this Agreement shall govern such matter and the inconsistent term or provision of the Contracts shall be deemed inoperable as to such matter.

ARTICLE 2

EFFECTIVENESS, AMENDMENT OF CONTRACTS, AND TERM OF AGREEMENT

2.1 Effectiveness and Commencement Date.

2.1.1 This Agreement shall become effective when executed and delivered by both

Buyer and El Paso.

2.1.2 The obligations of Buyer and Seller with respect to the purchase and sale of Committed Capacity and Delivered Energy hereunder shall commence on the last date (the "Commencement Date") on which all of the following conditions precedent have been satisfied or waived by the affected Party:

(a) all representations and warranties of Buyer hereunder shall be true and correct as of the Commencement Date as if made on and as of the Commencement Date;

(b) all representations and warranties of Seller hereunder shall be true and correct as of the Commencement Date as if made on and as of the Commencement Date;

(c) each of the Parties shall have delivered to the other Party legal opinions in the form(s) attached hereto as Exhibit F;

(d) El Paso and Affiliates shall have completed the Project Restructuring and obtained the approval thereof by the Lenders that provided financing for the Orange Facility and the Mulberry Facility and their owners, all on terms and conditions satisfactory to Seller in its sole discretion;

(e) Buyer shall have executed an Interconnection Agreement with the Orange and Mulberry Facility owners or operators, as the case may be, on terms and conditions mutually satisfactory to Buyer and Seller;

(f) El Paso shall have succeeded to the interests of the Partnerships in the Contracts, or shall have caused the Partnerships to execute and become Parties to this Agreement, with the consent of Buyer, such consent to be deemed granted upon certification by El Paso to Buyer that such succession or execution is consistent with and in furtherance of the Project Restructuring and El Paso's obligations under this Agreement;

(g) Buyer and Seller shall have obtained the consent or deemed consent of each Collateral Agent under each Consent and Agreement executed by Buyer with respect to the financing for the Orange Facility and the Mulberry Facility;

(h) Final orders, no longer subject to any appeal, shall have been issued by all Governmental Authorities having applicable jurisdiction, in form and substance satisfactory to Buyer in its sole discretion and to Seller in its reasonable discretion, (i) authorizing the amendment of the Contracts as contemplated by this Agreement; (ii) approving Buyer's execution of this Agreement and performance of its obligations hereunder; (iii) providing for the full and timely recovery by Buyer in its jurisdictional electric rates for the entire Term of this Agreement of (A) all sums paid by Buyer in connection with the amendment of the Contracts, and (B) all costs and charges to be paid by Buyer for Committed Capacity and Delivered Energy hereunder; and (iv) confirming that in any future proceeding regarding Buyer's restructuring, stranded costs or unbundled rates, this Agreement and the charges hereunder will be accorded the same treatment as an agreement entered into pursuant to PURPA.

2.1.3 Each of the Parties shall cooperate in good faith and shall use commercially reasonable efforts to cause the foregoing conditions precedent over which it has control to be satisfied as soon as reasonably possible. If, notwithstanding the reasonable efforts of both Parties, all of the conditions precedent have not been satisfied or waived by the Party entitled to the benefit thereof and the Commencement Date has not occurred on or before the earlier of November 30, 1999 and the one hundred eightieth (180th) day after the date of execution of this Agreement or if the Parties mutually agree prior to such date that it will not be possible to satisfy a condition precedent, then either Party may terminate this Agreement, without additional cost or liability to the other Party resulting from such termination, upon thirty (30) days prior written notice to the

other Party.

The Parties acknowledge for these purposes that in the event the Commencement Date has not occurred on or before July 15, 1999, Seller may for that reason, without limitation, deem that the Project Restructuring cannot be completed on terms and conditions which will be satisfactory to Seller.

2.2 Amendment of Contracts. The Parties agree hereby that, as of the Commencement Date, the Contracts, and each of them, are deemed to be amended and restated in their entirety by this Agreement, and the terms and provisions of the Contracts are deemed to be replaced in their entirety by the terms and provisions of this Agreement, except as may otherwise be expressly provided herein.

2.3 Term.

2.3.1 The Term of this Agreement shall mean the period from and including the Commencement Date and through and including (i) December 31, 2025 , with respect to 74 MW of the Committed Capacity; (ii) August 8, 2024, with respect to 79.2 MW of the Committed Capacity; and (iii) August 9, 2009, with respect to 30.8 MW of the Committed Capacity (such periods collectively the "Term").

2.3.2 At the expiration of the Term, the Parties shall no longer be bound by the terms and provisions hereof, except to the extent necessary to provide for final billings and payments and to enforce the rights and the obligations of the Parties arising under this Agreement prior to such expiration.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Each of El Paso and every Affiliate of El Paso that executes this Agreement, as Seller, hereby, individually and severally, makes the following representations and warranties to Buyer:

3.1.1 Seller is a corporation, partnership or limited partnership, duly organized, validly existing and in good standing, is qualified to do business in the State of Florida and has the legal power and authority to own or lease its properties, to conduct its business, to enter into this Agreement, to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

3.1.2 Except as set forth on Exhibit D, and subject to the satisfaction or waiver of the conditions precedent set out in Article 2.1.2, the execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary corporate action, and do not and will not require any consent or approval of any other entity or Governmental Authority, other than those that have been obtained.

3.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement by Seller do not and will not conflict with, or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, or Seller's articles of incorporation, charter, by-laws, partnership or limited partnership agreement or other similar document, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument by which Seller or any of its property is bound, or result in a breach of or a default under any of the foregoing.

3.1.4 This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

3.1.5 There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date of Seller's execution hereof.

3.2 Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller:

3.2.1 Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, and has the legal power and authority to own or lease its properties, to conduct its business, to enter into this Agreement, to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

3.2.2 Except as set forth on Exhibit E, and subject to the satisfaction or waiver of the conditions precedent set out in Article 2.1.2, the execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary corporate action, and do not and will not require any consent or approval of Buyer's Board of Directors or shareholders, or any other entity or Governmental Authority, other than those which have been obtained.

3.2.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement by Buyer do not and will not conflict with, or constitute a breach of or a default under,

any of the terms, conditions or provisions of any Legal Requirements, or Buyer's articles of incorporation, charter, by-laws, partnership or limited partnership agreement, or other similar document, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument by which Buyer or any of its property is bound, or result in a breach of or a default under any of the foregoing.

3.2.4 This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

3.2.5 There is no pending or, to the knowledge of Buyer, threatened action or proceeding affecting Buyer before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.

ARTICLE 4

COMMITTED CAPACITY

4.1 Commitment of Committed Capacity.

4.1.1 Seller hereby commits to reserve and make available to Buyer on a firm and absolute first call basis, twenty-four (24) hours per day, seven (7) days per week during the months of January, February and December, and during the hours ending 0800 through 2300 EPT Monday through Friday, during all other months, the quantities of capacity specified in Exhibit A hereto, from sources and Committed Facilities identified in Exhibit G hereto (the "Committed Capacity").

4.1.2 Seller acknowledges and agrees that (i) Buyer's primary purpose for executing this Agreement is to secure an assured source of capacity and Energy to serve Buyer's Native Load as replacement for Buyer's right to capacity and Energy under the Contracts, (ii) the commitment of Seller to assure the availability of the Committed Capacity and Call Energy is the primary consideration for Buyer's entering into this Agreement with Seller on the terms and provisions hereof, and (iii) but for Seller's assurance of the availability of the Committed Capacity and Call Energy if, as and when demanded by Buyer in accordance with the provisions hereof, Buyer would not have agreed to amend the Contracts, nor would it have entered into this Agreement.

4.2 Capacity Tests For Availability of Committed Capacity.

4.2.1 Seller shall conduct a Capacity Test of each Committed Facility not less frequently than once in each calendar year during the Term that such Committed Facility is committed pursuant to this Agreement as reflected on Exhibit G hereto, and shall submit the results of each such Capacity Test to Buyer in writing within ten (10) Business Days after the

completion of such Capacity Test. Seller shall notify Buyer at least ten (10) Business Days in advance of the conduct of any Capacity Test, and afford Buyer the opportunity to have its representative witness such Capacity Test. A Capacity Test that demonstrates that the Committed Facility tested has the capability to generate Energy equivalent to or greater than the aggregate of all firm capacity sales commitments of such Committed Facility shall be deemed a "Successful Capacity Test", and a Capacity Test that demonstrates that the Committed Facility tested does not have such capability shall be deemed an "Unsuccessful Capacity Test".

