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June 6, 2001

**John T. Butler, P.A.**  
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**-VIA HAND DELIVERY-**

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

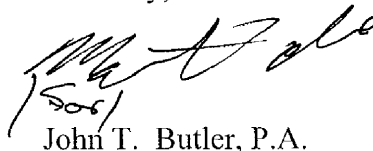
010821-EP

**Re: Joint Petition of Florida Power & Light Company and Indiantown Cogeneration, L.P. for Approval of Third Amendment to Their Agreement for the Purchase of Firm Capacity and Energy (docket number not yet assigned)**

Dear Ms. Bayó:

I am enclosing for filing the original and seven (7) copies of the Joint Petition of Florida Power & Light Company and Indiantown Cogeneration, L.P. for Approval of Third Amendment to Their Agreement for the Purchase of Firm Capacity and Energy, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 98, and the word processing software in which the document appears is WordPerfect 9.

Sincerely,



John T. Butler, P.A.

Enclosures

cc: Counsel of record

DOCUMENT NUMBER - DATE  
07110 JUN-7 01

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

<b>In re: Joint petition of Florida Power &amp; Light Company and Indiantown Cogeneration, L.P. for approval of Amendment No. 3 to their agreement for the purchase of firm capacity and energy.</b>	) ) ) ) ) ) ) ) ) )	<b>Docket No.  Filed: June 6, 2001</b>
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**JOINT PETITION OF FLORIDA POWER & LIGHT COMPANY  
AND INDIANTOWN COGENERATION, L.P. FOR APPROVAL  
OF THIRD AMENDMENT TO THEIR AGREEMENT  
FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY**

Florida Power & Light Company (“FPL”) and Indiantown Cogeneration, L.P. (“ICL”), pursuant to Rule 25-17.0836, F.A.C., hereby jointly petition the Florida Public Service Commission (the “Commission”) for approval of the Third Amendment, dated May 17, 2001 (the “Third Amendment”) to the Agreement for the Purchase of Firm Capacity and Energy Between Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated May 21, 1990, as amended by Amendment No. 1, dated December 5, 1990, and Amendment No. 2, dated July 15, 1992 (the “Power Purchase Agreement”). Copies of the Power Purchase Agreement and the Third Amendment are attached hereto as, respectively, Exhibits 1 and 2. The grounds for this Petition are:

**Introduction**

1. FPL is an investor-owned public utility regulated by the Commission pursuant to Chapter 366, Florida Statutes (2000). FPL purchases electricity from ICL’s cogeneration facility located near Indiantown, Florida (the “ICL Facility”) and makes capacity and energy payments to

ICL pursuant to the Power Purchase Agreement. FPL recovers those capacity and energy payments through its Commission-approved Fuel Cost and Purchase Power Recovery Clause and Capacity Payment Recovery Clause (the "Cost Recovery Clauses").

2. ICL is a limited partnership organized and existing under the laws of the State of Delaware, which owns and operates the ICL Facility, sells electricity to FPL from the ICL Facility, and receives capacity and energy payments from FPL pursuant to the Power Purchase Agreement.

3. FPL's address is 9250 West Flagler Street, Miami, FL 33174. Correspondence, notices, orders and other documents concerning this Petition should be sent to:

John T. Butler, P.A.  
Steel Hector & Davis LLP  
Suite 4000  
200 South Biscayne Boulevard  
Miami, FL 33131-2398  
(305) 577-7000 (voice)  
(305) 577-7001 (facsimile)

William G. Walker, III  
Vice President, Regulatory Affairs  
Florida Power & Light Company  
9250 W. Flagler Street  
Miami, FL 33174  
(305) 552-4981 (voice)  
(305) 552-2398 (facsimile)

4. ICL's address is 13303 Southwest Silver Fox Lane, P.O. Box 1799, Indiantown, FL 34956. Correspondence, notices, orders and other documents concerning this Petition should be sent to:

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McWhirter, Reeves, McGlothlin, Davidson  
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117 South Gadsden  
Tallahassee, FL 32301  
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Gary Weidinger  
Vice President  
Indiantown Cogeneration, L.P.  
c/o PG&E National Energy Group  
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(301) 280-6800 (voice)  
(301) 280-6900 (fax)

### **Background**

5. On April 5, 1991, the Commission issued Order No.24269-A in Docket No. 900731-EQ, which approved the Agreement for the Purchase of Firm Capacity and Energy Between

Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated May 21, 1990, as amended by Amendment No. 1, dated December 5, 1990 (the “December 1990 Agreement”) as a cogeneration agreement under Rule 25-17.0832, F.A.C. As part of this approval, the Commission made a finding that “all payments made by FPL pursuant to the [December 1990] Agreement may be recovered from FPL’s customers.” Order No. 24269-A, 91 FPSC 4:1, 44.

6. On July 15, 1992, FPL and ICL executed Amendment No. 2 to the December 1990 Agreement. Amendment No. 2 is comprised of four modifications that are not relevant to this Petition. On August 14, 1992, FPL petitioned the Commission for approval of Amendment No. 2, which was granted on November 23, 1992, by Order No. PSC-92-1345-FOF-EI in Docket No. 920825-EI.

7. Since 1991, FPL has recovered the payments made to ICL for purchases from the ICL Facility through the Cost Recovery Clauses, as approved by the Commission.

8. The Power Purchase Agreement gives FPL broad authority to “commit (start-up),” “decommit (shutdown)” and control the output of the ICL Facility into FPL’s electrical system. The Power Purchase Agreement also provides, however, that when FPL decommits the ICL Facility, ICL may -- except when safety or reliability concerns dictate otherwise -- “continue to operate” at or below 100 MW and sell the resulting electric energy to FPL at what is defined in the Power Purchase Agreement as the “Unit Energy Payment Cost.”

9. Disputes have arisen between FPL and ICL from time to time concerning the respective rights of the parties under the Power Purchase Agreement. FPL believes that it is entitled, under the Power Purchase Agreement, to decline to commit the ICL Facility when the ICL Facility is in FPL “Dispatch” (as defined in the Power Purchase Agreement) and FPL has more economical sources to meet the load on its system. ICL believes that, if ICL safety mechanisms separate the ICL

Facility from FPL's system at a time when ICL has the right under the Power Purchase Agreement to operate at or below 100 MW, ICL has the right to continue to operate and control the output of the ICL Facility up to 100 MW, and that FPL could refuse to allow reclosure solely for reasons of safety and system security.

10. One such dispute arose on March 10, 1999, after the ICL Facility "tripped" off line. ICL notified FPL that it had corrected the problems leading to the "trip" and that ICL intended to reclose the ICL Facility into the FPL electrical system. Citing its contractual rights to commit and dispatch the ICL Facility, FPL advised ICL that the ICL Facility was being placed on FPL Dispatch and refused to allow ICL to reclose. Based on its view that the ICL Facility was entitled to operate up to 100 MW unless a safety or system security issue was present, ICL believed that it had a right to reclose at that time. ICL filed a complaint regarding this dispute on March 19, 1999, styled *Indiantown Cogeneration, L.P. v. Florida Power & Light Co.*, Case No. 99-317-CIV-ORL-28C in the United States District Court for the Middle District of Florida (the "Litigation"). On December 19, 2000, during court-ordered mediation before the Litigation had gone to trial, FPL and ICL executed a settlement agreement which resolved and compromised the foregoing dispute (the "Settlement Agreement"). Pursuant to the Settlement Agreement, the parties were, among other things, to negotiate an amendment to the Power Purchase Agreement to implement their resolution and compromise, petition the Commission jointly for approval of the amendment, and dismiss the Litigation with prejudice if and when the Commission has approved the amendment. A copy of the Settlement Agreement is attached hereto as Exhibit 3.

11. FPL and ICL jointly requested that the Court, in light of the Settlement Agreement, remove the Litigation from its trial docket and stay all proceedings pending, among other things, the Commission's consideration of the amendment implementing the agreed resolution and compromise

of their dispute. By order dated December 29, 2000, the Court removed the Litigation from its trial docket and stayed proceedings until June 15, 2001, and required a status report to be filed on June 1, 2001. FPL and ICL have requested that the Court extend that stay to permit the Commission to consider and rule on this Petition.

### **The Third Amendment**

12. On May 17, 2001, FPL and ICL executed the Third Amendment, which is intended to implement the resolution and compromise of their dispute that is set forth in the Settlement Agreement.

13. The essential elements of the Third Amendment are as follows:

(a) If the ICL Facility separates from the FPL electrical system for any reason, ICL is permitted to reclose the ICL Facility into FPL's electrical system, subject to FPL's right to delay reclosure for up to four hours for any reason and for longer periods if FPL has safety or reliability reasons to prevent ICL from doing so.

(b) Following such reclosure, ICL may deliver up to 100 MW of electric energy to FPL from the ICL Facility during a period in which FPL has advised ICL that it "does not wish the Facility to reclose into FPL's system." This period is referred to in the Third Amendment as a "Reclose Period." A Reclose Period begins when the ICL Facility recloses into FPL's system and continues until the earlier of the time when (i) the ICL Facility separates from the FPL system "other than in accordance with Section 13.3.5(a)" of the Third Amendment, (ii) FPL Dispatches the ICL Facility to generate power above 100 MW, or (iii) FPL ends the Reclose Period and FPL is not exercising its Dispatch Rights under the Power Purchase Agreement.<sup>1</sup>

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<sup>1</sup> There are limited circumstances in which ICL may provide, and be compensated for, more than 100 MW of power during a Reclose Period. In negotiating the Third Amendment,

(c) FPL will pay for energy delivered during a Reclose Period at FPL's "As Available Energy Costs" (defined by the Third Amendment to be the tariff rate for as-available energy established pursuant to Rule 25-17.0825, F.A.C.) unless and until ICL has operated under Reclose Period conditions for more than a specified number of hours in a calendar year (the "Accumulated Reclose Hours Account," which is more fully described below), after which time FPL will pay for energy delivered during a Reclose Period at the Unit Energy Payment Cost specified in the Power Purchase Agreement.

(d) At the beginning of each calendar year, FPL receives for that year a base allocation in the Accumulated Reclose Hours Account of 360 hours. In addition, any unused hours in the prior year's Accumulated Reclose Hours Account are carried over and added to the base allocation, provided that in no year may the Accumulated Reclose Hours Account exceed 1440 hours.

