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**ORIGINAL**

January 8, 2001

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RECORDS AND REPORTING

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No.: 001748-EC

Dear Ms. Bayo:

On behalf of Seminole Electric Cooperative, Inc., enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Seminole Electric Cooperative, Inc.'s Request for Confidential Classification and Motion for Permanent Protective Order.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Sincerely,



Joseph A. McGlothlin

JAM/bae  
Enclosure

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD, GIBSON, HENNING, JAN-8 001748

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Petition for Determination of  
Need for the Osprey Energy Center in  
Polk County by Seminole Electric  
Cooperative, Inc. and Calpine  
Construction Finance Company, L.P.**

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**DOCKET NO. 001748-EC**

**FILED: January 8, 2001**

**Seminole Electric Cooperative, Inc.'s Request for Confidential Classification and Motion  
for Permanent Protective Order**

Seminole Electric Cooperative, Inc. (Seminole), with the agreement and consent of Calpine Construction Finance, L.P. and Calpine Energy Services, L.P. (collectively, Calpine), pursuant to section 366.093, Florida Statutes, and rule 25-22.006(4), Florida Administrative Code, requests specified confidential treatment and the entry of a Protective Order regarding the Power Purchase Agreement (PPA) executed by Seminole and Calpine on December 14, 2000, which is being filed with the Commission in the above-referenced docket in support of the Petition for Determination of Need for an Electrical Power Plant filed on December 4, 2000.<sup>1</sup> In support of this request, Seminole states as follows:

1. The parties to the Calpine-Seminole PPA are Calpine Energy Services, L.P. and Seminole. Calpine Energy Services, L.P. and Seminole executed the Calpine-Seminole PPA on December 14, 2000. The Calpine-Seminole PPA provides for the purchase by Seminole and the sale by Calpine of firm electric capacity and energy from Calpine's Osprey Energy Center (Osprey Project). Consistent with the representations in the petition for determination of need for the Osprey Project, the Calpine-Seminole PPA constitutes evidence of Calpine's commitment of the output of

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<sup>1</sup>The PPA should be substituted for the Memorandum of Understanding (MOU) between the parties which is provided as Appendix I-C to Volume 1 of the Exhibits to the Joint Petition.

DOCUMENT NUMBER-DATE

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FILED: 01/08/01

the Osprey Project to Seminole, a Florida load-serving utility.

2. The Calpine-Seminole PPA contains sensitive information relating to Calpine's and Seminole's competitive interests, the disclosure of which would impair Calpine's and Seminole's competitive business position. The Calpine-Seminole PPA is the subject of discovery requests propounded by the Commission Staff, and accordingly, Seminole is seeking a protective order in addition to classification of the PPA as a specified confidential document.

3. Specifically, the Calpine-Seminole PPA contains sensitive, confidential information relating to pricing and other terms and conditions of the contractual arrangements between Calpine and Seminole; the disclosure of any of this information would impair (a) Seminole's ability to contract with other parties for goods or services on favorable terms, (b) the competitive business of Calpine, or (c) both. The disclosure of the confidential, competitively sensitive information in the Calpine-Seminole PPA to any of the following classes of entities would impair Seminole's interests, or Calpine's interests, or both: (a) entities who are actual or potential competitors of Calpine or Seminole, (b) entities who are actual or potential vendors to either Seminole or Calpine, and (c) entities who would be actual or potential customers of Calpine's affiliates in Florida or elsewhere. Disclosure of this information to anyone outside the transaction would impair Calpine's or Seminole's ability, or the ability of both, to enter into similar contracts on reasonable business terms. As such, the information constitutes proprietary confidential business information entitled to protection from disclosure pursuant to sections 366.093(1),(3)(e), Florida Statutes, and rule 25-22.006, Florida Administrative Code.

4. The following documents explaining this request are attached hereto and incorporated herein by reference:

- Exhibit A: A justification "matrix" supporting Seminole's request for Specified Confidential treatment of the highlighted information in Exhibit B, identified on a page-by-page, line-by-line basis.
- Exhibit B: The Calpine-Seminole PPA with the identified confidential information that is the subject of this Request for Specified Confidential Treatment redacted. (Two copies).
- Exhibit C: The Calpine-Seminole PPA, with the confidential information subject to this request highlighted in transparent ink. This document has been placed in a separate envelope marked "Confidential" and should be given confidential treatment by the Commission. There is only one copy of this Exhibit C, which is attached to the original filing copy hereof.

5. Pursuant to rule 25-22.006(4)(d), Florida Administrative Code, Seminole affirms that the material identified as confidential in Exhibit B hereto is intended to be and is treated by Seminole and Calpine as confidential. The undersigned has conferred with Calpine and is authorized to represent that Calpine also affirms that the subject material identified as confidential in Exhibit B is intended to be and is treated by Calpine as confidential.

6. Seminole, with the agreement and consent of Calpine, requests that the information identified as confidential in Exhibit B be designated "Specified Confidential" by the Commission for the reasons set forth in Exhibit A. In addition, pursuant to section 366.093(4), Florida Statutes, Seminole, again with the agreement and consent of Calpine, further requests that such designation be for a period of 18 months and that the Calpine-Seminole PPA be returned to Seminole, upon the closure of this docket.

7. Seminole's basis for the requested protective order is grounded upon relevant provisions of Florida Statutes and case law. Section 90.506, Florida Statutes, creates a privilege for confidential business information. Section 90.506, Florida Statutes, provides:

A person has a privilege to refuse to disclose, and to prevent other

persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice. When the court directs disclosure, it shall take the protective measures that the interests of the holder of the privilege, the interests of the parties, and the furtherance of justice require. The privilege may be claimed by the person or the person's agent or employee.

Section 90.506, Florida Statutes, is implemented by Rule 1.280(c)(7), Florida Rules of Civil Procedure, which authorizes a tribunal to order "that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way."

8. Section 366.093(2), Florida Statutes, similarly authorizes the Commission to issue appropriate protective orders. Section 366.093(2), Florida Statutes, is implemented by Commission rule 25-22.006(6), Florida Administrative Code. Rule 25-22.006(6)(a) provides:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

9. Rule 1.280(c)(7), Florida Rules of Civil Procedure, authorizes a party seeking to prevent disclosure of confidential trade secret information to move for a protective order. See, Eastern Cement Co. v. Dep't of Env'tl. Reg., 512 So.2d 264 (Fla. 1st DCA 1987). Once the moving party demonstrates that the material at issue is in fact a confidential trade secret, the burden shifts to the opposing party to show a "reasonable necessity for the information." Id. at 266; see also, Scientific Games, Inc. v. Dittler Bros., Inc., 586 So.2d 1128, 1131 (Fla. 1st DCA 1991); Goodyear

Tire and Rubber Co. v. Cooley, 359 So.2d 1200 (Fla. 1st DCA 1978). If there is no such “reasonable necessity” the confidential information will not be subject to discovery. Eastern Cement, 512 So.2d at 266. In this instance, neither Seminole nor Calpine objects to the disclosure of the subject confidential information to the Commission Staff assigned to this docket or to the Commissioners, but rather to the disclosure of the information to anyone other than the Commissioners or the Commission Staff assigned to this docket.

10. The information requested by the Commission Staff is precisely the type of information the provisions of sections 90.506 and 366.093, Florida Statutes, and rule 1.280(c)(7), Florida Rules of Civil Procedure, were designed to protect. See, Inrecon v. Village Homes at Countrywalk, 644 So.2d 103 (Fla. 3d DCA 1994) (confidential information about business operations is a protected trade secret). Specifically, the subject information is competitively sensitive information the disclosure of which would impair the competitive business interests of either Seminole or Calpine or both. Disclosure would impair the competitive business interests of Seminole in negotiating contracts for needed power supply resources for its Member cooperatives and the member-consumers served by Seminole’s Members. Disclosure would similarly impair the competitive interests of Calpine in negotiating power sales agreements with other utility purchasers. Accordingly, Seminole and Calpine request the entry of a protective order prohibiting the disclosure of the subject information to anyone other than the Commissioners and the Commission Staff assigned to this proceeding, and also protecting the subject information from disclosure or use in the hearing other than as provided for in Commission Order No. 00-02413-PCO-EC, the Order Establishing Procedure for this docket.