4.2.2 In the event of an Unsuccessful Capacity Test, Seller shall cure the shortfall in Committed Capacity resulting from such Unsuccessful Capacity Test not later than sixty (60) Days after the completion of such Unsuccessful Capacity Test (such period the "Cure Period"). Seller shall be deemed to have cured a shortfall in Committed Capacity resulting from an Unsuccessful Capacity Test when it either (i) provides to Buyer the written results of a Successful Capacity Test conducted within the Cure Period of the Committed Facility which was the subject of the previous Unsuccessful Capacity Test, or (ii) commits to the performance of this Agreement additional capacity qualifying as Committed Capacity at least equivalent to the shortfall in Committed Capacity demonstrated by the Unsuccessful Capacity Test.

4.2.3 Should Seller fail to cure a shortfall in Committed Capacity within the Cure Period, the Monthly Capacity Payment shall be reduced (i) in proportion to the ratio of the shortfall in Committed Capacity as compared to the Aggregate Committed Capacity reflected on Exhibit A hereto, for the number of Days in each Month in which a shortfall occurs in accordance with Article 4.2.2 above, including the Day in which such cure is achieved. For example, if an Unsuccessful Capacity Test was performed on January 1, 1999 and the capacity shortfall was 10 MW, and was not cured until March 15, 1999, the Monthly Capacity Payment for each of the

Months of January and February would be reduced by an amount equal to the product of 10,000 kW x 1 month x [REDACTED] per kW-mo, or [REDACTED] per Month, and the Monthly Capacity Payment for March 1999, would be reduced by an amount equal to the product of 10,000 kW X 15 days/31 days x [REDACTED] per kW-mo, or [REDACTED]

4.3 Alternate Facilities. Seller may elect to designate, in writing, as Committed Capacity in replacement of the Committed Capacity of any Committed Facility specified on Exhibit G hereto, capacity from a source and/or the capacity of a generating facility, which designated facility shall become a Committed Facility to the extent of its capacity designated as Committed Capacity, provided, however, that no alternate facility shall become a Committed Facility, nor shall the capacity of such facility or capacity from any source become Committed Capacity for purposes of this Agreement, except with the prior written approval of Buyer, which approval shall not be unreasonably withheld, and provided further, that it shall not be a condition for such approval by Buyer that any ruling of the FPSC shall have been obtained prior thereto. Buyer shall exert its good faith best efforts to advise Seller within ten (10) Business Days after receipt of Seller's designation of capacity as replacement Committed Capacity, or a facility as a replacement Committed Facility, as the case may be, either (i) whether or not Buyer approves the designated capacity or facility as replacement Committed Capacity or a replacement Committed Facility, or (ii) the process by which, and the time frame within which, Buyer will approve or disapprove such designated capacity or facility. Neither the designation of Alternate Facilities by Buyer, nor approval of such designations by Seller shall be deemed by the Parties to constitute a material change to this Agreement, as such material changes are or may be contemplated under the regulations and policies at the FPSC.

ARTICLE 5

SALE OF CAPACITY AND ENERGY

5.1 Purchase and Sale of Committed Capacity.

5.1.1 As of and after the Commencement Date, Seller agrees to sell, and Buyer agrees to purchase an amount of capacity equal to the Committed Capacity in accordance with the terms and provisions of this Agreement.

5.1.2 During the Term, Seller shall not resell any Committed Capacity to any third party.

5.2 Purchase and Sale of Energy.

5.2.1 Commencing on the Commencement Date and throughout the Term, Buyer shall be entitled to Schedule, in accordance with the provisions of this Article 5.2, all, but not less than 184 MWh per hour through August 9, 2009, 153.2 MWh per hour from August 10, 2009 through August 8, 2024, and 74 MW from August 9, 2024 through December 31, 2025. Upon Buyer's Scheduling of such Call Energy, Seller shall Schedule, from any sources available to Seller, Call Energy equal to the sum of Call Energy amounts specified in Exhibit G hereto, as elected by Seller, (such Energy the "Call Energy"), for the applicable term and under the applicable conditions as specified in Exhibit G. Buyer shall purchase and Seller shall sell the Call Energy delivered to Buyer in accordance with the terms and provisions of this agreement.

5.2.2 Seller shall arrange and be responsible for transmission and all ancillary services necessary to supply any and all Scheduled Energy to Buyer at the Delivery Point. Buyer shall arrange and be responsible for transmission and all ancillary services at and from the

Delivery Point necessary to receive Scheduled Energy delivered by Seller in accordance with this Agreement at the Delivery Point. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of Scheduled Energy up to the Delivery Point, including without limitation, control area services, inadvertent energy flows, transmission losses and loss charges relating to the Scheduling and transmission of any such Energy, transmission and ancillary service charges. Buyer shall be responsible for any such costs or charges imposed on or associated with Delivered Energy, at and from the Delivery Point.

5.2.3 As between the parties, Seller shall be deemed to be in exclusive control of Energy prior to the Delivery Point (and responsible for any Claims caused thereby), and Buyer shall be deemed to be in exclusive control of the Delivered Energy at and from the Delivery Point (and responsible for any Claims caused thereby). Title to and risk of loss related to the Delivered Energy shall transfer from Seller to Buyer at the Delivery Point. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any Claims arising from any act or incident occurring as to any Energy at the time that title to such Energy is vested in the indemnifying Party.

5.2.4 Throughout the Term, Seller shall provide to Buyer by telephone no later than 0700 EPT each Day notice of which, if any, of the Committed Facilities are expected to be generating Energy ("Running"), and the expected Energy output from each of the Committed Facilities on the next Day.

5.2.5 Within ten (10) Days after the execution of this Agreement, each of Buyer and Seller shall designate the Person or Persons with the authority to coordinate the day-to-day operations in order for such Party to carry out the terms of this Agreement.

5.2.6 With respect to any of the Committed Facilities which are Running at the

time that Buyer demands that Seller sell and deliver Call Energy, Buyer shall give Seller at least two (2) hours prior notice of Buyer's demand, identifying the duration of Call Energy demanded by Buyer, and Buyer shall accept and purchase Call Energy for a minimum period of one (1) hour.

5.2.7 With respect to any of the Committed Facilities which are not Running at the time that Buyer demands that Seller sell and deliver Call Energy, Buyer shall give Seller at least five (5) hours prior notice of Buyer's demand, identifying the duration of demanded Call Energy; provided, however, that if so requested by Buyer, Seller will commence delivery of Call Energy sooner than five (5) hours after notice of demand if physically possible to do so using Good Utility Practices, and provided further that Buyer shall accept and purchase the demanded Call Energy from each source or Committed Facility for a minimum period of eight (8) hours, which minimum period shall begin with and include the Ramp Period. All communications between Buyer and Seller with respect to transactions in Call Energy shall be by telephone. Buyer and Seller hereby consent and agree to the recording of all such telephone communications.

5.3 Seller's Sales Options. In addition to the Call Energy Scheduled and purchased by Buyer, Seller shall have the options described below to require Buyer to purchase Energy produced by the Committed Facilities and delivered by Seller at the Delivery Point (such Energy the "Put Energy"), subject to the Seller having notified Buyer before 1200 EPT on the day prior to the intended sale of the estimated quantity of Put Energy and duration of the intended sale.

5.3.1 Seller may sell and Buyer shall purchase as Put Energy up to the Full Actual Output of the Committed Facilities as reflected in Exhibit G hereto during scheduled Ramp Periods at the As Available Energy Price in effect at the time of delivery of such Put Energy. Buyer shall have no obligation to provide Seller with any estimate of the As Available Price. The Parties acknowledge that the amount of Energy delivered during Ramp Periods, and the schedules

provided by Seller for Ramp Periods, are subject to change based on actual plant operations on the day the Energy is delivered, provided that Ramp Periods for the Orange and Mulberry Facilities shall not exceed the durations set forth in the definition of "Ramp Period" set forth in Article 1 hereof.

5.3.2 Seller may also sell and Buyer shall purchase as Put Energy at the As Available Energy Price in effect at the time of delivery of such Put Energy, up to an aggregate of 24 MWh per hour during periods other than scheduled Ramp Periods. The Parties acknowledge that the amount of Put Energy delivered, and the schedules provided by Seller for Put Energy, are subject to change based on actual plant operations on the day the Energy is delivered, provided that the amount of Put Energy shall not exceed 24 MWh per hour.