#### **Effect of the Third Amendment on FPL and its Customers**

14. The foregoing amendment implementing the resolution and compromise of the parties' dispute is fair and reasonable to FPL and its customers. The Third Amendment provides that ICL may reclose the ICL Facility into the FPL electric system and sell FPL up to 100 MW of energy when FPL does not wish to purchase that energy. ICL believes that it currently has this right under the Power Purchase Agreement; FPL disagrees. Although the Third Amendment resolves and compromises this dispute by allowing ICL to "reclose the [ICL] Facility to the FPL System" and

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ICL agreed that it will receive capacity payments during a Reclose Period for the full amount of the defined "Committed Capacity" only if and when it can demonstrate to FPL that the ICL Facility is capable of generating at least that level of output. FPL, in turn, agreed to pay ICL for all energy delivered in excess of 100 MW during demonstration testing at the Unit Energy Payment Cost rate.

“generate Energy at or below” 100 MW, it does so on terms that substantially protect FPL and its customers against incurring additional cost as a result of that purchase. This is because, under most circumstances, FPL will only have to pay its As-Available Energy Cost for the energy purchased from ICL, which is determined pursuant to Rule 25-17.0825(1), F.A.C. to be a rate “not to exceed the utility’s avoided energy cost.” Purchases from the ICL Facility at the As-Available Energy Cost rate cannot, by definition, increase FPL’s total costs above what they would be without making such purchases.<sup>2</sup>

15. The only circumstance in which FPL could be required to pay ICL more for electricity during a Reclose Period than FPL’s As-Available Energy Cost is if the total number of “Reclose Period Hours” (as defined in the Third Amendment) for which payments are made in a calendar year exceeds the hours in the Accumulated Reclose Hours Account. Both parties believe that this is unlikely to occur. The circumstances that constitute a Reclose Period under the Third Amendment are extremely limited: (a) the ICL Facility must have separated from FPL’s electrical system, but (b) at the point when ICL is willing and able to return the ICL Facility to service, (c) FPL has other, more-economical sources available to meet the load on FPL’s system. The Third Amendment provides a minimum of 360 Reclose Period Hours each year, which is equivalent to more than two full weeks of operation, and further allows unused Reclose Period Hours to accumulate from one year to the next until FPL has as much as two months’ (1440) worth of such hours. This is considerably more Reclose Period Hours than historical experience suggests FPL will

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<sup>2</sup> Moreover, the fact that FPL does not have an economic need for the Energy from the ICL Facility at the point when ICL seeks reclosure generally will mean that the As-Available Energy Cost is below the Unit Energy Payment Cost. ICL has claimed in the Litigation that it is entitled to receive the Unit Energy Payment Cost under its interpretation of the Power Purchase Agreement.



have occasion to use, even if the relationship between the price of coal (which the ICL Facility burns) and fuel oil (which is typically the fuel burned in FPL's marginal generating resource) favored decommitting the ICL Facility, which it presently does not. Moreover, even if FPL did use up all of the hours in the Accumulated Reclose Hours Account, it would thereafter only pay ICL for energy at the same rate (*i.e.*, the Unit Energy Payment Cost) that ICL would receive for *all* Reclose Period Hours if ICL were to prevail in the Litigation.

16. By agreeing to resolve and compromise its dispute with ICL as provided in the Third Amendment, FPL and its customers will avoid the substantial cost of proceeding to trial in the Litigation. They also will avoid uncertainty as to the outcome of the Litigation and the potential impact of that outcome. Each party believes that its interpretation of the Power Purchase Agreement is correct. Neither can predict the outcome of the Litigation. If ICL were to prevail in the Litigation, it is possible that FPL would be required to purchase up to 100 MW of energy per hour from the ICL Facility at the Unit Energy Payment Cost, when more economical energy is available from other sources. Under the proposed Third Amendment most, if not all, of such energy will be priced at the As-Available Energy Cost.

17. For the foregoing reasons, the Third Amendment will benefit FPL's general body of ratepayers, as contemplated in Rules 25-17.0836(5) and (6), F.A.C.

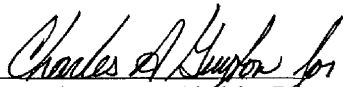
WHEREFORE, FPL and ICL respectfully petition the Commission to approve the Third Amendment to the Power Purchase Agreement and to authorize FPL to recover purchased power costs incurred pursuant to the terms of Power Purchase Agreement, as amended by the Third

Amendment, under the Cost Recovery Clauses.

Respectfully submitted,

Steel Hector & Davis LLP  
Suite 601  
215 South Monroe  
Tallahassee, Florida 32301-1804

Attorneys for Florida Power & Light Company

By:   
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McWhirter, Reeves, McGlothlin, Davidson,  
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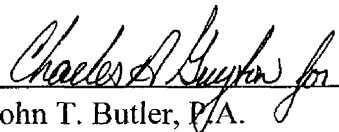
Attorneys for Indiantown Cogeneration, L.P.

By:   
Joseph A. McGlothlin, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Petition of Florida Power & Light Company and Indiantown Cogeneration, L.P. For Approval of Third Amendment to Their Agreement for the Purchase of Firm Capacity and Energy was mailed this \_\_\_\_ day of June, 2001 to the following:

Jack Shreve, Esquire  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400

  
John T. Butler, P.A.

MIA2001/21180-4

**THIRD AMENDMENT TO  
THE AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY  
BETWEEN INDIANTOWN COGENERATION, L.P.  
AND FLORIDA POWER & LIGHT COMPANY**

**THIRD AMENDMENT  
TO THE AGREEMENT FOR  
THE PURCHASE OF FIRM CAPACITY AND ENERGY  
BETWEEN INDIANTOWN COGENERATION, L.P.  
AND FLORIDA POWER & LIGHT COMPANY**

THIS THIRD AMENDMENT TO THE AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY ("Third Amendment") dated as of May ~~17~~, 2001, is by and between Indiantown Cogeneration, L.P. ("ICL") and Florida Power & Light Company ("FPL") (individually, "Party," and collectively, "Parties"). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in THE AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY BETWEEN INDIANTOWN COGENERATION, L.P. AND FLORIDA POWER & LIGHT COMPANY dated March 31, 1990, as amended by Amendment No. 1 to Agreement for the Purchase of Firm Capacity and Energy Between Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated December 5, 1990 and Amendment No. 2 to Agreement for the Purchase of Firm Capacity and Energy Between Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated July 15, 1992 (collectively the "Agreement").

**RECITALS**

WHEREAS, FPL and ICL are Parties to a dispute that is pending before the United States District Court for the Middle District of Florida, Orlando Division, captioned *Indiantown Cogeneration, L.P. v. Florida Power & Light Company*, Case No. 6:99-CV-317-ORL-28C (the "Litigation"), which has been stayed by the Court;

WHEREAS, the Parties executed a Settlement Agreement on December 19, 2000 that addressed ICL's reclosure of the Facility into the FPL system, specified the price to be paid for Energy if ICL recloses at a time when FPL does not desire that ICL reclose, delineated

associated terms and conditions, and required the Parties to jointly work to prepare this Third Amendment; and

WHEREAS, nothing herein or in the Settlement Agreement dated December 19, 2000 shall be construed as an admission of any kind by either Party, all such liability being expressly denied.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

### **SECTION I DEFINITIONS**

The Agreement is amended among other ways as set forth in this Third Amendment by amending certain specified Sections or by adding the following provisions, numbered Section 1.63 and higher, to Section 1.0 of the Agreement:

1.3 The definition of "Agreement" shall be amended to read as follows: "this document, including APPENDIX 1 hereto, and Appendices A, B, C, D, E, F, G, H, I, J, K, L and M, as the same may be amended from time to time in accordance with Section 24.11."

1.62 The definition of "Unscheduled Outage" shall be amended to read as follows: "a whole or partial interruption of the Facility's Committed Capacity, including, but not limited to, whether the Facility is (i) committed or decommitted by FPL or (ii) in a Reclose Period, in either case expressed in the nearest whole MW, that does not qualify as a Scheduled Reduction."

1.63 **Accumulated Reclose Hours Account** - the hours accumulated by FPL pursuant to this Section 1.63. For the calendar year in which the Third Amendment becomes effective, the Accumulated Reclose Hours Account balance as of the first day of such year will be deemed to be 360 hours. As of the first day of each subsequent calendar year, the balance of the Accumulated Reclose Hours Account will equal the lesser of (i) the Cap (i.e., 1440 hours) or (ii)

360 hours plus the difference between the balance of the Accumulated Reclose Hours Account existing as of the first day of the immediately prior calendar year and the number of hours occurring in the immediately prior calendar year for which ICL was paid or is due to be paid pursuant to Section 8.1.2, provided that such difference shall never fall below zero. APPENDIX 1 to this Third Amendment illustrates how the balance in the Accumulated Reclose Hours Account will be determined as of the beginning of each calendar year. At any point within any calendar year (after the date the Third Amendment becomes effective), the balance in the Accumulated Reclose Hours Account will equal the difference between the balance of the Accumulated Reclose Hours Account existing as of the first day of such calendar year, and the number of hours to-date occurring in such calendar year for which ICL was paid or is due to be paid pursuant to Section 8.1.2, provided that such difference shall never fall below zero.

1.64 **As-Available Energy Costs** - FPL's tariff rate for as-available energy calculated according to the methodology established pursuant to Florida Administrative Code 25-17.0825, as it may be amended from time to time.

1.65 **Cap** – the maximum number of hours that FPL is permitted to have accumulated at any time in the Accumulated Reclose Hours Account, which shall be 1440 hours.

1.66 **Reclose Notice** – a notice provided by ICL to FPL specifying a time at which the Facility will be ready to reclose into FPL's system.

1.67 **Reclose Period** - the period of time between (a) the time the Facility actually recloses into the FPL system and delivers Energy to FPL after FPL has notified ICL pursuant to Section 13.3.1 that it does not desire that the Facility reclose at the time specified in a Reclose Notice and (b) the earliest of (i) such subsequent time the Facility Separates other than in accordance with Section 13.3.5(a), (ii) the beginning of the first full clock-hour after FPL

exercises its Dispatch and Control Rights to request the Facility to again produce generation at or above Minimum Load, or (iii) the beginning of the first full hour as to which FPL advises ICL (a) FPL is ending the Reclose Period and (b) FPL is not exercising its Dispatch and Control Rights under the Agreement.

1.68 **Reclose Period Hour** - any hour during a Reclose Period in which ICL delivers Energy to FPL from the Facility, except for hours specified in Section 13.3.5(b) below.

1.69 **Separates (Separate or Separated or Separating)** – any circumstance in which the Facility is not connected to the FPL system such that electricity has ceased to flow from the Facility to the FPL system for any reason, including but not limited to, Major Maintenance Outages, Scheduled Maintenance Periods, Unscheduled Outages and periods in which FPL has requested ICL to decommit the Facility and ICL has elected not to operate the Facility.