**WHEREFORE**, Seminole, with the agreement and consent of Calpine, requests that the

information contained in the Calpine-Seminole PPA and identified as confidential in Exhibit B hereto be accorded specified confidential treatment and that the Commission enter an order protecting the information delineated herein from disclosure to anyone other than the Commissioners and the Commission Staff assigned to this docket and also protecting the subject information from use in the hearing except as specified in Order No. 00-2413-PCO-EC.

---

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Davidson, Decker, Kaufman, Arnold  
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Attorneys for Seminole Electric  
Cooperative, Inc.

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Attorneys for Seminole Electric  
Cooperative, Inc.



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by hand delivery(\*) or U.S. Mail, this 8<sup>th</sup> day of January 2001, to the following:

(\*) Robert V. Elias  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Boulevard  
Gunter Building  
Tallahassee, FL 32399-0850

(\*) R. Scheffel Wright  
Landers & Parsons  
310 West College Avenue  
Tallahassee, Florida 32301

  
Joseph A. McGlothlin

**EXHIBIT A**

**Osprey Project Need Determination  
Docket No. 001748-EC**

**Request for Specified Confidential Treatment**

**Calpine-Seminole PPA**

<b><u>Page</u></b>	<b><u>Line(s)</u></b>	<b><u>Justification</u></b>
2	17, 29, 37	The redacted information divulges the existence of certain negotiated terms of the Parties' PPA. These terms were the subject of sensitive negotiations and the disclosure of the existence of such terms would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their willingness to negotiate such terms. This, in turn, would impair both Parties' ability to negotiate successfully in the future.
3	38	The redacted information divulges the existence of certain negotiated terms of the Parties' PPA. These terms were the subject of sensitive negotiations and the disclosure of the existence of such terms would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their willingness to negotiate such terms. This, in turn, would impair both Parties' ability to negotiate successfully in the future.
5	5, 18, 19-20	The redacted information represents negotiated, competitively sensitive terms of the Parties' PPA which was the subject of sensitive negotiations. The disclosure of this information would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their agreement on this subject. This, in turn, would impair both Parties' ability to negotiate similar terms in future contract negotiations.
8	3-4, 6-9	The redacted information represents negotiated,

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| 9  | 4-7, 18-22  | The redacted information represents negotiated, competitively sensitive terms of the Parties' PPA which was the subject of sensitive negotiations. The disclosure of this information would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their agreement on this subject. This, in turn, would impair both Parties' ability to negotiate similar terms in future contract negotiations.  |
| 10 | 10          | The redacted information represents a negotiated, competitively sensitive term of the Parties' PPA which was the subject of sensitive negotiations. The disclosure of this information would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their agreement on this subject. This, in turn, would impair both Parties' ability to negotiate similar terms in future contract negotiations. |
| 11 | 12          | The redacted information represents a negotiated, competitively sensitive term of the Parties' PPA which was the subject of sensitive negotiations. The disclosure of this information would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their agreement on this subject. This, in turn, would impair both Parties' ability to negotiate similar terms in future contract negotiations. |
| 12 | 8-10, 19-37 | The redacted information represents negotiated, competitively sensitive terms of the Parties' agreement relating to certain rights and obligations under the PPA  |

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13            1-20, 22-41  
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14            17-18, 23-30,  
              32-38

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18	5-7, 9-24, 26, 28-29, 30 - 40	
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19            6-28, 30-31            The redacted information represents negotiated, competitively sensitive terms of the Parties' agreement relating to pricing under the PPA and which was the subject of sensitive negotiations. The disclosure of this information would impair both Parties' competitive interests by informing their actual and potential competitors, vendors, and customers of their agreement on this subject. This, in turn, would impair both Parties' ability to negotiate similar terms in future contract negotiations.

20            9, 15-16, 29-35,  
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21            1-34, 39-42

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30            1, 18-25

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31            10-12, 24-28

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**CONFIDENTIAL**

**POWER PURCHASE AGREEMENT**

**By and Between**

**CALPINE ENERGY SERVICES L.P.**

**and**

**SEMINOLE ELECTRIC COOPERATIVE, INC.**

**Dated as of December 14, 2000**

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INTRODUCTION

THIS POWER PURCHASE AGREEMENT (the "Agreement") is entered into as of December 14, 2000 (the "Agreement Date"), by and between CALPINE ENERGY SERVICES, L.P., a Delaware limited partnership ("Seller"), and SEMINOLE ELECTRIC COOPERATIVE, INC. ("Buyer"), a Florida corporation. Buyer and Seller may be individually referred to herein as a "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, Buyer is a cooperative corporation organized and existing pursuant to the laws of the State of Florida; and

WHEREAS, Buyer provides wholesale electric capacity and energy to its distribution cooperative members' electric utility systems, which in turn provide that electric capacity and energy to their retail member-consumers within Florida; and

WHEREAS, Seller is a Delaware limited partnership engaged in the business of marketing wholesale electric capacity and energy in the United States; and

WHEREAS, Calpine Construction Finance Company, L.P. or its successor ("CCFC"), an affiliate of Seller, is presently developing the Osprey Energy Center, a natural gas fired, combined cycle power plant in Auburndale, Polk County, Florida (the "Plant"), which through a contractual arrangement Seller provides fuel to and receives all of the electric capacity and energy from the Plant for sale at wholesale in Florida; and

WHEREAS, Buyer needs additional firm generating capacity and energy resources to meet the future needs of its distribution cooperative members' electric utility systems; and

WHEREAS, pursuant to this Agreement the full output of the Plant will be committed on a firm (i.e., unit contingent) basis, as provided herein, to Buyer for the benefit of Buyer, Buyer's member systems, and the retail member-consumers of Buyer's member systems.

NOW, THEREFORE, in view of the foregoing premises and in consideration of the mutual benefits to be gained by Buyer and Seller, the Parties hereby agree to the following:

Section 1. Definitions

In addition to terms defined in the Introduction and Recitals, the following terms shall have the meanings set forth below.

"Affiliate" means any Person that directly or indirectly Controls or is Controlled by or is under common Control with, the Person in question.

"Agreement" has the meaning set forth in the Introduction.

"Agreement Date" has the meaning set forth in the Introduction.

"Alternate Delivery Point" means a point of delivery for Requested Energy, which has been mutually agreed to by the Parties, other than the Delivery

"Ancillary Services" means those services necessary to support the transmission of Energy from resources to loads as defined in Tampa Electric Company's or its successor's open access transmission tariff, as amended from time to time.

"Applicable Law" has the meaning set forth in the Section 14.

"Attributable Start" has the meaning set for in Section 4.4.

"Breaching Party" has the meaning set forth in Subsection 21.3.

"Business Day or "Business Daily" means any day which is not a Saturday, Sunday or a day which is a NERC holiday .

"Buyer" has the meaning set forth in the Introduction.

"Buyer's Natural Gas Transportation Entitlement" means the firm transportation allotment to which Buyer is entitled on the applicable Interstate Pipeline as defined by the following formula:

[Firm Capacity/534]

"Capacity Charge" has the meaning set forth in Subsection 4.1.

"CCFC" has the meaning set forth in the Recitals.

"Claims" means all claims or actions threatened or filed by a person other than a Party, and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorney's fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Commencement Date" has the meaning set forth in Subsection 3.1.

"Commercial Operation Date" means the date on which Seller provides notice to Buyer



that the Plant, in accordance with Good Utility Practice, is capable of providing Firm Capacity and Energy for sale to Buyer at the Delivery Point pursuant to the terms and conditions of this Agreement, which date shall be no earlier than the date on which the Plant successfully completes the Commercial Operation Tests.