5.3.3 In addition to Put Energy which may be sold pursuant to the sale options described in Articles 5.3.1 and 5.3.2, Seller may offer to sell to Buyer each Day a specific quantity of Energy (such Energy the "Optional Energy") to be delivered during a specific single block of eight (8) hours during the following Day. Such offer shall be made by Seller to Buyer by 0700 EPT on the Day prior to the Day Seller desires to sell and deliver such Optional Energy. Buyer shall promptly notify Seller by 0830 EPT on the Day Buyer receives Seller's offer, of the price Buyer is willing to pay for such Optional Energy. By 0900 EPT of the Day Seller receives Buyer's bid price, Seller shall notify Buyer of Seller's decision, in its sole discretion, either to sell or to refuse to sell such specified block of Optional Energy to Buyer at Buyer's bid price. Buyer may elect, in its sole discretion, to offer Seller a price for any other Energy not already being sold to Buyer as Put Energy or Optional Energy. All communications with respect to transactions in Put Energy and Optional Energy shall be by telephone. Buyer and Seller hereby consent and agree to the recording of all such telephone communications.

5.4 PURPA Rights. As of the Commencement Date and for the duration of the Term, Seller hereby waives any right to require Buyer to purchase the capacity of and/or the associated Energy from any Committed Facility pursuant to PURPA or on any basis other than as set forth in this Agreement. Seller shall not be required to maintain any Committed Facility as a Qualifying Facility under PURPA.

5.5 Adjustments Related to the Orange Facility. The Parties acknowledge that 23 MW of capacity and associated energy of the Orange Facility is committed by Orange LP to TECO under the terms of the TECO Contract, and that Seller contemplates that the TECO Contract will be amended and restated, and assigned to an Affiliate of Seller, in the course of the Project Restructuring. In the event that such amendment, restatement and assignment of the TECO Contract does not occur on or before the Commencement Date, then, until but not after the expiration, termination or restructuring, in accordance with terms acceptable to Seller, of the TECO Contract, whichever first occurs, this Agreement shall be subject to the following adjustments: (i) the applicable Call Energy as specified with respect to the Orange Facility in Exhibit G hereto, shall be that which is labeled “No TECO Restructuring”, (ii) the amount of Energy the Buyer shall be entitled to Schedule pursuant to Section 5.2.1 shall be reduced by 24 MWh per hour; (iii) for the purposes of Article 6.3 of this Agreement, the annual variable “U” used in the calculation of the Make Whole Credit with respect to the Orange Facility, as shown in Table 3 of Exhibit H hereof shall be 217,250 MWh; (iv) in no event shall Buyer be required to purchase more than 160 MWh per hour pursuant to Seller’s sales options under Article 5.3 hereof; (v) the applicable Aggregate Capacity Charge for purposes of calculating the Monthly Capacity Payment shall be that which is labeled “Aggregate Capacity Charge Pursuant to Adjustment as Provided by Article 5.5” as shown in Exhibit A hereto; (vi) the Orange Contract

shall be deemed to be amended without consequence or liability accruing to Orange LP therefor, to the extent that (1) the Committed Capacity, as defined in the Orange Contract, shall be 24 MW only, and (2) Buyer shall be deemed to consent to the assignment of the Orange Contract by Seller to an Affiliate of Seller, provided that such Affiliate shall own or control the Orange Facility; (vii) the Parties shall impose such other amendments upon this Agreement as may be required to conform the rights and obligations of the parties to the Orange Contract to those of the Buyer and Seller under this Agreement without conflict among or breach of either agreement, and (viii) such other modifications and amendments to this Agreement as the Parties hereto may agree.

ARTICLE 6

BILLING AND COLLECTIONS

6.1 Capacity and Energy Billing and Payment. On and after the Commencement Date, Buyer shall pay Seller each Month the Monthly Capacity Payment and the Monthly Energy Payment in each case reduced to the extent of any set offs available to Buyer pursuant to the terms of this Agreement for amounts due and payable by Seller to Buyer. Buyer shall pay the net amount of the Monthly Capacity Payment due Seller, without invoice from Seller, by wire transfer on or before the first (1st) Business Day of the month following the Month during and for which the obligation to pay such net Monthly Capacity Payment was incurred. The Parties represent and agree that the Aggregate Capacity Charge for Committed Capacity as set out in Exhibit A hereto, represent discounts of [REDACTED], [REDACTED] and [REDACTED] from the capacity prices provided for under the Orange Contract, the Royster Contract and the Mulberry Contract, respectively, prior to their amendment and restatement by this Agreement, and that such amendment and restatement also

eliminates all obligations of the Parties with respect to the Capacity Accounts as defined by, provided for and accrued under the Contracts.

6.2 Taxes. The price paid to Seller by Buyer for capacity and Energy hereunder includes full reimbursement for, and Seller is liable for and shall pay or cause to be paid, or reimburse Buyer if Buyer shall have paid, all Taxes accruing as to the Delivered Energy sold hereunder prior to the Delivery Point ("Seller's Taxes"). Seller shall indemnify, defend and hold Buyer harmless from any Claims for Seller's Taxes. The price paid by Buyer to Seller for capacity and Energy hereunder, do not include reimbursement for, and the Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller shall have paid, all Taxes accruing as to the Delivered Energy sold hereunder after the Delivery Point, including, without limitation, Taxes imposed by a taxing authority with jurisdiction over Buyer ("Buyer's Taxes"). Buyer shall indemnify, defend and hold Seller harmless from any claims for Buyer's Taxes. Both Parties shall use reasonable efforts to administer this Agreement and implement the provisions hereof in accordance with their intent to minimize Taxes. Upon request, a Party shall provide a certificate of exemption or other evidence of exemption from any Tax, and each Party agrees to use its reasonable efforts to cooperate with the other in obtaining an exemption and minimizing Taxes payable.

6.3 Make Whole Credit. As part of Buyer's consideration for the execution and delivery of this Agreement, Buyer shall be entitled to receive from Seller each year as a "Make Whole Credit", an amount calculated in accordance with the methodology and assumptions set forth in Exhibit H. The Make Whole Credit shall be payable as follows:

(a) Seller shall pay Buyer monthly installments, in an amount set forth on Exhibit H, to be credited toward the Make Whole Credit for each year; provided that such payments shall

be netted and set off by Buyer against the Monthly Capacity Payments due Seller. The monthly installments payable during each calendar year after the calendar year in which the Commencement Date occurs shall be adjusted by the Annual Adjustment Factor;

(b) On or before January 30 of each calendar year, Buyer shall calculate the difference, if any, between (i) the monthly installment payments made by Seller toward the Make Whole Credit (or properly set off by Buyer against Monthly Capacity Payments, as the case may be), during the prior calendar year, and (ii) the Make Whole Credit owed by Seller to Buyer for such calendar year, calculated in accordance with the methodology set forth in Exhibit H, and shall give notice of such calculation to Seller, together with details of all assumptions, calculations and information supporting such determination. If such calculation reflects that the aggregate amount of the monthly installment payments credited toward the Make Whole Credit was greater than the Make Whole Credit owed Buyer for such prior calendar year, Buyer shall pay the difference to Seller on or before the February 20 next following the calculation of the Make Whole Credit. If such calculation reflects that the aggregate amount of monthly installment payments credited toward the Make Whole Credit was less than the Make Whole Credit owed by Seller for such prior calendar year, Buyer shall set off the amounts against the next Capacity Payments due Seller, following the calculation of the Make Whole Credit. Seller shall have the right to audit each calculation of the Make Whole Credit for any calendar year, and Buyer shall provide Seller with reasonable access to all of Buyer's relevant books and records for such purpose.

6.4 Payment Statements. As promptly as practicable after the end of each Month, Buyer shall provide to Seller all data available to Buyer with respect to the quantities of Delivered Energy received by Buyer from Seller or for Seller's account during such preceding Month. A payment invoice for amounts due Seller and Buyer hereunder for Delivered Energy sold to Buyer

during the preceding Month shall be prepared by Seller and delivered to Buyer no later than the twentieth (20th) Day of each Month, or if such 20th Day is not a Business Day, not later than the first Business Day after the 20th Day. Each Monthly invoice shall contain a statement explaining in reasonable detail how the invoice was calculated. The invoice shall include amounts due and payable to Seller for the Monthly Energy Payment and any Put Energy and Optional Energy, if any, purchased and received by Buyer during the prior Month, and shall reflect any set offs available to Buyer under the provisions of this Agreement, as calculated by Seller. Buyer's payment for the amount due Seller for the Monthly Energy Payment and any Put Energy and Optional Energy, or Seller's payment for the amount due Buyer, as the case may be, pursuant to a Monthly invoice shall be made in immediately available funds through electronic transfer within ten (10) Days after receipt of the invoice. A Monthly invoice not timely paid shall accrue interest daily at the Interest Rate. If the invoice is an estimated bill, any adjustments required shall be made in the ensuing Month's invoice.