## **SECTION II BASIS FOR PAYMENTS BY FPL**

2.1 The Agreement is amended by deleting Section 8.1 of the Agreement in its entirety and replacing it with the following:

8.1 FPL shall pay ICL for each MWh of Energy as follows:

8.1.1 Except as provided in Sections 8.1.2, 8.1.3, 8.1.5, 13.3.3, or 13.3.5(b), FPL shall pay ICL for each MWh of Energy at an hourly rate equal to the Unit Energy Payment Cost times the Unit Hourly Efficiency Factor.

8.1.2 For each MWh of Energy delivered from the Facility to FPL during an hour which is a Reclose Period Hour, up to and including (but not to exceed) the number of hours in the Accumulated Reclose Hours Account as of that hour, such Accumulated Reclose Hours to be calculated in accordance with Section 1.63 herein, FPL shall pay ICL at an



hourly rate equal to FPL's actual hourly As-Available Energy Costs, except as provided in Section 13.3.3(a).

8.1.3 For each MWh of Energy delivered from the Facility to FPL during an hour which is a Reclose Period Hour, for the number of such hours in excess of the number of hours in the Accumulated Reclose Hours Account as of that hour, such Accumulated Reclose Hours to be calculated in accordance with Section 1.63 herein, FPL shall pay ICL at an hourly rate equal to the Unit Energy Payment Cost, except as provided in Section 13.3.3(a).

8.1.4 At the end of the initial term of the Agreement, neither Party will be liable to the other Party with respect to any remaining balance then existing in the Accumulated Reclose Hours Account.

8.1.5 Other than as provided in Section 13.3.3(a) below, FPL shall not pay for any megawatts of Energy produced by ICL in excess of an integrated hourly output of 100 MWh per hour during any hour of a Reclose Period.

2.2 Section 8.3 of the Agreement is amended by substituting "Sections 8.1.1, 8.1.2, 8.1.3, 8.1.5, 13.3.3 and 13.3.5" for "Section 8.1" such that it reads as follows:

8.3 Calculation of the Monthly Energy Payment to ICL shall be (i) the sum, over all hours of the Monthly Billing Period, of the product of each hour's applicable rate as set forth in Sections 8.1.1, 8.1.2, 8.1.3, 8.1.5, 13.3.3 or 13.3.5 times the purchases of Energy by FPL for that hour, plus (ii) any applicable adjustments pursuant to Section 8.4. Any adjustment(s) made pursuant to Section 8.4 shall not affect the hourly rate for As Available Energy Costs paid by FPL to ICL pursuant to Section 8.1.2 above or the payment based upon As Available Energy Costs pursuant to Section 13.3.5(b).

2.3 Section 8.8 of the Agreement is amended by adding a sentence to the end of the paragraph such that it reads as follows:

8.8 Beginning on the Commercial Operation Date, FPL shall pay ICL the Start-up Cost incurred by ICL as a direct result of starting the Facility following an FPL-required shutdown of the Facility pursuant to Section 13.0 DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. The payment shall be the sum of all Start-up Costs during the Monthly Billing Period. From the beginning of any Reclose Period until the earlier of (i) the beginning of the first full hour after FPL exercises its Dispatch and Control Rights to request the Facility to again produce generation at or above Minimum Load, or (ii) the beginning of the first full hour as to which FPL advises ICL (a) FPL is ending the Reclose Period and (b) FPL is not exercising its Dispatch and Control Rights under the Agreement, FPL shall pay Start-up Costs as defined by Section 1.53 no more than one time and only if the Facility Separates following an FPL-required shut down. For avoidance of doubt, FPL shall not pay Start-up Costs if the Facility Separates as provided in Section 13.3.5(a) herein.

### **SECTION III BILLING AND PAYMENT**

3.1 The Agreement is amended by adding the following provisions to the end of Section 9.1 of the Agreement:

9.1.17 The total number of Reclose Period Hours that have occurred in that calendar year through the last day of the Monthly Billing Period;

9.1.18 The number of (i) Reclose Period Hours in the Monthly Billing Period during which Energy deliveries were subject to pricing pursuant to Section 8.1.2 and (ii) hours in the Monthly Billing Period during which Energy deliveries were subject to pricing pursuant to

Section 13.3.5(b), and the As-Available Energy Costs in each hour within (i) and (ii) applicable to such deliveries of Energy; and

9.1.19 The balance in the Accumulated Reclose Hours Account immediately after the last day of the Monthly Billing Period.

3.2 Section 9.1.15 of the Agreement is amended by deleting the word "and", and Section 9.1.16 of the Agreement is amended by replacing the period with ";".

#### **SECTION IV DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY**

4.1 The Agreement is amended by deleting Section 13.3 of the Agreement in its entirety and replacing it with the following provisions. Nothing in the following provisions, unless so expressly stated therein, is intended to limit FPL's Dispatch and Control Rights under the Agreement, including but not limited to FPL's rights set forth in Section 13.6 and defined in Section 1.21 of the Agreement.

13.3 If the Facility is Separated from the FPL system for any reason, under no circumstances shall ICL reclose into FPL's system without first obtaining FPL's specific approval, as determined by the Operating Representatives, as follows:

13.3.1 (a) If the Facility Separates and (i) ICL proposes to deliver Energy to FPL within four (4) hours or less from the time the Facility Separates, ICL, to reclose into the FPL system, shall provide a Reclose Notice to FPL as far in advance of the proposed reclosure time specified in the Reclose Notice as is practicable and, in any event, at least thirty (30) minutes prior to the reclosure time specified in the Reclose Notice, which proposed reclosure time must be not more than four (4) hours from the time of Separation, or (ii) ICL proposes to deliver Energy to FPL at a time that is more than four (4) hours from the time the Facility

Separates, ICL, to reclose into the FPL system, shall provide notice to FPL at least three (3) hours in advance of the proposed reclosure time specified in the Reclose Notice.

(b) If FPL does not wish the Facility to reclose into FPL's system at the time specified in ICL's Reclose Notice, FPL shall so notify ICL at least fifteen (15) minutes before the time specified in the Reclose Notice if subsection (a)(i) applies, and at least two (2) hours before the time specified in the Reclose Notice if subsection (a)(ii) applies.

(c) If ICL continues to wish to reclose the Facility into the FPL system after receiving the FPL notice pursuant to subsection (b), ICL shall notify FPL of such intent as soon as possible but within five (5) minutes after receipt of such FPL notice if subsection (a)(i) applies and within fifteen (15) minutes after receipt of such FPL notice if subsection (a)(ii) applies. If ICL provides the notice set forth in the preceding sentence, ICL shall have the right to reclose the Facility into the FPL system (and FPL shall be deemed to have granted specific approval to reclose the Facility to the FPL system) at the time specified in the Reclose Notice and generate Energy at or below Minimum Load (or above Minimum Load to the extent consistent with Section 13.3.2) subject only to FPL's right (i) to delay reclosure for up to four (4) hours beyond the time specified in the Reclose Notice for any reason FPL chooses in its sole interest and/or completely in its own self interest, and/or with or without cause or justification, or for no reason at all, provided that FPL may delay reclosure pursuant to this subsection (c)(i) only if FPL notifies ICL, as soon as possible following receipt of ICL's notice pursuant to the first sentence of this subsection (c) but within five (5) minutes after receipt of ICL's notice if subsection (a)(i) applies and within one (1) hour if subsection (a)(ii) applies, of such intent and designates in such notice the time at or within the four (4) hour period that ICL can reclose into the FPL system and (ii) to approve reclosure which approval shall be withheld only pursuant to

Section 6.3(i) or (ii) of this Agreement, provided that if reclosure is delayed pursuant to Section 6.3(i) or (ii), FPL shall comply with the last sentence of Section 6.3.

(d) If ICL recloses pursuant to Section 13.3.1(c) above following a Separation other than a Separation for a Scheduled Outage, ICL shall first comply with the requirements of Section 13.3.2(a).

13.3.2 (a) Following any time when the Facility (i) Separates other than for a Scheduled Outage and (ii) recloses pursuant to Section 13.3.1(c) above, ICL shall demonstrate the Facility's Available Committed Capacity. The Facility will have six (6) hours beginning with the first full hour following reclosure to seek to achieve and sustain for one full clock-hour an hourly integrated megawatt output level at or above its Committed Capacity and return to operation at or below Minimum Load and will operate at or below Minimum Load until (i) the end of the Reclose Period, unless the Facility Separates in accordance with Section 13.3.5(a), or (ii) the start of a Re-demonstration Period as described below in subsection (b). From the time of reclosure up through the end of the sixth full hour following reclosure ("Hour Six"), ICL shall receive credit towards its Daily Capacity Factor and Daily On-peak Capacity Factor at its actual hourly integrated megawatt output level for each such hour (not to exceed the Committed Capacity), unless and until the first full hour that the hourly integrated megawatt output level is at or above Committed Capacity ("Successful Demonstration"), in which case it shall receive credit towards its Daily Capacity Factor and Daily On-peak Capacity Factor at its Committed Capacity, which shall be ICL's Available Committed Capacity, for that hour and for each full hour thereafter until the earlier of (i) the end of the Reclose Period or (ii) a reduction in ICL's Available Committed Capacity ("Capacity Reduction"). If ICL is unable to achieve and sustain for one full clock-hour an hourly integrated megawatt output level at or above its Committed

Capacity, then beginning in the seventh full hour following reclosure and continuing until the earlier of (i) the end of the Reclose Period, (ii) a Capacity Reduction, or (iii) the start of a Re-demonstration Period as described in subsection (b) below, ICL shall receive credit at the highest hourly integrated megawatt output level achieved by ICL during the previous full six-hour period, which output level shall be ICL's Available Committed Capacity.

(b) If ICL is unable to achieve a Successful Demonstration or there is a Capacity Reduction, ICL shall have the right, upon two (2) hours notice to FPL, to select a consecutive four-hour period which begins no earlier than 7:00 a.m. and ends no later than 10:00 p.m., beginning any time after Hour Six, to re-demonstrate its Available Committed Capacity ("Re-demonstration Period"), and shall continue to have the right to re-demonstrate the Facility's Available Committed Capacity during a consecutive four-hour period which begins no earlier than 7:00 a.m. and ends no later than 10:00 p.m. on any day during the Reclose Period, upon two (2) hours notice to FPL, until ICL achieves a Successful Demonstration. At the end of each Re-demonstration Period, ICL will operate the Facility at or below Minimum Load until (i) the end of the Reclose Period, unless the Facility Separates in accordance with Section 13.3.5(a), or (ii) the start of a new Re-demonstration Period, if any. During the Re-demonstration Period, ICL shall receive credit towards its Daily Capacity Factor and Daily On-peak Capacity Factor at the actual hourly integrated megawatt output level for each such hour (not to exceed the Committed Capacity), unless and until the first full hour that it achieves a Successful Demonstration, in which case ICL shall receive credit towards its Daily Capacity Factor and Daily On-peak Capacity Factor at its Committed Capacity, which shall be ICL's Available Committed Capacity, for that hour and for each full hour thereafter until the earlier of (i) the end of the Reclose Period or (ii) a Capacity Reduction. If ICL is unable to achieve a Successful Demonstration, then

beginning in the first full hour following the Re-demonstration Period and continuing until the earlier of (i) the end of the Reclose Period, (ii) a Capacity Reduction, or (iii) the start of a new Re-demonstration Period, if any, ICL shall receive credit at the highest hourly integrated megawatt output level achieved by ICL during the most recent Re-demonstration Period, which output level shall be ICL's Available Committed Capacity.