“Commercial Operation Tests” means: a twenty-four (24) hour demonstration test during which the Plant must operate during each hour at an output of a minimum of 350 MW at ISO Conditions. The output of the Plant shall be corrected to ISO Conditions through the utilization of the OEMs’ standard performance correction curves, and by measuring the ambient conditions of temperature, relative humidity and atmospheric pressure at the Plant site. Such test shall not be deemed successful unless the twenty-four (24) hour demonstration test shows that the Plant can operate meeting all Permit requirements. Seller shall provide Buyer ten (10) Business Days prior written notification of the Commercial Operation Test, and Buyer shall have the right to be present at such testing. Buyer shall pay its avoided cost for test Energy produced during the demonstration and performance tests, if after reasonable notice by Seller to Buyer, Buyer agrees to take and purchase the test Energy from Seller. Otherwise, Seller may at its own discretion sell all of such test Energy to a third party.

“Confidential Information” has the meaning set forth in Section 11.

“Continuation” has the meaning set forth in Section 16.

“Contract Price” means collectively, the Capacity Charges, Requested Energy Charges, and Start-Up Charges, as set forth in Section 4.

“Contract Year” means (i) for the first Contract Year, the period commencing on the Commencement Date and ending on May 31, 2005, and (ii) for each 12-month period thereafter through the Termination Date, the Contract Year shall be each 12-month period ending May 31, unless the Termination Date is prior to a May 31, in which case the last Contract Year shall end on such Termination Date.

“Controls or Controlled” means the possession, directly or indirectly, through one or more intermediaries, of the following: (a) in the case of a corporation, 50% or more of the outstanding voting securities thereof; (b) in the case of a limited liability company, partnership, limited partnership or venture, the right to 50% or more of the distributions therefrom (including liquidating distributions); (c) in the case of a trust or estate, 50% or more of the beneficial interest therein; (d) in the case of any other entity, 50% or more of the economic or beneficial interest therein; or (e) in the case of any entity, the power or authority, through the ownership of voting securities, by contract or otherwise, to direct the management, activities or policies of the entity.

“Costs” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace this Agreement and attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement.

"CPI-U" means the U.S. Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor

"Defaulting Party" has the meaning set forth in Subsection 21.1.

"Delivered Energy" means, pursuant to a Request for Energy, the amount of (i) metered Requested Energy expressed in MWh produced at the Plant and delivered at the Delivery Point, and (ii) Requested Energy provided as Substitute Energy and Replacement Energy pursuant to Subsections 3.3 and 3.4, respectively. Delivered Energy in any hour shall not exceed the Request for Energy for such hour. Seller shall be responsible for all costs related to generation scheduling imbalances related to the provision of Delivered Energy.

"Delivery Point" means the high side of the transformer at the interconnection between the Plant and Tampa Electric Company's or its successor's transmission system.

"Designated Network Resources" means those generating resources designated by the Buyer and accepted by the transmission provider as eligible to provide Energy to serve Buyer's load.

"Early Termination Date" means any date earlier than May 31, 2020 on which either Party, pursuant to the terms of this Agreement, terminates this Agreement.

"Eastern Standard Time" means the time prevailing in the Eastern United States time zone.

"Energy" means electric energy having characteristics commonly known as three phase alternating current, with a nominal frequency of sixty (60) Hertz, a nominal voltage equivalent to that of Tampa Electric Company's or its successor's transmission system, and measured in KWh or MWh.

"Event of Default" has the meaning set forth in Subsection 21.1.

"FERC" means the Federal Energy Regulatory Commission or its successor.

"Firm Capacity" has the meaning set forth in Subsection 3.1 as may be adjusted pursuant to Subsection 3.5.

"First Call Priority" means (i) as to system purchases, a priority equivalent to native load, and (ii) as to unit contingent purchases, a priority equal to all other firm customers sharing the unit (e.g., deratings will be accomplished on a pro-rata basis between or among all firm customers).

"Force Majeure" has the meaning set forth in Section 13.

"Fuel Charge" has the meaning set forth in Subsection 4.2.

“ <u>Fuel Index Price</u> ” has the meaning set forth in Subsection 4.5.	1
“ <u>Fuel Transportation Charge</u> ” has the meaning set forth in Subsection 4.1.	2
“ <u>Fuel Transportation Price</u> ” means	3
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“ <u>GAAP</u> ” means generally accepted accounting principles.	5
“ <u>Gains</u> ” means,	6
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“ <u>Gas Day</u> ” means the 24 hour period of time as defined in the applicable Interstate Pipeline’s FERC approved transportation tariff as a “day.”	10
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“ <u>Good Utility Practice</u> ” 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 result(s) at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice 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, Applicable Law, Permits, NERC guides, and applicable safety and maintenance codes.	12
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“ <u>High Demand Season</u> ” has the meaning set forth in Subsection 7.1.	22
“ <u>Impaired Capacity</u> ” has the meaning set forth in Subsection 3.4.	23
“ <u>Initial Firm Capacity</u> ” has the meaning set forth in Subsection 4.1.	24
“ <u>Interstate Pipeline</u> ” means Gulfstream Natural Gas System, L.L.C. or such other interstate pipeline which Seller utilizes to transport natural gas to the Plant. or its successor pipeline.	25
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“ <u>ISO Conditions</u> ” means the standard temperature, atmospheric pressure and relative humidity conditions of 59° F, atmospheric pressure at sea level, and 60% relative humidity, as established by International Standards Organization.	28
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“ <u>kW</u> ” means kilowatt.	31
“ <u>kWh</u> ” means kilowatt-hour.	32

"Late Payment Rate" means a per annum rate of interest equal to the Prime Rate plus two percent (2%); provided, the Late Payment Rate shall never exceed the maximum lawful rate permitted by applicable law.

"Losses" shall mean,

"Low Demand Season" has the meaning set forth in Subsection 7.1.

"Minor Maintenance Days" has the meaning set forth in Subsection 6.2.

"MMBtu" means one million British thermal units.

"MW" means a megawatt. One MW is equal to 1,000 kW.

"MWh" means a megawatt-hour. One MWh is equal to 1,000 kWh.

"Negotiation Period" has the meaning set forth in Section 9.

"NERC" means the North American Electric Reliability Council, or its successor.

"Non-Defaulting Party" has the meaning set forth in Subsection 21.1.

"Non-Performing Party" has the meaning set forth in Section 13(A).

"OEM" means the original manufacturer of the Plant's equipment or components thereof.

"Outage" has the meaning set forth in Section 6.

"Party" has the meaning set forth in the Introduction.

"Permit" or "Permits" means the specific governmental permits applicable to the operation of the Plant.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

"Plant" has the meaning set forth in the Recitals, and as further described in Attachment 5.

"Prime Rate" means the prime lending rate as may from time to time be published in the *Wall Street Journal* under "money rates" or a successor heading, provided that if more than one rate is published under such heading, the Prime Rate shall be the average of such rates so published.

"Projection Period" has the meaning set forth in Section 5.

"Replacement Power" has the meaning set forth in Subsection 3.4.

"Request for Energy" means the request by Buyer for the delivery of Energy, including changes thereto, in accordance with the applicable provisions of Section 5.

"Requested Energy" has the meaning set forth in Subsection 3.2.

"Requested Energy Charge" has the meaning set forth in Subsection 4.2.

"Requested Energy Notice Requirements" means the advance notice requirements required to issue a Request for Energy specified in Table A-1 under Subsection 4.1 and Section 5.

"Reserved Firm Capacity" has the meaning set forth in Subsection 3.5.

"RUS" means the Rural Utilities Service.

"Sales Price" has the meaning set forth in Subsection 7.2.

"SCA" has the meaning set forth in Section 9.

"Scheduled Outage" means any reduction or outage of the Plant or a major component thereof, which is necessary, as commercially reasonably determined by Seller, to maintain or repair the Plant in accordance with Good Utility Practice and which has been scheduled in accordance with Subsection 6.2; provided, however, that Scheduled Outage excludes any outage of the Plant as a result of any Unscheduled Outage.

"Seasonal On-Peak Hours" has the meaning set forth in Subsection 7.1.

"Seller" has the meaning set forth in the Introduction.