6.5 Billing Disputes and Final Accounting.

6.5.1 If Buyer questions or contests the amount or propriety of any Monthly invoice submitted by Seller, Buyer shall by the due date for such Monthly invoice provide Seller with written notice of the amount of such Monthly invoice that Buyer claims not to be due and payable, setting forth in reasonable detail the basis therefor, to which Seller shall respond in writing either agreeing with Buyer's claim or disputing the same. All invoiced amounts shall be paid by Buyer (or by Seller if Buyer's setoffs are greater than the amount due Seller) in accordance with Article 6.4, without regard to any question or contest raised by Buyer with respect to a Monthly invoice.

6.5.2 In the event that Buyer questions or contests the correctness of any Monthly

invoice, Seller shall promptly review the questioned charge or credit and shall notify Buyer of any error in Seller's determination of amounts owed by Buyer or to Buyer and the amount required to be paid in respect of such redetermination. Not later than the twentieth (20th) Business Day after notice by Seller as to the amount of any adjustment to a questioned or contested Monthly invoice, the Party owing any amount as a result of such adjustment shall make payment to the other Party in immediately available funds. If Buyer disagrees with Seller's resolution of a question or contest, then Buyer may submit the matter to senior officers of Buyer and Seller to discuss the matter and attempt to resolve the dispute. Buyer shall have until the end of one (1) year after its receipt of any Monthly invoice to question or contest the correctness of such invoice, after which all such Monthly invoices shall be conclusively deemed accurate and correct.

6.6 Interest. All overpayments or underpayments shall be refunded by the Party receiving such overpayment, or paid by the Party making such underpayment, to the other Party, with interest at the Interest Rate from the date that such overpayment was received or such underpayment was made, to the date that such overpayment or underpayment is corrected.

6.7 Billing and Payment Records. Each Party will, until the end of one (1) year after its receipt of any invoice, make available to the other Party upon written request, and each Party may audit, such books and records of the other Party as are reasonably necessary to calculate the Monthly Capacity Payments and the Monthly Energy Payments shown on such invoice and thereby to verify the accuracy of the amounts billed by Buyer and the information provided by Buyer to Seller. The Parties shall maintain their respective books and records in accordance with generally accepted accounting principles applicable from time to time.

ARTICLE 7

OPERATION AND MAINTENANCE

7.1 Operation and Maintenance. Seller shall manage, control, operate and maintain all of the Committed Facilities in a manner consistent with Good Utility Practices, or shall cause the Committed Facilities to be so managed, controlled, operated and maintained. Seller shall coordinate the scheduling of maintenance outages of the Committed Facilities with Buyer and shall make reasonable efforts to give Buyer at least thirty (30) days advance written notice of such scheduled outage.

ARTICLE 8

MEASUREMENT

8.1 Meters. Seller shall secure all necessary authority for Buyer to install, operate and maintain, at Buyer's election and sole expense, appropriate equipment for metering and measuring the quantities of Energy, if any, generated by each Committed Facility. Whether or not Buyer has installed such equipment, Seller shall, consistent with Good Utility Practice, provide Buyer with all usual and customary documentation of the quantities of Delivered Energy from each source from which Seller obtains such Energy, and payments due Seller shall be calculated on the basis of such documentation unless otherwise agreed by the Parties. The Parties acknowledge that the Delivered Energy will be measured at the Delivery Point.

8.2 Calibration of Metering Equipment. The Parties shall periodically calibrate and adjust, if necessary, all metering and measurement devices used for purposes of measuring and metering the output of the Mulberry Facility and the Orange Facility, so long as such facilities are Committed Facilities. Either Party may require that such equipment be tested for accuracy at any

reasonable time, by giving a minimum of seven (7) Days prior written notice of such a test. If such equipment proves to be accurate within a two percent (2%) tolerance level, the expense of such test shall be borne by the requesting party, otherwise the non-requesting Party shall pay such expense. If any metering or measurement device is found to be inaccurate, and the period of inaccurate registry can be determined, the readings of such device shall be corrected, and the corrected readings shall be used as the basis for redetermining the deliveries of Energy during the period of inaccurate registry. When the period of inaccurate registry cannot be determined, such period shall be assumed to be the period between the time it is discovered that such device is inaccurate and the correction of such device, plus the last half of the period between such discovery and the most recent prior calibration, testing or proving of such metering or measurement device (but in no event for a period longer than one (1) year). In any case, metering or measurement devices which have been found to be registering inaccurately shall be adjusted promptly to register correctly, or shall be replaced with accurate equipment.

ARTICLE 9

FORCE MAJEURE

9.1 Definition of a Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances beyond the reasonable control of the affected Party and not caused by such Party's negligence that renders such Party unable to perform its obligations under this Agreement, in whole or in part, including, without limitation, natural disasters, lightning, flood, ice, earthquake, windstorm, eruption, fire, explosion, invasion, civil war, insurrection, sabotage, vandalism, military or usurped power, act of God, act of a public enemy, lockouts, blockages, riots, war, or action of

a court or public authority, and accidents to or failure of equipment or machinery comprising all or a part of a Committed Facility; provided, that accidents to or failure of equipment or machinery comprising all or a part of a facility, other than a Committed Facility, that is a source from which Seller obtains Energy for sale to Buyer hereunder shall not be deemed a Force Majeure Event with respect to, nor excuse Seller's obligation to sell and deliver, Call Energy as demanded by Buyer in accordance with this Agreement.

9.2 No Breach or Liability. Either Party shall be excused from performance (other than its accrued obligations to make payments of money) and shall not be construed to be in default in respect of any obligation hereunder, from and after the date and time that the affected Party notifies the other Party of the occurrence of a Force Majeure Event, for so long as (but in no event longer than thirty (30) days) and to the extent that such Force Majeure Event renders the affected Party unable to perform its obligations to the other Party, in whole or in part; provided, however, that no Force Majeure Event affecting Seller's ability to perform its obligations hereunder to make capacity available to Buyer shall excuse Buyer's obligation to make Monthly Capacity Payments to Seller, or after thirty (30) days excuse Seller's obligation to make Call Energy available to Buyer in response to Buyer's demand therefore in accordance with the provisions of Article 5.2.1.

9.3 Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

9.3.1 Give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event;

9.3.2 Use its best efforts to remedy its inability to perform as soon as practicable;

provided, however, that the settlement of strikes, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty; and

9.3.3 When it is able to resume performance of its obligations under this Agreement, give the other Party written notice to that effect.

9.4 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated Term.

ARTICLE 10

EVENTS OF DEFAULT

10.1 Events of Default. An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

10.1.1 The failure by the Defaulting Party to make, when due, any payment required hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Defaulting Party by the other Party; or

10.1.2 Any representation or warranty made by the Defaulting Party herein shall prove to have been false or misleading in any material respect when made; or

10.1.3 The failure by the Defaulting Party to perform any material covenant set forth in this Agreement (other than as described in Article 10.1.1 above) that is not excused by a Force Majeure Event, including, without limitation, the failure of Seller to deliver any amount of Call Energy demanded by Buyer in accordance with the applicable terms and provisions of this Agreement (a "Failure to Deliver Event of Default"); or

10.1.4 The Defaulting Party (i) is dissolved (other than pursuant to a consolidation or merger), (ii) becomes insolvent or is unable to pay its debts as they become due, (iii) makes an assignment, arrangement or composition with or for the benefit of its creditors, (iv) institutes or has instituted against it a proceeding seeking judgment of insolvency, bankruptcy or any other relief under bankruptcy or insolvency law or other similar law affecting creditors' rights, or in the event of a petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for its winding up or liquidation, or (B) is not dismissed, discharged, stayed or restrained, in each case within sixty (60) days after the institution or presentation thereof, (v) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a merger or consolidation), (vi) seeks to become subject to the appointment of a receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within sixty (60) days after any such event, (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events described in clauses (i) through (vii) inclusive, or takes any action in furtherance of or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts or events.