13.3.3 (a) If the Facility recloses pursuant to Section 13.3.1(c), then from the time the Facility recloses up through the end of Hour Six, as that term is used in Section 13.3.2 above, ICL shall be paid for each megawatt of Energy produced above 100 MW at an hourly rate equal to the Unit Energy Payment Cost and for each megawatt of Energy up to 100 MW in accordance with Sections 8.1.2 or 8.1.3 as applicable. Following Hour Six, ICL shall only receive payment for Energy produced up to 100 MW, which shall be paid in accordance with Sections 8.1.2 or 8.1.3 as applicable, except that during any Re-demonstration Period, as that term is used in Section 13.3.2 above, ICL shall receive payment for each megawatt of Energy produced up to 100 MW in accordance with Sections 8.1.2 or 8.1.3 as applicable, and shall receive payment for each megawatt of Energy produced above 100 MW in accordance with Section 8.1.2.

(b) FPL will provide ICL FPL's projected hourly As-Available Energy Costs for each hour of a Reclose Period using the most recent projected rate available. For the day on which the reclosure as specified in the Reclose Notice is to occur, FPL shall provide the projected hourly As-Available Energy Costs for that day and for at least the next following day as soon as practicable after FPL advises ICL that FPL wishes the Facility to remain Separated. On each day during a Reclose Period subsequent to the day specified in the Reclose Notice as the date of reclosure, FPL shall provide the ICL control room by facsimile the projected rate by 4:00

p.m. for at least the following day. FPL offers no guarantees with regard to the accuracy of the projected hourly As-Available Energy Costs, which are prepared and provided for planning purposes only and should not be relied upon. Further, ICL hereby agrees to treat as proprietary to FPL and confidential any and all projected hourly As-Available Energy Costs information provided to ICL by FPL, to use such information solely for the purpose of operating the Facility as set forth in the Agreement, and not to disclose this information to any other person or entity, including, but not limited to, any affiliate, parent, subsidiary or related company, other than a person that is employed in the operation or management of the Facility for 90 days after the day for which such projected hourly As-Available Energy Costs applies.

13.3.4 If the Facility fails to reclose within thirty (30) minutes after the time specified in a Reclose Notice or at such later time as provided for under Section 13.3.1(c), each hour, beginning with and including the later of the hour in which such reclosure as specified by ICL in the Reclose Notice was to occur or such later hour for reclosure as provided for under Section 13.3.1(c), and continuing until the first full hour following reclosure, shall be an Unscheduled Outage.

13.3.5 (a) If, during a Reclose Period, ICL desires to voluntarily Separate the Facility from the grid, ICL may do so provided ICL gives FPL a minimum of eight (8) hours notice prior to doing so, unless there is an unscheduled reduction of steam demand at the Facility's steam host(s) such that anticipated or actual steam demand will be 20,000 lbs. of steam per hour or less, in which case ICL will give FPL a minimum of two (2) hours notice prior to doing so. If the Facility voluntarily Separates, as that term is defined in Section 1.69 herein, without providing FPL such notice, or more than thirty (30) minutes prior to the time specified by ICL in the notice as the time the Facility will Separate, the hours, beginning with the hour the



Facility Separates and ending with the hour the Facility recloses, shall be deemed an  
Unscheduled Outage.

(b) If the Facility, rather than Separating at the time specified by ICL in the notice as provided in subsection (a) above, continues to operate and deliver Energy to FPL up to its Minimum Load for more than thirty (30) minutes after the time for Separation specified by ICL in the notice, ICL shall receive payment for all megawatts of Energy delivered up to a maximum of 100 MW at 50% of the As-Available Energy Costs and shall receive no payment for Energy delivered in excess of 100 MW. ICL shall be paid at the above-specified rates up through the end of the last hour of such Reclose Period. Any hours paid at the above-specified rates shall not be considered Reclose Period Hours.

13.3.6 If in response to a Reclose Notice provided pursuant to Section 13.3.1(a), FPL does not notify ICL as provided in Section 13.3.1(b) that FPL does not wish the Facility to reclose into FPL's system or is exercising its rights pursuant to Section 6.3(i) or (ii) of the Agreement, then the control of Capacity and Energy shall be ICL's responsibility (and FPL shall pay for each MWh of Energy pursuant to Section 8.1.1) unless and until FPL exercises its Dispatch and Control Rights.

4.2 Section 13.7 of the Agreement is amended to read in its entirety as follows:

13.7 For purposes of exercising certain Dispatch and Control Rights, FPL agrees that the minimum notice for shutdown shall be eight hours and the minimum run time between start-up and shutdown shall be eight hours. FPL may request ICL to decommit the Facility, provided that such requests will not exceed the FPL Operating Limits. Unless FPL notifies ICL that purchases from ICL at that time should be interrupted due to circumstances specified in Section 6.3(i) or (ii), SALE OF ENERGY AND CAPACITY BY ICL, ICL may, at

its sole discretion, continue to operate the Facility at or below Minimum Load and deliver Energy to FPL. Any hour or part of an hour (i) that ICL elects to continue to operate the Facility rather than decommit the Facility as requested by FPL, or (ii) any hour, whether or not encompassed by subsection (i) above, during a Reclose Period shall not be considered a Dispatch Hour. Once FPL requests the Facility to again produce generation at or above the Minimum Load, the first hour subsequent to such request shall be a Dispatch Hour.

4.3 Section 15.2.2 of the Agreement is amended by adding after the word “procedures” the following: “including procedures to implement Section 13.3.”

#### **SECTION V EFFECTIVE DATE**

5.1 This Third Amendment shall become effective on the first day of the month following the month in which the later of the following has been achieved: (i) the FPSC issues a final determination as to which no appeal is pending and which is no longer appealable (hereinafter the “Final Order”), in form and substance acceptable to each Party in its sole discretion and (ii) ICL shall have notified FPL in writing that it has obtained satisfaction of any requirements in ICL's bond indenture that are conditions precedent to the effectiveness of this Third Amendment to the Agreement (“Bond Requirements”) provided that such notice shall be delivered to FPL within sixty days of the execution by both Parties of this Agreement unless such period is extended in writing by the Parties.

5.2 Within 20 days of the execution of this Third Amendment by both Parties, the Parties will jointly submit a petition to the FPSC for approval of this Third Amendment (“Petition”). Each Party will use good faith diligent efforts to obtain approval of the Third Amendment by the FPSC, however, this obligation does not give rise to any liability by either

Party to the other Party. Either Party shall have the right to withdraw the Petition, in its sole discretion for any reason or for no reason, at any time prior to the time of a Final Order.

5.3 ICL will use good faith diligent efforts to satisfy the Bond Requirements; however, this obligation does not give rise to any liability by ICL to FPL.

## **SECTION VI SETTLEMENT OF LITIGATION**

6.1 Upon satisfaction of each of the conditions set forth in Section 5.1, the Parties shall (i) file a joint motion to dismiss the Litigation with prejudice, each Party to bear its own fees and costs, and (ii) except for claims to enforce the terms of this Third Amendment, each Party, and its direct or indirect owners, subsidiaries, affiliates, heirs, assigns, successors, distributors, licensees, officers, directors, agents, representatives and employees, both past and present, releases and discharges the other Party, and its direct or indirect owners, subsidiaries, affiliates, heirs, assigns, successors, distributors, licensees, officers, directors, agents, representatives, and employees, both past and present, from any and all claims, demands, or causes of action of any kind that each Party may now or hereafter have against the other Party concerning or arising from any allegations or claims, known or unknown, contingent or vested, which relate in any way to claims, counterclaims and causes of action which were asserted in the Litigation. Notwithstanding this provision, or any provision of this Third Amendment, the Parties expressly recognize that any and all claims relating to any costs, credits, rebates, discounts and allowances/concessions ICL received from its coal supplier, coal transporter, lime and/or ash vendors, or any other costs or adjustments required by, or in accordance with, Section 8.4 of the Agreement are not released by this provision.

6.2 Upon the denial or withdrawal of the Petition submitted to the FPSC, or the failure to satisfy the Bond Requirements within sixty days of the execution of this Third

Amendment (as such period may be extended in accordance herewith), the Parties shall promptly file a joint motion to vacate the stay of the Litigation, and this Third Amendment and the Settlement Agreement dated December 19, 2000 pertaining to reclosure of the Facility after Separation and which was the predicate for this Third Amendment, shall be immediately and without further action null and void and without further effect and neither Party shall have any liability to the other Party with respect to (i) such Settlement Agreement or (ii) this Third Amendment.

## **SECTION VII MISCELLANEOUS**

7.1 Except as expressly modified herein, all other terms and conditions of the Agreement shall remain unchanged. The Parties acknowledge and agree that this Third Amendment is contingent upon final approval of the Bond Requirements and the FPSC and that in the event such conditions are not satisfied, the above-referenced Agreement shall remain in full force and effect and unchanged without reference to this Third Amendment.

7.2 Each Party hereto expressly warrants and represents that it has any requisite corporate or partnership approval, as the case may be, to execute and deliver this Third Amendment and that each of the persons executing this Third Amendment has the necessary and appropriate authority to do so; that there are no pending agreements, transactions, or negotiations to which it is a party that would render this Third Amendment or any part thereof void, voidable, or unenforceable; that no authorization, consent or approval of any governmental entity is required to make this Third Amendment valid and binding upon it other than as contemplated in Articles V and VI above; and that, subject to Articles V and VI, this Third Amendment and the Agreement as amended by this Third Amendment each constitute its legal, valid and binding obligation.

7.3 This Third Amendment shall be governed by the laws of the State of Florida applicable to contracts made or to be performed in Florida, without regard to the conflicts of law principles thereof. The Parties hereto consent to the personal jurisdiction and venue of the federal and state courts in the State of Florida, and agree that all disputes or litigation regarding this Third Amendment shall be submitted to and determined by said courts.