“Security Coordinator” means the applicable security coordinator authorized by and under the Florida Reliability Coordinating Council or its successor for the Plant.

“Start-Up Charge” means the aggregate of the Start-Up Maintenance Charge and Start-Up Fuel Charge.

“Start-Up Fuel Charge” has the meaning set forth in Subsection 4.4.

“Start-Up Maintenance Charge” has the meaning set forth in Subsection 4.4.

“Substitute Energy” has the meaning set forth in Subsection 3.3.

“Term” has the meaning set forth in Section 2.

“Termination Date” means May 31, 2020, unless this Agreement is terminated earlier in accordance with the provisions of this Agreement, in which case the Termination Date means such earlier date on which this Agreement is terminated.

“Unscheduled Energy” has the meaning set forth in Subsection 3.6.

“Unscheduled Outage” means any reduction or outage of the Plant or a major component thereof, which is necessary, as commercially reasonably determined by Seller, to (i) maintain or repair the Plant in accordance with Good Utility Practice and was not reasonably foreseeable by Seller in time to perform as scheduled or routine maintenance, (ii) prevent significant harm or damage to the Plant, (iii) prevent harm or damage to life or property of others, or (iv) respond to any Force Majeure event; provided, however, that Unscheduled Outage excludes any outage of the Plant as a result of any scheduled or routine maintenance.

“Variable O&M Charge” has the meaning set forth in the in Subsection 4.2.

## Section 2. Duration

This Agreement shall become effective as of the Agreement Date, upon signing by both Parties. This Agreement shall continue in effect through May 31, 2020, unless terminated early pursuant to the terms hereof (the “Term”).

Section 3. Scope

Subsection 3.1 Firm Capacity

Beginning with the later of the Commercial Operation Date of the Plant and June 1, 2004 (“Commencement Date”), for the remainder of the Term, Seller shall provide and Buyer shall purchase the firm (i.e., unit contingent) electric capacity from the Plant at the Delivery Point, in the amounts identified in the monthly firm capacity schedule attached hereto as Attachment 1. Such amounts, as may be increased in accordance with Subsection 3.5, shall be defined as “Firm Capacity”

Subsection 3.2 Requested Energy

For the period between the Commencement Date and the end of the Term, Seller shall be obligated to sell and deliver at the Delivery Point, and Buyer shall be obligated to purchase and receive, the amount of Energy for each hour, requested by Buyer under a Request for Energy, up to the number of MWh that corresponds to the MW of Firm Capacity, subject to a minimum take by Buyer of enough MWs, in combination with Seller’s use of its share of the Plant, so that the Plant is not going to operate at less than 250 MW per hour (“Requested Energy”).

Subsection 3.3 Substitute Energy

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Subsection 3.4 Replacement Power



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**Subsection 3.5 Reserved Firm Capacity**

In addition to the Firm Capacity specified in Subsection 3.1 above, for the period between the Commercial Operation Date and the end of the Term, Seller shall provide Buyer, on a reserved firm capacity option basis, the right to call upon,

up to the difference between (i) Buyer's then committed Firm Capacity amount and (ii) the then-full MW capability of the Plant as adjusted for seasonal variability and projected degradation (such seasonal variability and projected degradation of the then-full MW capability of the Plant to be provided by Seller to Buyer upon written request) (said difference hereinafter being defined as "Reserved Firm Capacity");

If Buyer calls upon all or a portion of the Reserved Firm Capacity as provided for above, such called upon portion of Reserved Firm Capacity shall be considered Firm Capacity.

**Subsection 3.6 Exclusivity**

For the period between the Commencement Date and the end of the Term, the Plant shall be dedicated to providing Firm Capacity and Requested Energy as described herein to Buyer, except during those periods when Seller is performing testing and operational maintenance as

provided herein. Buyer is not obligated to pay the Start-Up Charges associated with the Plant during such testing or maintenance. For the period between the Commencement Date and the end of the Term,

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**Subsection 3.7 Title, Risk of Loss and Indemnity with Respect to Requested Energy**

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As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Requested Energy up to the Delivery Point or Alternate Delivery Point, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Requested Energy from the Delivery Point or Alternate Delivery Point. Seller warrants that the Requested Energy delivered by Seller shall be free and clear of all liens, claims and encumbrances at the Delivery Point or Alternate Delivery Point. Title to and risk of loss related to the Requested Energy shall transfer from Seller to Buyer upon delivery of the Requested Energy at the Delivery Point or Alternate Delivery Point.

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**Section 4. Price**

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**Subsection 4.1 Capacity Charge.**

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The monthly capacity charge ("Capacity Charge") shall be :

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The Capacity Charge shall be applied to the Firm Capacity for the then applicable month for the purpose of invoicing.

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**Subsection 4.2 Requested Energy Charge**

The monthly Requested Energy charge shall be comprised of a fuel charge and a variable O&M charge component ("Requested Energy Charge"). The fuel charge shall be calculated by multiplying the Delivered Energy (MWh) during the applicable billing month by a \$/MWh rate, which rate shall be calculated by

The variable O&M charge shall be calculated by applying a monthly Variable O&M Price per MWh (\$/MWh) to all Delivered Energy purchased.

**Subsection 4.3 Firm Capacity and Requested Energy**

Six months prior to the end of each calendar year of the Term, Buyer

**Subsection 4.4 Start-Up Charges**

If Seller, in response to a Request for Energy is required to start either of the two (2) combustion turbines at the Plant, such start shall be considered a start attributable to Buyer on a whole basis and if Seller, in response to a Request for Energy is required to start either of the two (2) combustion turbines at the Plant, such start shall be considered a start attributable to Buyer

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**Subsection 4.5 Fuel Index Price Procedure**

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**Section 5. Scheduling**

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- (a) Seller shall provide to Buyer through electronic telemetering equipment the allowable operating limits for the Plant. These operating limits will be established through the utilization of the OEMs' standard performance test curves for the ambient conditions existing at the Plant. Buyer shall pay for such telemetering equipment and the installation thereof. Buyer shall pay for a dedicated telephone line capable of supporting said telemetering equipment, the installation thereof and any phone charges associated therewith. The installation of the telemetering equipment and the phone line shall be subject to the review and approval of Seller. Seller shall, at its expense, provide the necessary interconnection to its Plant control system and operate and maintain its Plant control system in a manner consistent with such telemetering.

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- (b) Seller shall provide Buyer the upper and lower operating limits, maximum allowable ramp rate and real and reactive power output for the Plant via an electronic interface made available to Buyer at the common point of interface in the Plant switchyard. The upper and lower operating limits for the Plant will be established in accordance with the OEMs' performance correction curves by measuring the ambient temperature, barometric pressure and humidity at the Plant. This information will be calculated at a minimum of once every five minutes and telemetered to the dispatcher.
- (c) Seller shall provide Buyer an advance projection of expected capacity available and expected operation of the Plant if any, for each hour of the twenty-four (24) hour period for the next Gas Day ("Projection Period") (If the next Gas Day is a weekend or a holiday, such projection shall include the applicable weekend and holiday days). The advance projection shall be communicated on a Business Daily basis before 7:00 a.m. Eastern Prevailing Time, by telephone and confirmed in writing. In addition, if Buyer, on or before 8:00 am Eastern Prevailing Time, requests an advance projection of expected capacity available :  
s, for each hour of the twenty-four (24) hour period for the next Gas Day, Seller shall provide Buyer such information along with any scheduling flexibility limitations by 9:00 am Eastern Prevailing Time by telephone and confirmed in writing on the date of such request.
- (d) Seller shall be entitled to make changes to such before 7:00 a.m. Eastern Prevailing Time advance projection, communicated per Subsection 5(c) above, after 7:00 a.m. Eastern Prevailing Time, subject to Good Utility Practice, the technical limits (Seller shall not use the technical limits as an excuse to not provide Requested Energy between the loads of 250 MW to the Firm Capacity), applicable laws and applicable Permits. Seller shall advise Buyer promptly of any change in condition that materially alters Seller's expectation as to the availability of Firm Capacity from the Plant.
- (e) Seller's advance projection of capacity and changes thereto (including telephone requests and written confirmations) shall clearly specify
- (f) Requests for Energy scheduled shall be communicated by telephone and confirmed by Buyer in writing on a Business Daily basis before 10:00 a.m. Eastern Prevailing Time one Gas Day ahead for each hour of the twenty-four (24) hour period for the next Gas Day.