10.2 Rights Under Agreement. Except as otherwise expressly provided herein, each Party reserves to itself all rights, counterclaims and defenses that it is or may be entitled to, at law or in equity arising out of or in connection with any Event of Default, except that the Parties make no such reservations in the circumstances described by Articles 10.3.1, 10.3.2 or 10.3.4.

10.3 Remedies with Respect to Failure to Deliver Events of Default. With respect to Failure to Deliver Events of Default, the Parties agree that the following remedies shall be applicable:

10.3.1 If Buyer, acting in its sole discretion consistent with Good Utility Practice, curtails service to its Native Load customers during the period affected by a Failure to Deliver Event of Default, and if Energy produced by the Committed Facilities is not being sold to any other Person during such Failure to Deliver Event of Default, then Seller shall pay to Buyer as liquidated damages an amount equal to the product of (i) \$2,500.00 (in 1999 dollars) plus Buyer's highest cost purchase of Energy (in dollars per MWh) in each hour during the period of such Failure to Deliver Event of Default, multiplied by (ii) the number of MWh in each hour that Seller failed to sell and deliver to Buyer in response to Buyer's demand, during the continuance of such Failure to Deliver Event of Default. The amount (\$2500.00) set forth in this Article 10.3.1 (i) above shall be adjusted for each calendar year by the Annual Adjustment Factor for such calendar year.

10.3.2. If Buyer, acting in its sole discretion consistent with Good Utility Practice, does not curtail deliveries of Energy to its firm Native Load customers during a Failure to Deliver Event of Default, and if Energy produced by a Committed Facility is not being sold to any Person during such Failure to Deliver Event of Default, then Seller shall pay to Buyer as liquidated damages an amount equal to the product of (i) Buyer's highest cost purchase of Energy (in dollars per MWh) in each hour during the period of such Failure to Deliver Event of Default, minus the Strike Price, multiplied by (ii) the number of MWh in each hour, that Seller failed to sell and deliver to Buyer in response to Buyer's demand during the continuance of such Failure to Deliver Event of Default.

10.3.3 The total amount of liquidated damages for which Seller shall be liable under Articles 10.3.1 and 10.3.2 during the Term shall be [REDACTED] (the "Liquidated Damages Cap"). The Liquidated Damages Cap shall be increased by interest on the amount of [REDACTED] (the "Interest Adder") calculated at the Interest Rate compounded annually from the Commencement Date until the first to occur of (i) the exhaustion of the sum of the Liquidated Damages Cap plus the Interest Adder by payments of liquidated damages to Buyer pursuant to Article 10.3.1 and Article 10.3.2, or (ii) the expiration of the Term. On or before the Commencement Date, Seller shall pay to Buyer the non-refundable sum of [REDACTED] in cash (the "Initial Liquidated Damages Payment") toward the Liquidated Damages Cap. Until the aggregate amount of liquidated damages paid and payable under Article 10.3.1 and Article 10.3.2 first exceeds [REDACTED], Seller shall pay fifty percent (50%) of each amount of liquidated damages becoming payable to Buyer under Article 10.3.1 and Article 10.3.2, whether in cash, or by reduction of amounts due Seller for Monthly Capacity Payments and/or Monthly Energy Payments, and Buyer shall credit the other fifty percent (50%) of each such amount of liquidated damages under Article 10.3.1 and Article 10.3.2 against the Initial Liquidated Damages Payment. After the aggregate amount of liquidated damages paid and payable under Article 10.3.1 and Article 10.3.2 first exceeds [REDACTED] Seller shall pay all amounts of liquidated damages thereafter becoming due under Article 10.3.1 and Article 10.3.2, to Buyer in cash, or by reduction of amounts due Seller for Monthly Capacity Payments and/or Monthly Energy Payments, until the Liquidated Damages Cap plus the Interest Adder is exhausted. Liquidated damages shall be due and payable upon invoice issued by Buyer to Seller in accordance with Article 6.4. The Liquidated Damages Cap shall not be applicable to limit liquidated damages for which Seller is liable under any provision of this Agreement other than Articles 10.3.1 and 10.3.2.

10.3.4 If a Failure to Deliver Event of Default occurs during any period when Energy produced by a Committed Facility is being sold to any Person other than Buyer, then Seller shall pay to Buyer as liquidated damages an amount equal to \$2,500.00 (in 1999 dollars) per MWh plus Buyer's highest cost purchase of Energy (in dollars per MWh) in each hour during the period of such Failure to Deliver Event of Default, less the Strike Price, all multiplied by two, and the product thereof; multiplied by the number of MWh that Seller failed to sell and deliver to Buyer in response to Buyer's demand during the continuance of such Failure to Deliver Event of Default. The amount (\$2,500.00) set forth in the immediate preceding sentence shall be adjusted each calendar year by the Annual Adjustment Factor. The amount of liquidated damages to which Buyer shall be entitled pursuant to this Article 10.3.4 shall not be subject to the Liquidated Damages Cap or any other limitation, and payments of liquidated damages by Seller to Buyer pursuant to this Article 10.3.4 shall not reduce the Liquidated Damages Cap.

10.3.5 For purposes of calculating liquidated damages under this Article 10.3, the number of MWh that Seller fails to sell and deliver in a particular Failure to Deliver Event of Default shall be reduced by the number of MWh which were not available from the Orange Facility solely in the event and to the extent that all of the following occur: (i) the Orange Facility is a Committed Facility at the time of such Failure to Deliver; (ii) the Orange Facility is not Running at the time Buyer Schedules Energy for delivery; (iii) Seller is unable to obtain sufficient natural gas supply or natural gas transportation service over the Florida Gas Transmission Company system to enable the Running of the Orange Facility to supply Scheduled Energy; and (iv) Buyer is unable or unwilling to provide natural gas supply or natural gas transportation service over the Florida Gas Transmission Company system sufficient to enable the Running of the Orange Facility to supply Scheduled Energy. If Buyer provides natural gas supply or natural gas

transportation service to Seller under the circumstances described in (i) through (iii) above, Seller shall not be excused from delivering Scheduled Energy from the Orange Facility and Buyer shall be entitled to set off the delivered cost of such natural gas or of such transportation service, not to exceed the cost for natural gas or transportation service which is generally available to customers of the Florida Gas Transmission Company system at such time, against the amounts due to be paid by Buyer to Seller for Energy sold and delivered from the Orange Facility in response to Buyer's demand.

10.3.6 For purposes of this Article 10.3, Buyer's highest cost for purchased Energy shall be the weighted average cost, expressed in dollars per MWh, of Buyer's highest cost purchase, including but not limited to emergency purchases, during the period affected by a particular Failure to Deliver Event of Default, for a quantity of Energy equal to the quantity of Energy which Seller failed to sell and deliver to Buyer in response to Buyer's demand during such Failure to Deliver Event of Default.

10.3.7 For any Failure to Deliver Event of Default for which liquidated damages is herein provided, such remedy or measure of damages shall be the sole and exclusive remedy therefore, the obligor's liability shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived; provided, however, that if, during a Failure to Deliver Event of Default, Seller sells Energy from Committed Capacity to any Person other than Buyer in lieu of the delivery of Scheduled Call Energy to Buyer, in willful or reckless disregard of Seller's obligations to Buyer, such Failure to Deliver Event of Default shall be for all purposes a material breach of Seller's obligations to Buyer under this Agreement, and Buyer shall have no right to receive liquidated damages on account of such material breach. Buyer may take whatever action and shall have such remedies for and in respect of such material breach as

are available to it, at law or in equity.

10.4 Remedies for Other Events of Default. With respect to any Event of Default that is not a Failure to Deliver Event of Default for which liquidated damages are expressly provided under Article 10.3, the Defaulting Party shall be liable to the other Party for any and all costs, expenses, damages and losses suffered or incurred by such other Party in connection with such Event of Default. In no event, however, shall a Party be liable for consequential, incidental or indirect damages in tort, contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages shall be without regard to the cause or causes thereof, including, without limitation, the negligence of any Party, whether such negligence is sole, joint, concurrent, active or passive.

10.5 Nature of Liquidated Damages. To the extent that any damages required to be paid hereunder are liquidated, the Parties acknowledge that such damages are in lieu of actual damages and are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages. Each Party hereby waives any defense as to the validity of any liquidated damages stated in this Agreement as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

ARTICLE 11

INDEMNIFICATION AND LIMITATION OF LIABILITY

11.1 Indemnity. Each Party (the "Indemnifying Party") expressly agrees to indemnify and defend against and hold the other Party (the "Indemnified Party"), and its partners, shareholders, members, directors, officers, employees and agents (including, but not limited to, Affiliates and contractors and their employees), harmless from all Claims in any manner directly or indirectly

connected with or growing out of the generation, transmission or distribution of Delivered Energy on its own side of the Delivery Point, or arising out of the Indemnifying Party's breach of this Agreement, or out of a tort committed by the Indemnifying Party (including Claims based on negligence and strict liability), except as to any such Claim that arises from the gross negligence or willful misconduct of the Party seeking indemnification.