7.4 This Third Amendment is binding upon and shall inure to the benefit of the licensees, representatives, transferees, affiliates, subsidiaries, direct and indirect owners, successors, heirs and/or assigns of the Parties hereto. This Third Amendment and the Agreement contain the entire agreement between the Parties hereto with respect to the subject matter hereof, supersedes any and all prior oral and written agreements relating thereto, and may not be modified, amended, or amplified except by a written document executed by both Parties hereto.

7.5 If any provision of this Third Amendment is invalid and unenforceable then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect, and (b) the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the Agreement.

7.6 This Third Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement, and a facsimile signature shall be deemed to have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be executed as of this 17th day of May, 2001 by their respective duly authorized officers.

INDIANTOWN COGENERATION, L.P.

By: P. Crisman Libe

Title: President

FLORIDA POWER & LIGHT COMPANY

By: [Signature]

Title: Dennis P Coyle  
General Counsel

**APPENDIX 1**

SAMPLE DETERMINATION OF ACCUMULATED RECLOSE HOURS ACCOUNT  
ON A CALENDAR YEAR BASIS  
USING HYPOTHETICAL OPERATIONS OVER ASSUMED 15 YEAR PERIOD  
(FOR PURPOSES OF ILLUSTRATION ONLY)

(a) Year (starting with year in which Third Amendment becomes effective)	(b) Accumulated Reclose Hours Account (as of first day of the year, equal to (e) + 360 after year 1; capped at 1440)	(c) Hours of ICL Operation During Reclose Periods (assumed)	(d) Number of Hours In Which Payment is made pursuant to Section 8.1.2 (lesser of (b) or (c))	(e) Difference of (b) and (d)
1	360	300	300	60
2	420	500	420	0
3	360	60	60	300
4	660	400	400	260
5	620	20	20	600
6	960	20	20	940
7	1300	20	20	1280
8	1440	0	0	1440
9	1440	0	0	1440
10	1440	500	500	940
11	1300	200	200	1100
12	1440	1500	1440	0
13	360	500	360	0
14	360	100	100	260
15	620	0	0	620

December 19, 2000

## SETTLEMENT AGREEMENT

If the Indiantown Facility is off line for any reason and at the time ICLP notifies FPL that it is ready to reclose and FPL is not ready to commit the Facility, ICLP may, subject to a six hour delay to allow FPL to accommodate scheduling issues and unit cycling concerns, reclose its unit into the system, provided that ICLP obtains approval from FPL under Section 13.3 of the contract, which approval shall be withheld only for safety or reliability concerns, as set forth in Sections 6.3(i) and (ii) of the Contract, and deliver up to 100 megawatts of Energy (the "Reclose Decommit Period"). FPL shall accumulate Reclose Decommit Period hours at the rate of 360 hours per calendar year, up to a maximum of 1440 hours (the "Cap"). If during any calendar year, there are less than 360 Reclose Decommit Period hours, the remaining hours will be carried over and added to the 360 hour total for the following calendar year. This carry-over will continue from year to year. The price paid to ICLP for this Energy will be FPL's actual As Available Energy Costs for those Reclose Decommit Period hours available under the Cap in any calendar year. After those hours are exhausted, FPL will pay ICL at the Contract Unit Energy Cost.

FPL and ICL will jointly submit an amendment of the Contract to the FPSC for approval.

The parties will jointly submit a stipulation to stay the litigation between FPL and ICL pending in the U.S. District Court for the Middle District of Florida, Case No. 6:99-CV-317-ORL-28C. This settlement is contingent upon the Court granting the parties joint stipulation by no later than January 10, 2001. Upon the denial or withdrawal of the petition submitted to the FPSC, either party may move to vacate the stay. Such motion shall terminate the substantive terms of this agreement. Upon the issuance of a FPSC order approving the petition, which is



acceptable to each party and which is no longer appealable, the parties shall file a joint motion dismissing all claims with prejudice, each party to bear their own costs and fees.

This agreement, in addition to being conditioned upon FPSC approval, is also conditioned upon ICL obtaining any necessary approval of its bond indenture. If ICL has not obtained any such approval by the time an FPSC order which is no longer appealable is obtained approving the settlement, either side may move to vacate the stay in the district court, which motion to vacate shall terminate the substantive terms of this agreement.

This Settlement Agreement does not constitute an amendment to the PPA. The parties will jointly work to prepare an amendment of the Contract consistent with the terms of this Settlement Agreement for submission to the FPSC.

INDIANTOWN COGENERATION, LP

By: \_\_\_\_\_

Title: ICLP Board of Control

mediator  
James B. Chaplin

FLORIDA POWER AND LIGHT

BY: \_\_\_\_\_

Title: DIRECTOR, RESOURCE ASSESSMENT & PLANNING

**CLASSIFIED**  
Form 1020 (3. Locking) Rev. 2/56

CLASSIFIED BY: K.A. Leonard  
DEPARTMENT: Corporate Contracts  
DATE: 6-1-90  
ACCESS TO: FPL Departments with  
need to know  
Termination Date  
DECLASSIFY ON: plus 3 years  
OR-REVIEW FOR  
DECLASSIFICATION: \_\_\_\_\_

AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY BETWEEN  
INDIANTOWN COGENERATION, L.P. AND FLORIDA POWER & LIGHT COMPANY

TABLE OF CONTENTS

<u>SECTION NO.</u>	<u>TITLE</u>	<u>PAGE</u>
1.0	DEFINITIONS . . . . .	1
2.0	FACILITY . . . . .	17
3.0	TERM AND TERMINATION . . . . .	17
4.0	COMPLETION SECURITY . . . . .	24
5.0	PRE-OPERATION PERIOD . . . . .	27
6.0	SALE OF ENERGY AND CAPACITY BY ICL . . . . .	35
7.0	DELIVERY OF ENERGY AND CAPACITY . . . . .	36
8.0	BASIS FOR PAYMENTS BY FPL . . . . .	37
9.0	BILLING AND PAYMENT . . . . .	42
10.0	RECORDS AND AUDITS . . . . .	45
11.0	TERMINATION FEE STATEMENT . . . . .	47
12.0	TESTING AND CAPACITY RATING . . . . .	47
13.0	DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY . . . . .	50
14.0	DATA ACQUISITION . . . . .	61
15.0	OPERATING REPRESENTATIVE . . . . .	63
16.0	INSURANCE . . . . .	64
17.0	INDEMNIFICATION . . . . .	66
18.0	LIMITATIONS OF LIABILITY . . . . .	67
19.0	COMPLIANCE WITH LAWS, RULES AND REGULATIONS . . . . .	68
20.0	FORCE MAJEURE . . . . .	70
21.0	SECURITY . . . . .	72

TABLE OF CONTENTS

<u>SECTION NO.</u>	<u>TITLE</u>	<u>PAGE</u>
22.0	NOTICES . . . . .	82
23.0	PROPRIETARY AGREEMENT . . . . .	83
24.0	MISCELLANEOUS . . . . .	84
 <u>APPENDICES</u>		
APPENDIX A	MONTHLY CAPACITY AND FIXED O&M PAYMENT CALCULATION . . . . .	A1
APPENDIX B	TERMINATION FEE . . . . .	B1
APPENDIX C	INSURANCE . . . . .	C1
APPENDIX D	ICL'S ACTUAL ENERGY COST . . . . .	D1
APPENDIX E	FACILITY PERFORMANCE CONDITIONS . . . . .	E1
APPENDIX F	NERC GUIDELINES . . . . .	F1
APPENDIX G	FACILITY ACTUAL NET GENERATION AND FUEL COST . . . . .	G1
APPENDIX H	FACILITY ACTUAL PERFORMANCE DATA . . . . .	H1
APPENDIX I	UNIT ENERGY COST CALCULATION . . . . .	I1
APPENDIX J	CONSENT TO COLLATERAL ASSIGNMENT FORM . . . . .	J1
APPENDIX K	FORM OF SECOND MORTGAGE AND SECURITY AGREEMENT . . . . .	K1
APPENDIX L	FORM OF SECURITY AGREEMENT . . . . .	L1
APPENDIX M	LEVELIZATION PAYMENT . . . . .	M1

THIS AGREEMENT is made and entered into as of the 31st day of March, 1990, by and between INDIANTOWN COGENERATION, L. P. ("ICL"), a limited partnership organized and existing under the laws of the State of Delaware having its principal place of business in Bethesda, Maryland, and FLORIDA POWER & LIGHT COMPANY ("FPL"), a utility corporation organized and existing under the laws of the State of Florida having its principal place of business in Miami, Florida. ICL and FPL shall collectively herein be called the "Parties" and each may be individually identified herein from time to time as a "Party".

**WITNESSETH:**

WHEREAS, ICL will construct and be the owner and/or operator of a facility which has been or will be certified as a "qualifying cogeneration facility" by the Federal Energy Regulatory Commission as that term is defined in Section 3(18)(B) of the Federal Power Act, as amended by Section 201 of the Public Utility Regulatory Policies Act of 1978; and

WHEREAS, ICL desires to sell, and FPL desires to purchase, electricity to be generated by such facility.

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

**1.0 DEFINITIONS**

When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following defined meanings; however, such defined terms shall not apply except as otherwise specified therein to Appendices C, F, G, H, J, K and L.

**1.1 Actual Energy Cost** - ICL's adjusted fuel cost for Energy calculated in accordance with Appendix D, ICL'S ACTUAL ENERGY COST.

- 1.2 **Adjusted Energy Cost** - the sum, over all hours, starting with the Commercial Operation Date, in the Monthly Billing Period, of (i) the Unit Hourly Efficiency Factor during each hour times (ii) the Unit Energy Cost times (iii) the purchases of Energy by FPL for the applicable hour.
- 1.3 **Agreement** - this document and Appendices A, B, C, D, E, F, G, H, I, J, K, L and M.
- 1.4 **Agreement Year** - the twelve Monthly Billing Periods preceding each anniversary of the first full Monthly Billing Period following the Commercial Operation Date, except that the first Agreement Year shall consist of the period beginning 12:01 a.m. on the Commercial Operation Date and ending with the commencement of the second Agreement Year.
- 1.5 **Annual Capacity Factor** - until 365 consecutive Daily Capacity Factors have occurred, the sum of all consecutive Daily Capacity Factors divided by the number of Daily Capacity Factors to date. Thereafter, the Annual Capacity Factor shall be calculated as the sum of the latest 365 Daily Capacity Factors divided by 365. In the event of Force Majeure, upon the conclusion of such event, each Daily Capacity Factor calculated during the event of Force Majeure shall be adjusted to the higher of (i) the actual Daily Capacity Factor or (ii) 54.99% for the purpose of determining the Annual Capacity Factor from the point in time when such Force Majeure is concluded.
- 1.6 **Annual On-peak Capacity Factor** - until 365 consecutive Daily On-peak Capacity Factors have occurred, the sum of all Daily On-peak Capacity Factors divided by the number of Daily On-peak Capacity

Factors to date. Thereafter, the Annual On-peak Capacity factor shall be calculated as the sum of the latest 365 Daily On-peak Capacity Factors divided by 365. In the event of Force Majeure, upon the conclusion of such event, each Daily On-peak Capacity Factor calculated during the event of Force Majeure shall be adjusted to the higher of (i) the actual Daily On-peak Capacity Factor or (ii) 93% for the purpose of determining the Annual On-peak Capacity Factor from the point in time when such Force Majeure is concluded.