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(i) For Attributable Starts of the Plant, and for increases or reductions in Requested Energy, Buyer shall be required to, pursuant to its Request for Energy, schedule as Requested Energy the Energy produced to ramp the Plant up or down to the ultimate Requested Energy level.



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**Section 6. Outages**

**Subsection 6.1 Outages**

An "Outage" of the Plant shall mean the unavailability of the Plant, either in whole or in part, caused by either a Scheduled Outage or an Unscheduled Outage.

**Subsection 6.2 Scheduled Outages**

At least sixty (60) days before the beginning of each calendar year, Seller shall provide Buyer with a proposed schedule of Scheduled Outages of the Plant for the next calendar year. Such schedule shall be based on Good Utility Practice and OEMs' recommendations. Seller shall make good faith efforts to coordinate Scheduled Outages with Buyer so as to take account of scheduled outages of one or more of Buyer's generating units. If Buyer reasonably objects to

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the Scheduled Outage schedule proposed by Seller, Buyer shall notify Seller thereof within thirty (30) days after receipt of Seller's proposed schedule, stating in detail the reasons for its objection and a proposed alternative Scheduled Outage schedule. Seller shall consider Buyer's objections and proposed alternative schedule reasonably and in good faith, and shall develop a revised Scheduled Outage schedule. Seller may revise the Scheduled Outage schedule during a calendar year, subject to Buyer's approval, such approval to not be unreasonably withheld taking into consideration Good Utility Practice, OEMs' recommendations, and scheduled outages of one or more of Buyer's generating units. Under no circumstances, however, may a Scheduled Outage take place during the On Peak Hours during the months of \_\_\_\_\_ except, however, Buyer shall provide, with ten (10) Business Days notice to Seller, two (2) consecutive days in each quarter of each calendar year for the purpose of Seller performing minor maintenance ("Minor Maintenance Days"), and said Minor Maintenance Days shall not be deemed as having violated the aforementioned On-Peak Scheduled Outage restriction. During each Scheduled Outage, Seller shall keep Buyer apprised of the status of the Plant and the expected duration of the Scheduled Outage.

**Subsection 6.3 Unscheduled Outages**

Seller shall provide Buyer with a good faith oral best estimate (followed by written confirmation) of the cause, duration and scope of each Unscheduled Outage as soon as practical after the occurrence thereof.

**Section 7. Failure To Provide or Receive Requested Energy**

**Subsection 7.1 Failure of Seller To Provide Requested Energy**

(a) Unless excused by Buyer's failure to perform, Seller shall in the months of \_\_\_\_\_ ("High Demand Season") during the Term maintain an \_\_\_\_\_ Equivalent Availability Factor of \_\_\_\_\_

(b) Unless excused by Buyer's failure to perform, Seller shall in the months of \_\_\_\_\_ ("Low Demand Season") during the Term maintain an \_\_\_\_\_ Equivalent Availability Factor of \_\_\_\_\_

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Subsection 7.2 Failure of Buyer To Receive Requested Energy

If pursuant to a Request for Energy, Seller has incurred an obligation to take and pay for gas supply under this Agreement, unless excused by Force Majeure or Seller's failure to perform, and Buyer fails to receive, or otherwise take the Requested Energy, then:

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**Section 8. Commercial Operation Date Delay**

**Subsection 8.1 Commercial Operation Date Delay**

In the event that the Commercial Operation Date of the Plant shall occur later than the expected in-service date of June 1, 2004, for reasons other than Force Majeure

**Section 9. Termination for Convenience/Conditions Subsequent**

**Subsection 9.1 Conditions Subsequent**

If any of the following conditions subsequent are not satisfied, Buyer may terminate this Agreement for its convenience by written notice to Seller:

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**Section 10. Dispute Resolution**

The dispute resolution procedures set forth in this Section 10 shall govern the resolution of any dispute, controversy or claim arising out of, under, or relating to this Agreement (a "Dispute") unless mutually agreed to by the Parties. The Parties agree to first negotiate in good faith to attempt to resolve any Dispute that arises under this Agreement. In the event that the Parties are unsuccessful in resolving a Dispute through such negotiations, the controversy may be submitted to binding arbitration as provided below.

(A) Good-Faith Negotiations.

The process of "good-faith negotiations" requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to agree on a mutually agreeable resolution of the Dispute. Upon request, each Party shall promptly make available to the other such information, including existing studies and raw data, to the extent related to the Dispute. The related information to be made available must include both studies and raw data that support the position advocated and existing studies and raw data that are related to, but do not support, the position advocated. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such information or any information subject to attorney-client or other privilege under applicable law regarding discovery and production of documents.

Additionally, where one Party possesses the exclusive capability of collecting additional raw data or making additional studies related to the Dispute, it shall accommodate reasonable requests from the other Party requesting such data or studies, subject to limitations on disclosure

of confidential, proprietary or privileged information. The Party requesting such data shall reimburse the other Party for the cost incurred to provide the data. The negotiation process shall include at least two meetings to discuss any Dispute prior to invoking arbitration rights. Unless otherwise mutually agreed, the first meeting shall take place within ten (10) Business Days after either Party has received notice from the other of the desire to commence formal negotiations concerning the Dispute. Unless otherwise mutually agreed, the second meeting shall take place no more than ten (10) Business Days later. In the event a Party refuses to attend a negotiation meeting, either Party may proceed immediately to binding arbitration concerning the Dispute.

(B) Binding Arbitration.

Binding arbitration may be initiated at any time by either Party following Good Faith Negotiations (the "Binding Arbitration Notice"). The Binding Arbitration Notice shall specify the issue(s) to be submitted to binding arbitration, including a summary of the complaining Party's position with respect thereto and a proposed resolution. The Party receiving the Binding Arbitration Notice shall have the right to rebut the issue(s) set forth in the Binding Arbitration Notice. The Parties shall by mutual agreement appoint an arbitrator within thirty (30) days after receipt of the Binding Arbitration Notice giving preferred consideration to former US Circuit Court Judges with training or experience to address the issue in controversy. In the event the Parties are unable to agree upon an arbitrator within such time frame, either Party may request the American Arbitration Association to designate three potential arbitrators, each of whom (1) shall have agreed to arbitrate the Dispute, (2) shall have never been affiliated with either Party or its affiliate(s), (3) shall be qualified by training or experience to address the issue in controversy and (4) shall be available to fulfill the responsibilities of binding arbitration in a timely manner. Each Party shall be provided relevant information related to each potential arbitrator, including applicable fees; and each shall designate its first, second and third choices among the potential arbitrator, with the designated choice receiving four, three and one point(s), respectively. In the event a Party fails to designate an order of choice, each potential arbitrator shall receive one point. The potential arbitrator receiving the most points shall be the arbitrator. Unless otherwise mutually agreed, binding arbitration shall commence two (2) weeks after the selection of the arbitrator. The arbitration shall proceed in accordance with the rules for commercial arbitration established by the American Arbitration Association absent the contrary agreement of the Parties. Any recommendation or decision by the arbitrator shall be binding on the Parties. The fees and expenses of the arbitrator shall be shared equally by the Parties, and each Party shall bear its own costs.

(C) Confidentiality and Non-Admissibility of Statements Made in, and Evidence Specifically Prepared for, Good Faith Negotiations and Binding Arbitration.

Each Party hereby agrees that all statements made in the course of good faith negotiations, as contemplated in Section 10(A), and in binding arbitration, as contemplated in Section 10(B), shall be confidential, and shall not be disclosed to or shared with any third parties (other than the arbitrator, potential arbitrators or any other person whose presence is necessary to facilitate the negotiation and/or binding arbitration process). Furthermore, each Party agrees that any documents or data specifically prepared for use in good faith negotiations and/or binding arbitration shall not be disclosed to any third party, except those parties whose presence is necessary to facilitate the binding arbitration process. Each Party agrees and acknowledges that no statements made in or evidence specifically prepared for good faith negotiations, under

Section 10(A) shall be admissible for any purpose in any subsequent binding arbitration.