11.2 Indemnification Procedures. Each Indemnified Party shall promptly notify the Indemnifying Party of any Claim in respect of which the Indemnified Party is entitled to be indemnified under this Article 11. Such notice shall be given as soon as is reasonably practicable after the Indemnified Party becomes aware of each Claim; provided, however, that failure to give prompt notice shall not adversely affect the right of a Party for indemnification hereunder except to the extent the Indemnifying Party's ability to contest any Claim by any third party is materially adversely affected. The Indemnifying Party shall have the right, but not the obligation, at its expense, to contest, defend, litigate and settle, and to control the contest, defense, litigation and/or settlement of, any Claim by any third party alleged or asserted against any Indemnified Party arising out of any matter in respect of which such Indemnified Party is entitled to be indemnified hereunder. The Indemnifying Party shall promptly notify such Indemnified Party of its intention to exercise such right set forth in the immediately preceding sentence and shall reimburse the Indemnified Party for the reasonable costs and expenses paid or incurred by it prior to the assumption of such contest, defense or litigation by the Indemnifying Party. If the Indemnifying Party exercises such right and the Indemnified Party notifies the Indemnifying Party that it desires to retain separate counsel in order to participate in or proceed independently with such contest, defense or litigation, such Indemnified Party may do so at its own expense. If the Indemnifying Party fails to exercise its rights set forth in the third sentence of this Article 11.2, then the

Indemnifying Party will reimburse the Indemnified Party for its reasonable costs and expenses incurred in connection with the contest, defense or litigation of such Claim. No Indemnified Party shall settle or compromise any Claim in respect of which the Indemnified Party is entitled to be indemnified under this Article 11 without the prior written consent of the Indemnifying Party; provided, however, that such consent shall not be unreasonably withheld by the Indemnifying Party.

11.3 No Liability to Third Party. Nothing herein shall create, or be interpreted as creating, any standard of care with reference to any duty or liability to any person not a Party hereto.

ARTICLE 12

ASSIGNMENT

12.1 Assignment and Assumption of Obligations. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, that either Party may, without the consent of the other Party and without relieving itself from liability hereunder, (i) transfer, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer or assign this Agreement to an Affiliate or to any Person or entity succeeding to all or substantially all of the assets of such Party; provided, further, that in each such case, this Agreement shall be binding upon any such assignee, such assignee shall agree in writing to be bound by the terms and conditions hereof and each of the representations of a Party shall be true with respect to such Party's assignee as of the effective date of such assignment.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Amendments. This Agreement may be amended only by a written instrument duly executed by each of Buyer and Seller.

13.2 Binding Effect. This Agreement and any extension shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

13.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

13.4 Notices. Any notice, request, demand, statement, or payment provided for in this Agreement shall be confirmed in writing and shall be made as specified below; provided, however, that notices of interruption and scheduling communications may be provided orally, effective immediately and upon request, confirmed in writing.

Unless otherwise acknowledged earlier by the Party, a notice sent by facsimile transmission or other electronic means or by same-day delivery service shall be deemed to have been received by the close of the Business Day on which such notice was transmitted; provided, however, that if said notice is not transmitted or delivered prior to 4:00 p.m. EPT of a Business Day, it shall be deemed delivered on the next Business Day. Notice sent by express courier service or overnight mail service shall be deemed to have been received by the close of the Business Day on which such notice was delivered to the other Party's premises. The addresses of the Parties are as follows:

To Seller:

Notices and Correspondence :

El Paso Power Services
Attention: Larry Kellerman
350 Indiana Street, Suite 300
Golden, CO 80401
(303) 278-3400

Payments:

Mike Craig
Director of Energy Accounting
El Paso Energy
1001 Louisiana Street
Houston, TX 77002
Fax: 713-420-2108, phone 713-420-4864

To Buyer:

Notices and Correspondence:

Florida Power Corporation
Attention: Manager, Purchased Power Resources
263 13th Avenue South
St. Petersburg, Florida 33701
(727) 826-4323

Invoices and Payments:

Florida Power Corporation
Attention: Manager, Back Office
263 13th Avenue South
St. Petersburg, Florida 33701
(727) 826-4109

or to such other address as may be designated by the Parties.

13.5 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties concerning the purchase and sale of the Committed Capacity

and related Energy, and supersedes any other previous agreements concerning the Committed Capacity and related Energy between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

13.6 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida, with venue in Pinellas County, Florida, except that conflicts-of-law principles shall not be invoked in order to apply the laws of any other state or jurisdiction.

13.7 Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions; nor shall it in any way affect the validity of this Agreement or any part hereof, or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing that expressly states that the Parties hereby agree to a waiver or modification as applicable, and is signed by both Parties.

13.8 Headings. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties, and shall not be used to aid in any manner in the construction of this Agreement.

13.9 No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement. This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty, obligation, or liability to any entity not a Party to this Agreement.

13.10 Agency. This Agreement shall not be interpreted or construed to create an

association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

13.11 Severability. If any term or provision of this Agreement or the application thereof to any Person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.12 Confidentiality. The Parties acknowledge that this Agreement may contain Proprietary Information, and each Party agrees that, for a period of two (2) years after the Effective Date hereof, it will not, without the written consent of the other Party or as otherwise provided herein, knowingly disclose to any third party (other than to Affiliates of the disclosing Party or consultants and advisors to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party or Lenders to such Affiliates or the disclosing Party), the Proprietary Information of the other Party, except to the extent that disclosure is required by law, or by a court or by an administrative agency having jurisdiction over the disclosing.

Party. Buyer acknowledges that Seller has, via separate communication, specified certain elements, provisions, prices and terms of this Agreement as Proprietary Information for purposes of this Article 13.12.

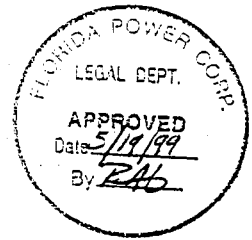
13.13 Winding Up Arrangements. Any final monies or other charges due and owing by

a Party to the other Party shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds due to either Party shall be made, within sixty (60) Days of the expiration of the Term. Any imbalances in accounts or deliveries shall be corrected to zero within thirty (30) Days of the expiration of the Term.

13.14 Preparation of Agreement. The Parties stipulate and agree that this Agreement shall be deemed for all purposes as having been prepared through the joint effort of the Parties, and shall not be construed against one Party or the other as a result of the preparation, submittal or other event of drafting, negotiation or execution hereof.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

FLORIDA POWER CORPORATION



By: Joseph H. Richard
Title:

EL PASO POWER SERVICES COMPANY

By: Larry McCall
Title: President

**EXHIBIT A TO MASTER AGREEMENT
COMMITTED CAPACITY, AGGREGATE COMMITTED CAPACITY AND AGGREGATE CAPACITY CHARGE**

CONTRACT	MULBERRY	ROYSTER	ORANGE				
TERM	08/08/2024	08/09/2009	12/31/2025				
CAPACITY MW	79.2	30.8	74	Aggregate Committed Capacity	Aggregate Capacity Charge	Aggregate Committed Capacity Pursuant to Adjustment as Provided by Article 5.5	Aggregate Capacity Charge Pursuant to Adjustment as Provided by Article 5.5
CAPACITY CHARGES	\$/kW-mo	\$/kW-mo	\$/kW-mo	MW	\$/kW-mo	MW	\$/kW-mo
1999							
2000							
2001							
2002							
2003							
2004							
2005							
2006							
2007							
2008							
2009 –through 8/10/2009							
8/10/2009 through 12/31/2009					Redacted		
2010							
2011							
2012							
2013							
2014							

2015
2016
2017
2018
2019
2020
2021
2022
2023
2024 through
8/8/2024
8/9/2024
through
12/31/2024
2025

Redacted

The sole purpose for reporting the individual capacity charges associated with each contract is for the operative understanding of computing the Aggregate Capacity Charges.