- 1.7 Automatic Generation Control - procedures and equipment which automatically adjust a control area's generation to maintain its net interchange schedule plus frequency bias.
- 1.8 Available Committed Capacity - Committed Capacity less all Unscheduled Outages and Scheduled Reductions, expressed in the nearest whole megawatt ("MW") quantities, as determined by ICL on an on-going basis.
- 1.9 Available Run Hour - starting with the Commercial Operation Date, any hour except those hours during which the Facility is subject to a Scheduled Maintenance Period.
- 1.10 Available Run On-peak Hour - starting with the Commercial Operation Date, any On-peak Hour except those hours during which the Facility is subject to a Scheduled Maintenance Period.
- 1.11 Capacity - electric power, in MW, generated by the Facility and delivered to FPL's system.
- 1.12 Capacity Billing Factor - the Annual Capacity Factor, plus one-half the difference between (i) the Annual On-peak Capacity Factor and

- (ii) 93%. For purposes of determining the Capacity Billing Factor, the Annual On-peak Capacity Factor shall not be greater than 98%.
- 1.13 **Capacity Test** - a test as described in Section 12.0, TESTING AND CAPACITY RATING, which is performed by ICL to determine the Continuous Capability of the Facility.
- 1.14 **Commercial Operation Date** - the date determined by ICL which shall be at least two calendar days immediately following the successful completion of the initial Capacity Test as described in Section 12.0, TESTING AND CAPACITY RATING. The Commercial Operation Date shall not occur (i) more than three months before the anticipated Commercial Operation Date specified pursuant to Section 4.2, COMPLETION SECURITY, or (ii) before September 1, 1995, whichever is later.
- 1.15 **Committed Capacity** - the maximum Capacity pursuant to Sections 5.13, PRE-OPERATION PERIOD, and 12.0, TESTING AND CAPACITY RATING, which ICL contractually commits to sell to FPL pursuant to the terms of this Agreement. All designations of Committed Capacity shall be to the nearest whole MW unit of Capacity and, except for the initial Committed Capacity, shall be effective on the first calendar day of the subsequent Monthly Billing Period. The initial Committed Capacity shall be effective on the Commercial Operation Date.
- 1.16 **Continuous Capability** - the highest sustained MW rating at which the Facility can operate without exceeding normal operating conditions, temperatures, pressures, etc. as defined by the manufacturers and determined by a Capacity Test pursuant to Section 12.0, TESTING AND CAPACITY RATING.



1.17 **Daily Capacity Factor** - for every calendar day beginning at 12:01 a.m. on the Commercial Operation Date, except for any calendar day during which the total number of Available Run Hours equals zero, (i) the sum of (a) the Energy purchased during each Available Run Hour of the calendar day for which the calculation is made and (b) the megawatt-hours ("MWh") of Energy that could have been produced, but were not produced, by the Available Committed Capacity during each Available Run Hour in which FPL did not accept Energy for delivery pursuant to Section 6.3, SALE OF ENERGY AND CAPACITY BY ICL, including Energy not provided by the Facility from Available Committed Capacity pursuant to Section 13.7, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, when ICL elects to operate the Facility rather than to decommit the Facility as requested by FPL, divided by (ii) the product of (a) the Committed Capacity during the Monthly Billing Period and (b) the number of Available Run Hours during such calendar day. For purposes of calculating the Daily Capacity Factor, hourly Energy deliveries (i) shall not exceed those which could be produced, but were not produced, by the Committed Capacity for such hour, except however, for any hour, excess Energy deliveries shall be included in the calculation if such excess Energy was requested by FPL and (ii) shall be reduced, when applicable pursuant to Section 13.10, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. For any calendar day which has zero Available Run Hours, there shall be no Daily Capacity Factor associated with such calendar day.

1.18 **Daily On-peak Capacity Factor** - for every calendar day beginning at 12:01 a.m. on the Commercial Operation Date, except for any calendar day during which the total number of Available Run On-peak Hours equals zero, (i) the sum of (a) the Energy purchased during each Available Run On-peak Hour of the calendar day for which the calculation is made and (b) the MWh of Energy that could have been produced, but were not produced, by the Available Committed Capacity during each Available Run On-peak Hour in which FPL did not accept Energy for delivery pursuant to Section 6.3, SALE OF ENERGY AND CAPACITY BY ICL, including Energy not provided by the Facility from Available Committed Capacity pursuant to Section 13.7, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, when ICL elects to operate the Facility rather than to decommit the Facility as requested by FPL, divided by (ii) the product of (a) the Committed Capacity during the Monthly Billing Period and (b) the number of Available Run On-peak Hours during such calendar day. For purposes of calculating the Daily On-peak Capacity Factor, hourly Energy deliveries (i) shall not exceed those which could be produced by the Committed Capacity plus 10% for such hour and (ii) shall be reduced, when applicable pursuant to Section 13.10, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. For any calendar day which has zero Available Run On-peak Hours, there shall be no Daily On-peak Capacity Factor associated with such calendar day.

1.19 **Demonstration Period** - in each calendar year following the Commercial Operation Date, the period beginning 12:00 midnight on June 30 and ending at 12:00 midnight on the following October 15.

- 1.20 Dispatch - FPL's Dispatch And Control Rights with respect to committing (start-up) and decommitting (shutdown) the Facility and controlling the Capacity and Energy output of the Facility.
- 1.21 Dispatch And Control Rights - subject to Section 13.0, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, the absolute and sole right of FPL (i) to commit and decommit the Facility and (ii) through supervisory equipment or otherwise, to control the Capacity and Energy output of the Facility pursuant to this Agreement. These rights also extend to control of the reactive power output of the Facility, voltage, frequency and other characteristics of such Energy output, which parameters are normally controlled or reflected in a utility's economic dispatch.
- 1.22 Dispatch Hour - any Available Run Hour or part of an Available Run Hour that FPL Dispatches the Facility except as provided in Section 13.7, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. Dispatch Hours include decommitted hours designated by FPL and extend for at least one hour after the Facility's actual Ready For Control time but exclude the hour(s), if any, between the scheduled Ready For Control and the actual Ready For Control as specified in Section 13.9, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.
- 1.23 Energy - electrical energy in MWh generated by the Facility and delivered to FPL's transmission system at the Interconnection Point.
- 1.24 Event of Default - any of those occurrences specified in Section 3.5, TERM AND TERMINATION.

- 1.25 Facility - that nominal net output 300 MW coal-fired electrical cogeneration resource to be designed, constructed, installed, owned, operated and maintained pursuant to this Agreement by the Facility Owner on property leased or purchased by ICL and located adjacent to Caulkins Citrus Processing plant located at Indiantown, Florida, together with all equipment, fuel and other consumables, transformers, switchgear, protective devices, fuel handling and residue disposable infrastructure, and other associated property, both real and personal, on ICL's side of the Interconnection Point necessary for proper operation of the Facility except for metering facilities, telemetering and data acquisition equipment as provided for in Sections 7.0, DELIVERY OF ENERGY AND CAPACITY, 13.0, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY and 14.0, DATA ACQUISITION.
- 1.26 Facility Owner - ICL or any successor(s) in interest to ICL's ownership.
- 1.27 FERC - Federal Energy Regulatory Commission.
- 1.28 Force Majeure - an event or circumstance that is beyond the reasonable control and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or its suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or

other labor disputes or difficulties. Equipment breakdown caused by its design, construction, operation or maintenance or otherwise caused by an event originating in the Facility shall not be considered a Force Majeure.

- 1.29 FPL Entities - FPL, its parent, subsidiaries and affiliated entities and each of their respective officers, directors, employees, agents and contractors.
- 1.30 FPL Operating Limits - certain operating capabilities of the Facility that shall be available to FPL pursuant to this Agreement, including, but not limited to: (i) 85% power factor leading and 85% power factor lagging; (ii) Maximum Sustained Rate: 6 MW per minute; (iii) Frequency of Cycles: 12 times per Agreement Year, not to exceed 180 times during the initial term of this Agreement; (iv) Turn Around Time Hot to Hot: less than 4 hours; (v) minimum operating capability while under Automatic Generation Control: 100 MW; (vi) minimum operating capability while under manual generation control: 100 MW; and (vii) Start-up Time: (a) if the Facility has been off-line between 0 hours and 12 hours ("Hot Start"): 6 hours, (b) if the Facility has been off-line between 12 hours and 72 hours ("Warm Start"): 16 hours, or (c) if the Facility has been off-line more than 72 hours ("Cold Start"): 30 hours.
- 1.31 FPSC - Florida Public Service Commission.
- 1.32 Frequency of Cycles - the number of times the Facility is started and stopped (i.e., one cycle breaker closing to breaker opening) in an Agreement Year.

1.33 Good Engineering and Operating Practices - generally accepted and sound electric utility industry practices, methods and acts applicable to similarly situated U.S. facilities which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

1.33.1 Adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs.

1.33.2 Sufficient operating, maintenance and supervisory personnel are available and adequately experienced and trained to operate, maintain and supervise the Facility properly, efficiently and within manufacturer's guidelines and specifications.

1.33.3 Preventive, routine and non-routine maintenance and repairs are performed on a basis that achieves reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures.

1.33.4 Appropriate monitoring and testing are done periodically to ascertain that equipment is functioning as designed and to provide assurance that equipment will function properly.

1.33.5 Equipment is operated in a safe manner and in a manner safe to workers, the general public and the environment, and with regard to defined limitations such as steam pressure, temperature and moisture content, chemical content and quality of make-up water, operating voltage range, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.

1.34 ICL Fuel Cost - for each hour, the differential fuel cost increase incurred for the Energy produced when the Facility is operated by ICL during any hour not considered a Dispatch Hour. The ICL Fuel Cost for the applicable hour shall equal (i) the ICL Hourly Efficiency Factor - 1.0 times (ii) the Unit Energy Cost times (iii) the number of MWh of Energy produced during such hour.