### Section 11. Confidentiality of Shared Information

Neither Party shall disclose or otherwise make available to any other party any information of a technical, commercial or business nature regarding the Plant or this Agreement ("Confidential Information") without the prior written consent of the other Party, except that Seller may provide Confidential Information to its lenders. Confidential Information shall not include information which (i) the receiving Party can demonstrate was known to it prior to its disclosure by the other Party, (ii) is, or later becomes, public knowledge without breach of this Agreement by the receiving Party, (iii) was received by the receiving Party from a third party without obligation of confidentiality, or (iv) is developed by the receiving Party independently from Confidential Information received from the other Party, as evidenced by appropriate documentation. In the event that disclosure is required by court order or a Governmental Body, the Party subject to such requirement may disclose Confidential Information to the extent so required, but shall promptly notify the other Party and shall use reasonable efforts to obtain protective orders or similar restraints with respect to such disclosure. Notwithstanding the above, either Party may disclose information required pursuant to regulation by a Governmental Body, on a non-confidential basis if necessary, but only to such extent necessary, in connection with a regulatory filing contemplated hereunder or as otherwise required pursuant to this Agreement.

### Section 12. Buyer's Support for Need Determination of the Plant

Buyer shall provide such support for the petition for determination of need for Seller's Plant as the Parties mutually agree is necessary to facilitate and expedite the permitting and construction of the Plant. Buyer's support shall include becoming a co-applicant for the requisite determination of need for the Plant.

### Section 13. Force Majeure

(A) Force Majeure Excuse. Neither Party shall be responsible or liable for or deemed in breach of this Agreement for any delay or failure in the performance of its respective obligations under this Agreement to the extent such delay or failure is due to circumstances beyond the reasonable control of the Party experiencing such delay or failure (such Party referred to herein as the "Non-Performing Party"), and such circumstances are limited to: (i) types of events such as acts of God, drought, flood, landslide, earthquake, hurricane, tornado, storm, or other such unusually severe weather conditions, fire, lightning, epidemic, war, blockade, riot, civil disturbance, famine, sabotage, explosions, theft, embargo, and injunction, (ii) labor strikes or slowdowns of the Non-Performing Party's employees to the extent that such strikes or slowdowns also affect employers in addition to the Non-Performing Party



Force Majeure: In the event of

1. the Non-Performing Party shall give the other Party notice within forty-eight (48) hours (or as soon as practicable) after learning of the Force Majeure, with details further describing the particulars of the occurrence to be supplied within ten (10) Business Days after learning of the Force Majeure; if such notice is given within the required time period, the Non-Performing Party shall be relieved of its obligations from the commencement of the Force Majeure; if such notice is given later than the required time period, the Non-Performing Party shall be relieved of its obligations from the time of giving such notice; if no notice is given, then the obligations of the Parties shall continue without regard to the Force Majeure event;
2. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably attributable to the Force Majeure;
3. the Non-Performing Party shall use its reasonable commercial efforts to remedy its inability to perform;
4. when the Non-Performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party notice to that effect; and

(B) Non-Force Majeure Examples. Examples of circumstances which the term Force Majeure does not include are as follows: (1) changes in market conditions that affect the cost of a Party's supply of fuel or any alternate supplies of fuel, (2) any negligent or intentional acts, errors or omissions, or failure to comply with any Applicable Law, or any breach of or default under this Agreement, or any other agreement, by the Non-Performing Party or its contractors, (3) the inability to obtain any Permits required to construct and operate the Plant, (4) changes in market conditions that affect the cost of producing or making available Requested Energy or Firm Capacity or any necessary wheeling or transmission arrangements, (5) any damage to or failure of necessary equipment comprising the Plant caused by a defect in design, manufacturing or construction of the Plant or any component thereof, (6) any damage to or failure of the Plant or any component thereof caused by normal wear and tear, and (7) inability of Seller to enter into a firm gas transportation agreement with an Interstate Pipeline. These examples are not intended to be exclusive or exhaustive.

Section 14. Applicable Law

This Agreement shall be made under and shall be governed by and construed in accordance with the laws of the State of Florida, exclusive of any conflict of laws provisions thereof that would apply the laws of another jurisdiction ("Applicable Law"). The Parties agree to submit to the jurisdiction of, and agree that venue for actions hereunder shall be, the U.S. District Court for the Middle District of Florida, if the U.S. District Court has jurisdiction, or, if the U.S. District Court does not have jurisdiction, the Circuit Court of the State of Florida sitting in Hillsborough County, Florida, and the Parties further agree to waive any right they may have to a jury trial with respect thereto.

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Section 16. Reopener

The Parties will engage in good faith negotiations concerning the price, terms and conditions under which this Agreement will continue beyond May 31, 2009 ("Continuation"). If the Continuation is not executed by July 31, 2005, then Seller shall promptly thereafter notify Buyer in writing that unless either Party within sixty (60) days of such written notice from Seller elects to terminate this Agreement for its convenience as of May 31, 2009, that this Agreement shall be deemed continued as written for another sixty (60) month increment, with the exception that all references to "May 31, 2009" in this Section shall be modified to reflect the date sixty (60) months thereafter and all references to "July 31, 2005" in this Section shall be modified to reflect the date forty-six (46) months prior to such sixty (60) months thereafter date. Within sixty (60) days of such notice from Seller, either Party, based on its sole judgment, will be free to terminate this Agreement as of May 31, 2009 for its convenience.

If the Continuation is not executed by July 31, 2005, and neither Party, within sixty (60) days of such notice from Seller terminates this Agreement for its convenience, pursuant to the preceding sentence, then this Agreement shall be deemed continued consistent with the terms hereof. The Parties agree that, unless otherwise agreed to by the Parties, Continuations to this Agreement's term shall be in sixty (60) month increments and that similar reopener provisions to that contained herein shall be part of any such Continuation.

Section 17. Ancillary Services

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Section 18. Metering

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**Subsection 18.1 Meter Reading**

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The Parties will cause meters to be read monthly at times agreed upon. Metering records shall be available at all reasonable times to authorized representatives and employees of the Parties.

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**Subsection 18.2 Billing, Meters and Associated Transformers**

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Seller will, own, operate, and maintain the billing meters and associated transformers at the Delivery Point. Seller's records of data collected from such meters shall be available at all reasonable times to the duly authorized representatives of Buyer.

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**Subsection 18.3 Meter Tests**

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Each meter used hereunder shall, by comparison with accuracy standards as provided for in Subsection 18.4, be tested and calibrated by Seller or its agent at approximate intervals of twelve (12) months or as otherwise agreed to by both Parties. If a meter is found not registering accurately, it shall be restored to an accurate condition or it shall be replaced by an accurate meter. Seller shall provide Buyer prior written notification of any such testing and calibration, and Buyer shall have the right to be present at such testing and calibration.

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**Subsection 18.4 Meter Accuracy**

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Each Party shall have the right to request that a special test of metering equipment be made at any time. If any test made at Buyer's request discloses that the metering equipment tested is registering within one-half percent (+ or - 0.5%) accuracy, Buyer shall bear the expense of the test. The expense of all other such tests shall be borne by Seller.

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**Subsection 18.5 Meter Adjustments**

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The results of all meter tests and calibrations shall be open to examination by Buyer. Any meter tested and found to be within one-half percent (+ or - 0.5%) accuracy shall be considered to be accurate. If, as a result of any test, any meter is found to register not within plus or minus one-half percent accuracy, the readings of such meter previously taken shall be corrected according to the percentage of inaccuracy so found for the most recent one-half of the time period since the date the meter was last tested, and the applicable invoices shall be adjusted to reflect such corrected meter readings; provided, however, that the time period for which the meter readings are adjusted shall not exceed six months. If any metering equipment fails to register, or if the meter registration is erratic, the Energy delivered shall be determined first by

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reference to backup meters, if any. If no backup meters exist, or if the backup meters are not accurate, the Energy delivered shall be determined by mutual agreement of the Parties.