**EXHIBIT B TO MASTER AGREEMENT
DELIVERY POINTS**

The Delivery Point(s) for all Energy shall include, without limitation, the interconnection of each of the Orange Facility and Mulberry Facility with the Buyer's transmission system, and shall also be within Buyer's control area at any point or points of delivery between Buyer and other utilities or units or pools (should one or more pools be developed in Buyer's control area), at any interface mutually agreed upon between Buyer and Seller, but excluding (i) Buyer's interface with the City of Tallahassee, and (ii) Buyer's interface with Southern Company.

**EXHIBIT C TO MASTER AGREEMENT
CAPACITY TEST PROCEDURE**

A Capacity Test shall require that the Committed Facility being tested, while operated in compliance with all applicable operating permits, has maintained an hourly kW output, as metered at the Delivery Point for Energy from such facility, equal to or greater than the aggregate of all firm capacity sales commitments of such Committed Facility for an eight (8) hour period between the hours ending 0800 and 2300 EPT on two (2) consecutive days; provided that such periods are reasonably reflective of the daily operational hours of the Committed Facility. A Capacity Test is to be performed either in the January-February time period or the July-August time period. The months during which the Capacity Test for each Committed Facility shall be performed shall be selected by the Buyer by written notice to Seller no later than the first day of November prior to each calendar year during the Term applicable to such Committed Facility.

**EXHIBIT D TO MASTER AGREEMENT
SELLER'S REQUIRED AND UNOBTAINED REGULATORY AUTHORIZATIONS**

(TO COME)

**EXHIBIT E TO MASTER AGREEMENT
BUYER'S REQUIRED AND UNOBTAINED REGULATORY AUTHORIZATIONS**

(TO COME)

EXHIBIT F TO MASTER AGREEMENT
FORM OF OPINION OF COUNSEL

FLORIDA POWER CORPORATION LETTERHEAD

Date

El Paso Power Services Company
350 Indiana Street, Suite 300
Golden, Colorado 80401

Ladies and Gentlemen:

I am Vice President and General Counsel of Florida Power Corporation, a Florida corporation ("Florida Power"), and render the opinions expressed below in connection with that certain Master Agreement to Amend and Restate Contracts for the Purchase of Firm Capacity and Energy dated as of _____, 1999 (the "Master Contract"), by and between Florida Power and El Paso, Orange LP and Polk LP, which affects the restructuring (the "Transaction") of the obligations of Florida Power to purchase and pay for, and the obligations of El Paso, Orange LP and Polk LP to sell and make available Energy and Capacity to Florida Power, under and pursuant to the Contracts. Terms defined in the Master Contract and not otherwise defined in this opinion letter are used herein as defined in the Master Contract.

In rendering the opinions expressed below, I have examined executed copies of the Master Contract, the _____ and the _____ (collectively the "Transaction Documents"), the Articles of Incorporation of Florida Power, the Bylaws of Florida Power, the resolutions of the board of directors of Florida Power approving the execution and delivery by Florida Power of the Transaction Documents, and such other documents and materials as I deem necessary or appropriate in order to express such opinions.

In my examination, I have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to me as originals and the conformity with authentic original documents submitted to me as copies. When relevant facts were not independently established, I have relied upon representations made in or pursuant to the Transaction Documents and other information provided by representatives of Florida Power. I have also assumed that all of the terms and conditions of or relating to, the Transaction are correctly and completely embodied in the Transaction Documents.

In rendering the opinions expressed below, I have assumed, with respect to all documents referred to in this opinion letter, that:

- (i) such documents have been duly authorized by, have been duly executed and delivered by, and constitute legal, valid, binding and enforceable obligations of El Paso, Orange LP and/or Polk LP, as applicable;
- (ii) all signatories to such documents acting on behalf of any of El Paso, Orange LP and Polk LP have been duly authorized with respect to the execution and delivery thereof; and
- (iii) each of El Paso, Orange LP and Polk LP is duly organized and validly existing and has the power and authority (corporate or other) to execute and deliver, and perform the obligations provided for in and pursuant to, such documents.

Based on and subject to the foregoing, and subject also to the comments and qualifications set forth below, and having considered such questions of law as I have deemed necessary as a basis for the opinions expressed below, I am of the opinion that:

1. Florida Power is a corporation validly existing and in good standing under the laws of the State of Florida;
2. Florida Power has the requisite corporate power and authority to execute and deliver the Transaction Documents and to consummate the transactions contemplated thereby;
3. The execution and delivery by Florida Power of the Transaction Documents and the consummation of the transactions contemplated thereby have been duly authorized by all necessary action of the board of directors of Florida Power; and
4. Each Transaction Document has been duly executed and delivered by a duly authorized officer of Florida Power and constitutes the valid, legal and binding obligation of Florida Power, enforceable in accordance with its terms (except insofar as the enforceability of such document may be limited by bankruptcy, insolvency, similar laws affecting the rights of creditors generally, the general principles of equity and the requirements of good faith and fair dealing, as to which I express no opinion).

The foregoing opinions are subject to the following comments and qualifications: The enforceability of provisions in the Transaction Documents to the effect that terms may not be waived or modified except in writing may be limited under circumstances.

I am a member of the State Bar of Florida and the foregoing opinions are limited to the laws of the State of Florida and the federal laws of the United States of America. No opinions beyond those stated herein may be implied or inferred.

This opinion letter speaks only as of the date hereof; I undertake no obligation to advise you of facts which may hereafter come to my attention or changes in the law occurring after the date of this opinion letter which might affect the opinions expressed herein.

This opinion letter is provided to you by me in my capacity as General Counsel of Florida Power solely in connection with the Transaction. This opinion letter may not be relied upon by you for any other purpose or relied upon or furnished to any other individual or entity without, in each instance, my prior written consent.

Very truly yours,

Kenneth E. Armstrong

EXHIBIT G TO MASTER AGREEMENT
 QUANTITIES OF CALL/PUT ENERGY

Term	Committed Facility	Condition	
Commencement Date through 8/08/2009	Mulberry	All	a)
			b)
8/9/2009 through 8/08/2024	Mulberry	All	a)
			b)
Commencement Date through 12/31/2015	Orange	TECO Restructures and TECO Delivery	a)
			b)
Commencement Date through 12/31/2015	Orange	TECO Restructures and no TECO Delivery	a)
			b)
Commencement Date through TECO Contract termination	Orange	No TECO Restructuring	a)
			b)
TECO contract termination through 12/31/2025	Orange	All	a)
			b)

Redacted

EXHIBIT H TO MASTER
AGREEMENT
MAKE WHOLE CREDIT

Make Whole Credit Calculation Methodology

The Make Whole Credit is based upon (i) the difference between the As Available Energy Price and the QF Energy Rate, subject to certain limitations described below, and (ii) an agreed upon number of hours (Y) and an agreed upon number of annual MWH (U). The Make Whole Credit shall be paid monthly as an estimate and corrected annually as needed, and shall be calculated with respect to each of the Contracts as follows:

For each of the Y hours of the year (as Y is hereinafter defined with respect to each of the Contracts) in which the As Available Energy Price were greatest, the QF Energy Rate shall be subtracted from the lesser of the As Available Energy Price or the Strike Price. The differences shall be summed and the sum divided by the number of hours considered. If the result (the "Credit Difference") is equal to or greater than Z (as Z is hereinafter defined with respect to each of the Contracts), the Credit Difference with respect to each Contract shall be deemed to be Z. If the Credit Difference is equal to or less than W (as W is hereinafter defined with respect to each of the Contracts), the Credit Difference with respect to that Contract shall be deemed to be W. If the Credit Difference is greater than W and less than Z, the Credit Difference is the calculated value.

The Credit Difference with respect to each Contract shall be multiplied by the value of U (as U is hereinafter defined with respect to each Contract). The results of each multiplication shall be summed, and such sum shall be the annual Make Whole Credit to be paid by Seller to Buyer. The initial values of Y (expressed in hours), Z and W (each expressed in 1999 dollars per MWh), and U (expressed in MWh) are as set forth with respect to the Contracts in Tables 1 - 3 below; provided, that the values of Z and W shall be adjusted annually by application of the Annual Adjustment Factor, which shall have cumulative effect upon the values of Z and W .