1.35 ICL Hourly Efficiency Factor - commencing on the Commercial Operation Date, (i) for each Dispatch Hour, a value equal to 1.000 and (ii) for all other hours, the ICL Hourly Efficiency Factor shall be the rate factor produced by the following formula:

Y - ICL Hourly Efficiency Factor

$$Y = \frac{A + Bx + Cx^2 + Dx^3}{23.20}$$

where: A = 41.09481

B = -0.53656

C = 0.00559

D = -0.00002

X = Percent of unit full load net output multiplied by 100 (i.e., 33.5% load = 33.500). X shall not be less

than 10,000 divided by the Committed Capacity, nor higher than 100.

- 1.36 **Initial Synchronization Date** - the first date upon which (i) Energy is generated and (ii) such Energy is metered by the FPL-owned metering equipment.
- 1.37 **Interconnection Point** - the physical point designated by FPL where the Facility and the FPL system are connected.
- 1.38 **Major Maintenance Outage** - the extension of the outage maximum to ten consecutive weeks for the Scheduled Maintenance Period during the first Agreement Year and within approximately every fifth Agreement Year cycle thereafter; provided however, that no more than twenty-six weeks of Scheduled Maintenance Periods shall have occurred in each five-year period. The five-year cycle shall be defined as the period beginning the second Agreement Year through the end of the sixth Agreement Year and every five years thereafter. Major Maintenance Outages shall normally be taken during the applicable Agreement Year. However, the Major Maintenance Outages may be shifted to other Agreement Years pursuant to Sections 5.10, PRE-OPERATION PERIOD, and 13.11, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.
- 1.39 **Maximum Sustained Rate** - the maximum load-following capability of the Facility, expressed in MW per minute level, that the MW output of the Facility can be raised or lowered to meet FPL's system conditions for a sustained period.
- 1.40 **Minimum Load** - 100 MW net of internal electrical requirements of the Facility.



- 1.41 **Monthly Billing Period** - the period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the Initial Synchronization Date and ending with the last calendar day of such month.
- 1.42 **Monthly Billing Statement** - a monthly summary prepared by FPL in accordance with Section 9.1, BILLING AND PAYMENT.
- 1.43 **Monthly Capacity Payment** - monthly payments for Capacity and fixed operation and maintenance expenses calculated in accordance with Appendix A, MONTHLY CAPACITY AND FIXED O&M PAYMENT CALCULATION.
- 1.44 **Monthly Energy Payment** - monthly payments for Energy calculated in accordance with Section 8.3, BASIS OF PAYMENTS BY FPL.
- 1.45 **NERC** - the North American Electric Reliability Council, including any successor thereto and subdivisions thereof.
- 1.46 **On-peak Hours** - those hours occurring April 1 through October 31, from noon to 9:00 p.m., and November 1 through March 31, from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. FPL shall have the right to change such On-peak Hours by providing ICL a minimum of ninety calendar days written notice. The total number of On-peak Hours shall not exceed 38% of the total hours during a calendar year.
- 1.47 **Operating Representatives** - the Parties' representatives designated pursuant to Section 15.0, OPERATING REPRESENTATIVE, who act in matters pertaining to detailed operating arrangements for the delivery of Capacity and Energy provided under this Agreement.

- 1.48 **Peak Capability** - the maximum MW rating which the Facility can achieve for a period of up to four hours without exceeding the design pressures and temperatures.
- 1.49 **Ready For Control** - the point in time when the Facility is turned over to FPL's system control center for Automatic Generation Control or manual control. At this point, the Facility shall have full load-following capability equal to the Maximum Sustained Rate.
- 1.50 **Scheduled Maintenance Period** - any period of time, not to exceed four weeks per Agreement Year, or not to exceed ten weeks per Agreement Year that qualifies for a Major Maintenance Outage, during which ICL plans, in coordination with FPL as provided in Sections 5.10, PRE-OPERATION PERIOD, and 13.11, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, and subjects the Facility to a Scheduled Reduction in Capacity for routine or periodic maintenance; provided however, that the Scheduled Maintenance Period shall be limited to the period during which the Facility actually experiences a Scheduled Reduction in Capacity. The four weeks may be taken consecutively or in periods of not less than four hours provided such periods are coordinated with, and approved by, FPL. Scheduled Maintenance Periods shall normally be taken during the applicable Agreement Year. However, the Scheduled Maintenance Periods may be shifted to other Agreement Years pursuant to Sections 5.10, PRE-OPERATION PERIOD, and 13.11, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.

- 1.51 **Scheduled Reduction** - any reduction in generating capability of the Facility, expressed in the nearest whole MW, as a result of a Scheduled Maintenance Period.
- 1.52 **Special Capacity Factor** - the sum of all Daily Capacity Factors for Monthly Billing Periods ten through eighteen, inclusive, immediately following the Commercial Operation Date, divided by the number of such Daily Capacity Factors.
- 1.53 **Start-up Cost** - for each start-up at the Facility following an FPL-required shutdown of the Facility pursuant to Dispatch And Control Rights, (i) the appropriate Start-up Energy times (ii) the Start-up Fuel Cost.
- 1.54 **Start-up Energy** - the MMBtus of gas or oil consumed by the Facility during start-up which shall be (i) 360 MMBtu for a Hot Start, (ii) 840 MMBtu for a Warm Start, and (iii) 1,800 MMBtu for a Cold Start.
- 1.55 **Start-up Fuel Cost** - ICL's weighted average cost of start-up fuel(s) as provided to FPL in Appendix G, FACILITY ACTUAL NET GENERATION AND FUEL COST. The actual percentage weighting of gas and oil fuel costs shall reflect the mix of fuels utilized to start-up the Facility as agreed upon by the Operating Representatives from time to time. The report provided to FPL during the current Monthly Billing Period pursuant to Section 8.2, BASIS FOR PAYMENTS BY FPL, shall be used to determine the current Start-up Fuel Cost.
- 1.56 **Start-up Time** - the time it takes from the moment the Facility is activated (i.e., initiate start-up sequence) until it is on-line and Ready For Control.

1.57 Termination Fee - the dollar amount calculated in accordance with the formula in Appendix B, TERMINATION FEE, which ICL shall pay FPL upon an the Event of Default or the premature termination of this Agreement.

1.58 Turn Around Time Hot to Hot - the minimum down time which is measured from the moment the Facility is taken off-line (i.e., breaker open) until the Facility is again able to be Ready For Control.

1.59 Unit Energy Cost - \$23.20 dollars/MWh, effective January 1, 1990, indexed as provided in Appendix I, UNIT ENERGY COST CALCULATION.

1.60 Unit Energy Payment Cost - the Unit Energy Cost as adjusted in Section 8.5, BASIS FOR PAYMENTS BY FPL.

1.61 Unit Hourly Efficiency Factor - prior to the Commercial Operation Date, a value equal to 1.000. Thereafter, (i) for each Dispatch Hour, the Unit Hourly Efficiency Factor shall be the rate factor produced by the following formula:

Y - Unit Hourly Efficiency Factor

$$Y = \frac{A + Bx + Cx^2 + Dx^3}{23.20}$$

where: A = 41.09481

B = -0.53656

C = 0.00559

D = -0.00002

X = Percent of unit full load net output multiplied by 100 (i.e., 33.5% load = 33.500). X shall not be less

than 10,000 divided by the Committed Capacity, nor higher than 100.

and (ii) for all other hours, the Unit Hourly Efficiency Factor shall equal 1.000.

1.62 **Unscheduled Outage** - a whole or partial interruption of the Facility's Committed Capacity, whether the Facility is committed or decommitted by FPL, expressed in the nearest whole MW, that does not qualify as a Scheduled Reduction.

## 2.0 FACILITY

2.1 ICL shall operate the Facility as a "qualifying cogenerator" as that term is defined in Section 3 (18)(C) of the Federal Power Act.

2.2 ICL shall, throughout the term of this Agreement, maintain the existing status of the Facility as a "qualifying cogeneration facility" and ICL's status as a "qualifying cogenerator" pursuant to FERC and FPSC regulations.

## 3.0 TERM AND TERMINATION

3.1 Except for obligations under Section 3.2, FPL's obligations under this Agreement shall not become enforceable until the following conditions precedent have occurred or been satisfied:

3.1.1 The FPSC's prior approval, without change or condition, including FPSC findings that (i) this Agreement is reasonable, prudent and in the best interest of FPL's ratepayers, (ii) this Agreement contains adequate security based on ICL's financial stability, (iii) no costs in excess of FPL's full avoided costs are likely to be incurred by FPL over the initial term of this

Agreement, (iv) FPL may recover from its ratepayers all payments for Energy and Capacity, and (v) FPL shall not be required to resell the Energy and Capacity to another electric utility so long as the retention of Energy and Capacity is in the best interest of FPL's ratepayers. It is understood and agreed that in the event (i) FPL gives written notice to ICL of its acceptance of the FPSC's approval, including its findings, or (ii) FPL fails to give written notice to ICL of FPL's nonacceptance of the FPSC's approval, including its findings, within thirty days from the date the FPSC order containing its approval and findings becomes final and any appeals therefrom have been concluded, then in either such event (whichever occurs first), the condition precedent set forth in this Section 3.1.1 shall be deemed fulfilled.

3.1.2 ICL provides the amount specified in Section 4.1.1, COMPLETION SECURITY.

3.2 FPL shall submit this Agreement to the FPSC and seek the FPSC's approval hereof, and ICL shall use its best efforts to support FPL's request for FPSC approval.

3.3 The initial term of this Agreement shall extend until the later of December 1, 2025, or thirty Agreement Years unless terminated as provided herein. However, the term may be extended through a written instrument authorized and executed with the same formality as this Agreement.

3.4 Notwithstanding any other provision of this Agreement, FPL may terminate this Agreement for cause, without penalty or further obligation, in the event that, except when due to a Force Majeure or as provided in Section 4.2.2, COMPLETION SECURITY, ICL fails to (i) achieve the closing of the construction loan for the Facility by thirty-six months from the date of execution of this Agreement; (ii) start construction by thirty-nine months from the date of execution of this Agreement; (iii) place the order for the turbine/generator by November 1, 1994; (iv) have the turbine/generator delivered on-site by March 1, 1996; or (v) achieve the Commercial Operation Date by December 1, 1996, unless such failure to achieve the Commercial Operation Date results solely from FPL's failure to timely interconnect with ICL; provided, however, FPL may not terminate this Agreement unless FPL gives written notice of said failure and (i) ICL fails to furnish adequate assurance of due performance to cure the failure within thirty calendar days after receipt of FPL's written notice; or (ii) such cure is not successfully completed within sixty calendar days after receipt of FPL's written notice.