## Section 19. Representation and Warranties

### Subsection 19.1 Representations and Warranties

As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Agreement Date as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except for those which Seller is to obtain as conditions subsequent pursuant to Subsection 9.1 and except for the regulatory approval from the Administrator of the RUS pursuant to Subsection 9.1;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it;

(d) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

(e) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and

(f) there are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that could reasonably be expected to materially adversely affect its ability to perform this Agreement.

### Subsection 19.2 No Other Representations and Warranties

Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement.

Section 20. Additional Covenants

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Subsection 20.1 Remaking of Representations and Warranties

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Each Party covenants that it will cause its respective representations and warranties in Subsection 19.1, except for suits and proceedings under Subsection 19.1(f), to remain true and correct throughout the Term.

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Subsection 20.2 Financial Information

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Each Party shall cause to be delivered to the other Party such financial information as is reasonably requested by the other Party, including annual audited financial statements

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Section 21. Events of Default and Remedies

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Subsection 21.1 Event of Default

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An "Event of Default" shall mean, with respect to a Party alleged to have taken or been affected by any of the actions set forth below in this Subsection 21.1 (the "Defaulting Party"):

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(a) the failure of the Defaulting Party to make, when due, any payment required under this Agreement 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 ("Non-Defaulting Party") and *provided* the payment is not the subject of a good faith dispute as described in the billing and payment provisions under Subsection 22.1; or

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(b) any representation or warranty made by the Defaulting Party in this Agreement shall prove to have been false or misleading in any material respect when made, or ceases to remain true and not cured within thirty (30) days of receipt of written notice from the other Party that such representation or warranty has ceased to be true, during the Term, except for suits and proceedings under Subsection 19.1(f); or

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(c) the failure by the Defaulting Party to perform any material covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Subsection 21.1 as a separate Event of Default or its obligations to deliver or receive Requested Energy, a remedy for good faith failure of which is provided in Subsections 7.1 and 7.2), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Defaulting Party or if the breach or default is not of the type that can be reasonably cured by the payment of money within ten (10) Business Days, within a reasonable period not longer than thirty (30) days so long as (i) the Defaulting Party has commenced to cure the breach or default within such ten (10) Business Day period and thereafter diligently pursues such cure to

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completion, (ii) the Defaulting Party continues to perform all other obligations under this Agreement; or

(d) the Defaulting Party shall:

(i) make an assignment or any general arrangement for the benefit of creditors;

(ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such petition is not withdrawn or dismissed for thirty (30) days after such filing;

(iii) otherwise become bankrupt or insolvent (however evidenced); or

(iv) be unable to pay its debts as they fall due.

Subsection 21.2 Remedies Upon an Event of Default

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**Subsection 21.3 Effects of Regulation**

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In the event that either Party is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by such regulated Party under any provision of this Agreement, such action shall not operate to excuse such regulated Party from performance of any obligation, nor shall such action give rise to any right of such regulated Party to any refund or retroactive adjustment of the Contract Price. Notwithstanding the foregoing, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any law to a greater or different extent than that existing on the Agreement Date and such regulation either (a) renders this Agreement illegal or unenforceable or (b) materially adversely affects the business of a Party, with respect to its financial position or otherwise, then in the case of (a) above, either Party, and in the case of (b) above, only the Party affected (the "Breaching Party"), shall at such time have the right to

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**Section 22. Billing and Payment**

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**Subsection 22.1 Billing and Payment**

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Seller shall render to Buyer (by regular mail, facsimile or other acceptable means pursuant to Subsection 27.8) for each calendar month during the Term a statement setting forth the total Capacity Charges for the month, the Requested Energy Charges for that month, Start-Up Charges for that month, and any other charges due Seller or Buyer. On or before fifteen (15) Business Days after receipt of Seller's statement, Buyer or Seller, as the case may be, shall pay, by wire transfer, the amount set forth on such statement to the other Party. Wire transfers to Seller shall be to Seller's account as Seller directs on its statement. Any payment determined to be due to Buyer by Seller under this Agreement shall be rendered by Seller to Buyer by wire transfer to Buyer's account as specified by Buyer in a notice to Seller. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment at the Late Payment Rate. If either Party, in good faith, disputes a statement, such Party shall provide a written explanation specifying in detail the basis for the dispute and pay the portion of such statement conceded to be correct no later than the due date. If any amount disputed by such Party is determined to be due to the other Party, it shall be paid within fifteen (15) Business Days of such determination, along with interest accrued at the Late Payment Rate until the date paid.

**Subsection 22.2 Netting**

If Buyer and Seller are each required to pay an amount in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, counterclaims and other remedies and defenses consistent with this Section 22 (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement.

**Subsection 22.3 Audit**

Each Party (and its representatives) has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Requested Energy delivered at the Delivery Point or mutually agreed to alternate delivery point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be promptly made and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of \_\_\_\_\_ from the end of the year in which the statement was rendered; and *provided further* that this Subsection 22.3 will survive any termination of this Agreement for a period of \_\_\_\_\_ from the date of such termination for the purpose of such statement and payment objections.

**Section 23. Assignment**

**Subsection 23.1 Assignment**

Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party (and without relieving itself from liability hereunder), (a) transfer, sell, mortgage, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements directly related to the construction of the Plant, including lease back arrangements relating to the Plant; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; *provided, however*, that in each such case any such assignee shall agree in writing to be bound by the terms and conditions hereof. Notwithstanding the above, Buyer's interest in this Agreement may be assigned, transferred, mortgaged or pledged by Buyer without Seller's consent for the purpose of creating a security interest for the benefit of the United States of America, acting through the RUS (and thereafter the RUS, without the approval of Seller or its Lenders, may cause the RUS's interest in this Agreement to be sold, assigned transferred or otherwise disposed of to a third party.). To the extent this Agreement is transferred, sold, mortgaged, pledged, encumbered or



assigned in connection with any financing or other financial arrangements related to the construction of the Plant or to the RUS, the non-assigning Party shall cooperate with the assigning Party by providing reasonably requested documentation (i.e., consents and acknowledgements).

**Subsection 23.2 Binding Effect**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve Seller or Buyer of any of its respective obligations under this Agreement, except those assignments permitted hereunder or consented to by the non-assigning Party.

**Section 24. Indemnification, Limitation of Liability and Insurance**

**Subsection 24.1 Seller Indemnification**

Seller hereby agrees to indemnify, defend and hold harmless Buyer, its agents, servants, partners, officers, directors, trustees, affiliates, and employees of each (collectively, "Buyer's Indemnitees"), from and against any and all losses, claims, damages and liabilities to third parties

arising out of the fraud, negligence or willful misconduct of Seller relating to power delivered under this Agreement before or at such time as the power has been delivered to Buyer at the Delivery Point or mutually agreed to alternative delivery point including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of obligation under this Agreement of Buyer's Indemnitees and provided that Seller shall be promptly notified in writing of any such claim or suit brought against any such Buyer Indemnitee and shall be permitted to manage at its cost and expense reasonably acceptable to Buyer a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such Buyer Indemnitee) of such claim or suit through counsel. The foregoing notwithstanding, Seller's obligations under this Agreement towards any Buyer Indemnitee are conditioned upon such Buyer Indemnitee providing at Seller's expense such cooperation as Seller may reasonably request in connection with its defense or settlement of the claim or suit against such Buyer Indemnitee.