Table 1 Mulberry Energy Make Whole Terms

VARIABLE	TERM	VALUE
Y	Number of Hours	[REDACTED]
Z	Maximum Difference \$/MWh	\$18.00
W	Minimum Difference \$/MWh	[REDACTED]
U	MWh	[REDACTED]

Table 2 Royster Energy Make Whole Terms

VARIABLE	TERM	VALUE
Y	Number of Hours	[REDACTED]
Z	Maximum Difference \$/MWh	\$18.00
W	Minimum Difference \$/MWh	[REDACTED]
U	MWh	[REDACTED]

Table 3 Orange Energy Make Whole Terms

VARIABLE	TERM	VALUE
Y	Number of Hours	[REDACTED]
Z	Maximum Difference \$/MWh	\$15.00
W	Minimum Difference \$/MWh	[REDACTED]
U	MWh	[REDACTED]

Estimated Monthly Make Whole Credit Payments

CONTRACT	MWh	\$/MWh	INSTALLMENT
Mulberry	[REDACTED]	\$11.50	[REDACTED]
Royster	[REDACTED]	\$11.50	[REDACTED]
Orange	[REDACTED]	\$10.00	[REDACTED]

Example of Make Whole Credit Calculation (Mulberry Contract)

- Step One: Identify [REDACTED] hours of the Year (or fewer, as reduced in proportion to the number of days of a Year in which this Agreement was in effect for only a portion of the Year, compared to 365 days, or 366 days in a Leap Year) in which the As-Available Energy Prices were greatest (during the portion of the Year that this Agreement was in effect);
- Step Two: If the As-Available Energy price for any hour identified in Step One is greater than the corresponding Strike Price for that year, the Strike Price shall be used in lieu of the As-Available Energy Price for such hour (the "Applicable Price");
- Step Three: Determine corresponding QF Energy Rate for each hour identified in Step One;
- Step Four: For each hour identified in Step One, subtract the QF Energy Rate from the corresponding As-Available Energy Price or the Applicable Price, as the case may be. The result for each hour is the "Hourly Make Whole Difference".
- Step Five: Compute the average of the Hourly Make Whole Differences. The result is the "Average Make Whole Rate".
- Step Six: If the Average Make Whole Rate is greater than or equal to \$18.00/MWh (for 1999) then the "Make Whole Amount" shall be equal to \$18.00/MWh (for 1999).
- Step Seven: If the Average Make Whole Rate is less than or equal to [REDACTED] MWh (for 1999), then the Make Whole Amount shall be equal to [REDACTED] MWh (for 1999).
- Step Eight: If the Average Make Whole Rate is less than \$18.00/MWh (for 1999) and greater than [REDACTED] MWh (for 1999), then the Make Whole Amount shall be equal to the Average Make Whole Rate.
- Step Nine: Multiply the Make Whole Amount (in dollars per MWh) by [REDACTED] MWh. The result shall be the Make Whole Credit.

EXHIBIT I TO MASTER AGREEMENT
QF Energy Rate Calculation

“*QF Energy Rate*” means the FPC firm rate expressed in \$/MWh (rounded to two decimal places) and calculated as follows: $\frac{(A) \times (B) \times (C) \times (D)}{E}$

A = the monthly inventory charge out cost of coal burned at FPC’s Crystal River 1&2 units in dollars per MMBTU (rounded to three decimal places) calculated for the prior month. FPC shall provide this information to Seller on a monthly basis consistent with the cost data contained in FPC’s A-4 Data Report [filed by FPC with the FPSC], or relevant successor report.

Variable	Definition	Mulberry Contract	Royster Contract	Orange Contract
B =	Heat rate in Btu/kWh	9,830	9,830	9,652
C =	Delivery voltage adjustment	1.022	1.022	1.022
D =	Conversion factor	0.8	0.8	1.0
E =	Conversion factor	1,000	1,000	1,000

Example Calculation: For purposes of illustration, the calculation of the QF Energy Rate for the month of December 1998 for the Mulberry Facility would be as follows:

A = the November 1998 Crystal River coal cost of 1.662 (per the FPC A-4 Data Report)

B = 9,830

C = 1.022

D = .8

E = 1,000

$$(1.662) \times (9,830) \times (1.022) \times (.8) / 1,000 = \$13.3575$$

The QF Energy Rate for December 1998 would be \$13.36.

**EXHIBIT I TO MASTER AGREEMENT
QF Energy Rate Calculation**

"QF Energy Rate" means the FPC firm rate expressed in \$/MWh (rounded to two decimal places) and calculated as follows: $(A) \times (B) \times (C) \times (D)$

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B =	Heat rate in Btu/kWh	9,830	9,830	9,652
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Example Calculation: For purposes of illustration, the calculation of the QF Energy Rate for the month of December 1998 for the Mulberry Facility would be as follows:

A = the November 1998 Crystal River coal cost of 1.662 (per the FPC A-4 Data Report)

B = 9,830

C = 1.022

D = .8

E = 1,000

$$(1.662) \times (9,830) \times (1.022) \times (.8) / 1,000 = \$13.3575$$

The QF Energy Rate for December 1998 would be \$13.36.

**EXHIBIT J TO MASTER AGREEMENT
ARBITRATION PROCEDURE FOR DETERMINING A NEW AS AVAILABLE ENERGY PRICE**

Within thirty (30) days after the last exchange of lists of price reference lists, when the Parties have been unable to determine an As Available Energy Price pursuant to the procedures for such purpose set out in the Agreement, each Party shall serve on the other Party a notice (a "Decision Notice") setting forth the price reference (including the pricing point, and the Delivery Point) that such Party wishes the Arbitrator to choose as the As Available Energy Price. Within ten (10) days after the date on which Decision Notices are due, the Parties shall attend and participate in a meeting (the "Meeting") at a mutually agreeable time and place to discuss fully the contents of the respective Decision Notices, and based on such discussion to determine whether either or both Parties wish to modify their Decision Notice in any way. Any such modification shall be fully disclosed by the Party wishing to make it to the other Party at the Meeting, so that when a Party finalizes its Decision Notice it shall do so with full knowledge of the content of the other Party's Decision Notice. The finalization of the Decision Notices shall occur at the Meeting unless by mutual agreement the Parties agree to participate in one or more additional Meetings for such purpose.

It is the intent of the Parties that the Arbitration be conducted by an individual who is knowledgeable and experienced in the pricing and sale of electric energy at wholesale (the "Arbitrator"). In the event that the Parties are unable to agree upon an Arbitrator within ten (10) days after the Meeting, then, unless otherwise agreed, each Party shall prepare a list of two (2) individuals to serve as Arbitrator, and shall submit such list to the senior U.S. District Judge for the Middle District of Florida, who, in his or her sole discretion, shall select an Arbitrator from the persons named on the two lists. Upon selection of the Arbitrator, such Arbitrator shall within ninety (90) days after his or her selection choose a price reference which shall become the As Available Energy Price. The Arbitrator shall be required to adopt the price reference set forth in one of the Parties' final Decision Notice, and shall have no power whatsoever to reach any other decision. The Arbitrator shall adopt the Decision Notice that in his or her judgement more accurately and fairly reflects the price of firm Energy delivered in Buyer's control area.

The Arbitrator shall charge his or her costs and fees equally to each Party.

The Parties agree that once a matter is submitted to and determined by arbitration in accordance with this procedure, the decision of the Arbitrator shall be final and binding on the Parties, and that neither Party shall seek to have the matter of the As Available Energy Price determined in any matter other than pursuant to the above described Arbitration; provided, that nothing herein shall prevent the Parties from mutually agreeing on an As Available Energy Price an any time during or after the completion of the Arbitration.

EXHIBIT 2

**CALCULATION OF COST SAVINGS TO
FLORIDA POWER CUSTOMERS FROM
DISCOUNTED CAPACITY PAYMENTS
IN RESTRUCTURING AGREEMENT
(redacted copy)**

Capacity Payment Comparison Orange/Mulberry/Royster Restructuring (Based on 184 MW)

Year	Existing Contract Capacity Payments	Restructured Contract Capacity Payments	Ratepayer Savings	Composite Reduction
1999 Sept-Dec	17,751,952			
2000	55,689,611			
2001	58,170,782			
2002	60,845,370			
2003	63,634,196			
2004	66,557,000			
2005	69,780,623			
2006	73,313,420			
2007	77,022,183			
2008	80,922,096			
2009	80,111,495			
2010	73,850,660			
2011	77,573,433			
2012	78,654,157			
2013	82,668,837			
2014	86,881,805			
2015	91,313,672			
2016	95,982,442			
2017	100,870,111			
2018	106,024,729			
2019	111,408,553			
2020	117,098,810			
2021	123,075,759			
2022	129,342,008			
2023	135,953,304			
2024	115,703,929			
2025	64,440,748			