**Subsection 24.2 Buyer's Indemnification**

Buyer hereby agrees to indemnify, defend and hold harmless Seller, its agents, servants, partners, officers, directors, trustees, affiliates and employees of each (collectively, "Seller's Indemnitees"), from and against any and all losses, claims, damages or liabilities to third parties

arising out of the fraud, negligence or willful misconduct of Buyer relating to power delivered under this Agreement after such power has been delivered to Seller at the Delivery Point or mutually agreed to alternative delivery point, including, without limitation, the loss or

claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of obligation under this Agreement of Seller's Indemnitees and provided that Buyer shall be promptly notified in writing of any such claim or suit brought against any such Seller Indemnatee and shall be permitted to manage at its cost and expense reasonably acceptable to Seller a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such Seller Indemnatee) of such claim or suit through counsel. The foregoing notwithstanding, Buyer's obligations under this Agreement towards any Seller Indemnatee are conditioned upon such Seller Indemnatee providing at Buyer's expense such cooperation as Buyer may reasonably request in connection with its defense or settlement of the claim or suit against such Seller Indemnatee.

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Subsection 24.3

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Subsection 24.4 Duty To Mitigate

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

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Subsection 24.5 Florida Uniform Commercial Code

Except as otherwise provided for in this Agreement, the provisions of the Florida Uniform Commercial Code shall govern this Agreement and shall be deemed to apply to this

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Agreement. Requested Energy shall be deemed to be a "good" for purposes of the Florida Uniform Commercial Code.

**Subsection 24.6 Insurance**

Within thirty (30) days after execution of this Agreement, each Party shall provide the other Party certificates of insurance demonstrating that it has adequate liability insurance pursuant to its corporate policies for any liability arising out of its activities undertaken pursuant to this Agreement. Each Party agrees to provide at least thirty (30) days' notice to the other Party prior to cancellation of its liability insurance policy.

**Section 25. Taxes**

**Subsection 25.1 General**

Buyer and Seller shall each use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax. Either Party with knowledge of a tax on the purchase or sale of the capacity or Energy, that may be applicable to the Firm Capacity or Requested Energy sold hereunder, shall notify the other Party, in advance, of the applicability of such tax and shall also notify the other Party of any proposal to implement a new tax or apply an existing tax to the purchase, sale, delivery, or receipt of Firm Capacity or Requested Energy hereunder.

**Subsection 25.2 Applicable Taxes**

Seller shall be responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local governmental agency on the Requested Energy to be sold and delivered hereunder prior to the transfer of title. Buyer shall be responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local governmental agency on the Capacity sold hereunder, the Requested Energy sold and delivered hereunder and imposed or levied on the Delivered Energy after transfer of title thereto. If either Party is required to pay any tax that under the provisions hereof is the responsibility of the other Party, the paying Party shall be reimbursed by the other Party. Neither Party is required to pay, or cause to be paid, any taxes measured by the income of the other Party. Each Party shall indemnify (to the extent permitted by law), release, defend and hold harmless the other Party from and against any and all liability for (i) taxes measured by the income of the other Party and (ii) taxes imposed or assessed by any taxing authority with respect to the Firm Capacity and Requested Energy sold, delivered and received hereunder that are not the responsibility of such other Party pursuant to this Subsection 25.2.

**Section 26. Construction Schedule and Access Rights**

Seller shall submit an integrated project schedule to Buyer within ninety (90) days from the execution of this Agreement. This schedule shall identify key licensing, permitting, construction, performance testing and operating milestone dates and activities. Seller shall notify Buyer of any material changes in such schedule within ten (10) Business Days after such changes are determined. Seller shall provide monthly progress reports to Buyer, which shall report in detail on the status of the Plant, and in addition will report promptly any adverse events that are reasonably likely to delay the achievement of milestone dates.

Seller shall arrange through its affiliate CCFC to provide Buyer and its authorized experts, representatives and/or agents with access to the Plant upon reasonable prior notice (in light of the circumstances) and subject to CCFC's safety and operating rules and regulations of general applicability, in connection with the design, construction and operation of the Plant. Such access shall include access to CCFC's maintenance records during normal business hours upon at least thirty (30) Business Days' prior notice to Seller by Buyer. Any information provided to Buyer by Seller or by CCFC on behalf of Seller in accordance with this Section shall constitute confidential information and be treated by Buyer in accordance with Section 11. Buyer's access shall not interfere with Seller's or CCFC's normal business operations.

**Section 27. Miscellaneous**

**Subsection 27.1 Entirety**

This Agreement and its Attachments, which are incorporated by reference, constitute the entire agreement between the Parties. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved

by verbal agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

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**Subsection 27.2 Non-Waiver**

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No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

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**Subsection 27.3 Severability**

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Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency having jurisdiction over the Parties, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.

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**Subsection 27.4 Headings: Attachments**

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The headings used for the sections and subsections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. References in this Agreement to sections and subsections shall be deemed a reference to this Agreement, unless otherwise indicated. Any and all Attachments referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

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**Subsection 27.5 Winding Up Arrangements**

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All indemnity, limitation of liability and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect for the purpose of complying herewith.

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**Subsection 27.6 No Third Party Beneficiaries**

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Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

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**Subsection 27.7 Counterparts**

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

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**Subsection 27.8 Notices**

All notices, requests, or statements shall be made as follows. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent. A Party may change its address by providing notice of same in accordance herewith.

If to Buyer: Seminole Electric Cooperative, Inc.  
Attention: Director of Pricing and Bulk Power Contracts  
16313 North Dale Mabry Highway  
Tampa, FL 33618  
Phone: (813) 963-0994  
Fax: (813) 264-7906

If to Seller: Calpine Energy Services, L.P.  
Attention: Director, Contracts and Administration  
The Pilot House, Second Floor  
Lewis Wharf  
Boston, MA 02110  
Phone:  
Fax:

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

EXECUTION

By the signatures of their authorized representatives below, Buyer and Seller enter into this Agreement. This Agreement may be executed in any number of counterparts, such counterparts may be transmitted by either Party to the other Party by facsimile transmission, and each executed counterpart or facsimile transmission thereof shall have the same force and effect as an original instrument.

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CALPINE ENERGY SERVICES, L.P.  
a Delaware limited partnership

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By: Robert K. Alff  
Name: ROBERT K ALFF  
Title: Senior Vice President

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SEMINOLE ELECTRIC COOPERATIVE, INC.  
a Florida corporation

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By: Richard J. Midulla  
Name: Richard J. Midulla  
Title: Executive Vice President and General Manager

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ATTACHMENT 1  
MONTHLY FIRM CAPACITY SCHEDULE

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Month	Firm Capacity
January	360
February	360
March	354
April	350
May	346
June	341
July	340
August	340
September	342
October	347
November	355
December	360

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ATTACHMENT 2

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ATTACHMENT 3  
DEGRADATION

<u>Contract Year</u>	<u>Degradation Factor</u>	<u>Heat Rate for Compensation (MMBTU/MW-hr-HHV)</u>
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ATTACHMENT 4  
START-UP FUEL

Startup Energy, Hot Start  
Startup Energy, Cold Start

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**ATTACHMENT 5  
PLANT DESCRIPTION**

The Osprey Energy Center is located in Auburndale, Florida. The Plant will tie into a number of existing facilities, including potable water, reclaimed water and wastewater pipelines, a paved road, and Tampa Electric Company's Recker Substation, which has 230-kV transmission lines adjacent to the Plant.

The Plant will consist of a nominal 534-MW combined-cycle power plant and associated facilities. The Plant will include two nominal 170-MW Westinghouse "F" Class combustion turbines (CTs) and associated triple pressure heat recovery steam generators (HSRGs). The CTs will be equipped with dry low-nitrogen oxides combustors to reduce NOx emissions from the CTs. The HSRGs will be equipped with Selective Catalytic Reduction systems to further reduce NOx emissions. The CT units will have a combined generating capacity of nominally 340-MW (net), when operating under average ambient conditions (74<sup>o</sup> F), excluding power augmentation. The HSRGs will supply steam to a steam turbine electric generator, which will have a nominal generating capacity of 200-MW under average ambient conditions, excluding duct firing. The Plant will have a total generating capacity of nominally 534-MW (average ambient). The Plant will be fired exclusively with natural gas and is expected to be operated in a combined-cycle mode.

Electric energy from the Plant will have characteristics commonly known as three-phase alternating current, with a nominal frequency of sixty (60) Hertz, a nominal voltage equivalent to that of the transmission system into which the energy is delivered.