3.5 Notwithstanding the occurrence of any Force Majeure as described in Section 20.0, FORCE MAJEURE, each of the following shall constitute an Event of Default:

3.5.1 ICL fails to file with the FPSC to determine the need for the Facility pursuant to Section 403.519, Florida Statutes (1989), within ninety days of the execution of

this Agreement or as otherwise agreed in writing by the Parties;

- 3.5.2 On or before the Commercial Operation Date, ICL fails to execute a long-term fuel contract (or contracts) between ICL and its fuel supplier(s), which (i) has a term of at least fifteen years, (ii) provides for at least 50% of its requirements and (iii) includes market price reopener provisions;
- 3.5.3 ICL fails to comply with the provisions of any of the following Sections: 21.1, 21.2, 21.4, 21.5, 21.7, 21.9 or 21.10, SECURITY;
- 3.5.4 After the Commercial Operation Date, the Facility fails to deliver any Energy for twelve consecutive months; provided, however, such period shall be extended to eighteen consecutive months if (i) ICL determines that major equipment, including, but not limited to, the boiler and the turbine generator, needs replacement, (ii) ICL provides to FPL, in writing, proof that such major equipment does need replacing, and (iii) FPL concurs in such determination;
- 3.5.5 After the Commercial Operation Date, the Facility fails for any twenty-seven consecutive months to maintain a Capacity Billing Factor of at least 55%;
- 3.5.6 Except as provided in Sections 3.6.2 and 21.3, SECURITY, a receiver or liquidator or trustee of ICL or of a substantial part of the assets of ICL is appointed by



order of a court of competent jurisdiction, and such receiver or liquidator or trustee is not discharged within a period of sixty days; or if by decree of such a court, ICL is adjudicated bankrupt or insolvent or a substantial part of the assets of ICL are sequestered, and such decree continues undischarged and unstayed for a period of sixty days after the entry thereof; or if a petition to declare bankruptcy or to reorganize a party pursuant to any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to ICL, as now or hereafter in effect, is filed against ICL and is not dismissed within sixty days after such filing; or if ICL files a voluntary petition in bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against it under any similar law; or, without limitation of the generality of the foregoing, ICL files a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to ICL, as now or hereafter in effect, or an answer admitting the material allegations of a petition filed against it in such a proceeding;

- 3.5.7 ICL fails to give adequate assurance that it is in compliance with any material provision of this Agreement not specifically referenced in this Section 3.5 within thirty calendar days after FPL has given notice in writing to ICL of such noncompliance unless ICL has cured such failure within such thirty day notice period;
- 3.5.8 ICL fails, commencing no later than fifteen years after the Commercial Operation Date, to execute a fuel contract (or contracts) between ICL and fuel supplier(s) which provides for at least 50% of ICL's requirements for the remainder of the initial term of this Agreement and includes market price reopener provisions; or
- 3.5.9 ICL fails to make any of the payments as specified in Section 4.0, COMPLETION SECURITY.
- 3.6 Upon the occurrence of any of the foregoing Events of Default, FPL may, at its option:
- 3.6.1 Terminate this Agreement by written notice to ICL, and apply to any payment(s), due from FPL to ICL, any payment(s) otherwise due from ICL to FPL; or
- 3.6.2 Apply to any court of competent jurisdiction for the appointment of a receiver to take charge of, manage, preserve, protect, complete construction of, and operate the Facility; to make all necessary and needed repairs to the Facility; and to pay all taxes and assessments against the Facility and insurance premiums for insurance thereof. It is hereby agreed that, upon occurrence of an

Event of Default, FPL would be entitled to such appointment; accordingly, it is agreed that upon application by FPL, the court may forthwith appoint such receiver with the usual powers and duties thereof and that ICL consents to, and shall not object to, such appointment. Appointment of a receiver under this Section 3.6.2 shall not terminate this Agreement. In the event ICL cures all Events of Default under Sections 3.5.1, 3.5.2, 3.5.3, 3.5.6, 3.5.7, and 3.5.9 and ICL cures all other Events of Default as follows: (i) with respect to an Event of Default under Section 3.5.8, ICL enters into fuel contract(s) and is otherwise in compliance with the terms of this Agreement, and, (ii) with respect to Events of Default under Sections 3.5.4 or 3.5.5, the Facility resumes delivery of Energy and Capacity and otherwise demonstrates that ICL is capable of fulfilling all of its obligations under this Agreement, the Parties agree that the court may terminate the receivership upon such conditions as the court deems proper.

FPL agrees that, prior to any exercise by FPL of its remedies under this Section 3.6, with respect to an Event of Default, FPL will afford ICL's lenders sixty days following the occurrence of such Event of Default to cure such Event of Default.

3.7 Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Agreement.

3.8 Upon termination of this Agreement following the Commercial Operation Date ICL shall owe FPL and be liable for the Termination Fee calculated in accordance with Appendix B, TERMINATION FEE. The obligations of ICL to pay such Termination Fee shall be secured in accordance with Section 21.1, SECURITY. ICL's obligation to pay the Termination Fee shall survive termination of this Agreement.

3.9 ICL may terminate this Agreement pursuant to Section 19.4, COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

#### 4.0 COMPLETION SECURITY

4.1 ICL shall provide FPL either (i) an unconditional, irrevocable direct pay letter of credit issued by a bank acceptable to FPL in form and substance acceptable to FPL or (ii) earnest money, in either case in the amounts listed below to assure completion of the Facility by December 1, 1995 except as such date may be modified as provided in Sections 4.2.2 and 4.2.3:

4.1.1 One Million Dollars (\$1,000,000) within fifteen business days after satisfaction of the condition precedent set forth in Section 3.1.1, TERM AND TERMINATION.

4.1.2 An additional Two Million Dollars (\$2,000,000) within fifteen business days after the certification of the Facility site pursuant to the Florida Electrical Power Plant Siting Act, Sections 403.501-519, Florida Statutes, as it may be amended.

4.1.3 An additional Six Million Dollars (\$6,000,000) within fifteen business days after the closing of ICL's construction loan for the Facility.

4.2 Within twenty-four months from the date of execution of this Agreement, ICL shall notify FPL of its anticipated Commercial Operation Date, based on its knowledge at such time.

4.2.1 Except as modified by Sections 4.2.2 and 4.2.3, if the Commercial Operation Date does not occur before December 1, 1995, then commencing December 1, 1995, and continuing the first calendar day of each calendar month for twelve calendar months or until the Commercial Operation Date, FPL shall retain Seven Hundred Fifty Thousand Dollars (\$750,000) per calendar month of such earnest money, or a pro rata share thereof if the Commercial Operation Date occurs before the end of such calendar month, (or shall be entitled to draw on such letter of credit in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000) per calendar month, or a pro rata share thereof if the Commercial Operation Date occurs before the end of such calendar month) as liquidated damages for the impact on FPL of such delayed availability of Committed Capacity. If the Commercial Operation Date occurs prior to December 1, 1996, then FPL shall refund any remaining earnest money to ICL with interest accrued, if any pursuant to Section 8.10, BASIS FOR PAYMENTS BY FPL. In the event that FPL terminates this Agreement prior to December 1, 1996, pursuant to Sections 3.4 and 3.6, TERM AND TERMINATION, FPL may retain earnest money not previously retained as liquidated damages (or may draw on and retain

the proceeds of any amounts remaining available under any letter of credit provided for in Section 4.1) and will apply it, or any portion thereof as appropriate, as an offset to any damages otherwise due to FPL under this Agreement.

4.2.2 ICL shall diligently proceed to obtain all required permits and licenses which may be required for the construction and operation of the Facility, including certification of the Facility under the Florida Electrical Power Plant Siting Act. ICL shall use its best efforts to submit its application for site certification within seven months from the date of execution of this Agreement, subject to adjustment based on ICL's presubmittal meetings with involved agencies and governmental units regarding the required input and prerequisites of such application, including approval of a plan of study as applicable. If site certification is delayed beyond March 1, 1992, the dates in Sections 3.4, TERM AND TERMINATION, and 4.2.1 shall be adjusted for any additional months, or partial month, of such delay in obtaining the site certification beyond March 1, 1992, up to a maximum of five months, provided ICL has used due diligence to mitigate the effects of such delay and return the project to its original schedule, provided however that nothing in this Section 4.2.2 shall affect

the rights of the Parties under Section 3.4, TERM AND TERMINATION, in the event of a Force Majeure.

4.2.3 If ICL fails to achieve the Commercial Operation Date by December 1, 1995 because of an event of Force Majeure, the dates in Section 4.2.1 shall be adjusted for any additional months, or partial month, of such delay up to a maximum of five months after December 1, 1995, provided ICL has used due diligence to mitigate the effects of such delay and return the project to its original schedule.

4.3 If the actual Commercial Operation Date is on or before December 1, 1995, as it may be extended because of delays in obtaining necessary governmental approvals pursuant to Section 4.2.2 or because of Force Majeure pursuant to Section 4.2.3, then FPL shall refund to ICL the earnest money in full plus interest earned on such earnest money pursuant to Section 8.10, BASIS FOR PAYMENTS BY ICL, or return the letter of credit.

## 5.0 PRE-OPERATION PERIOD

5.1 ICL shall choose an architect/engineering firm for the design and construction of the Facility, which selection shall be subject to approval by FPL. FPL shall not unreasonably withhold such approval. FPL must approve or disapprove ICL's selection within ninety calendar days of a presentation by the proposed architect/engineering firm to FPL. ICL shall instruct the architect/engineering firm to design and construct the Facility to be substantially capable of operating reliably with a Capacity

Billing Factor of at least 87% during the initial term of this Agreement.

- 5.2 ICL agrees that the Facility shall be designed and constructed in accordance with the design of the architect/engineering firm selected pursuant to Section 5.1. ICL shall ensure that all equipment used in the Facility shall be new and unused, of good quality utility grade, suitable for the intended service, and shall meet the requirements of applicable codes and standards. During the design and construction of the Facility, ICL shall provide FPL with such information as FPL may request to determine whether the Facility is being so designed and constructed.
- 5.3 The contract for engineering, procurement and construction services between ICL and the project prime contractor shall contain provisions guaranteeing performance and providing for performance testing when the Facility is complete. Performance testing will measure electrical output, process steam output, environmental emissions, and fuel consumption against guaranteed levels. The prime contractor will also have to meet a guaranteed completion date. The prime contractor will be liable to ICL for liquidated damages, in an aggregate amount of at least Sixty Million Dollars (\$60,000,000), if the performance levels and schedule are not met. Upon its execution, a copy of the subject contract shall be made available for review by FPL. ICL shall provide FPL with the above performance test results, including heat rate data calculated from such results, within ninety calendar days of the completion of the performance tests.



5.4 ICL shall arrange for the Facility lenders to choose a qualified independent engineering firm to review and evaluate the design of the Facility. ICL shall arrange for such firm to present to FPL the scope of the proposed design review and, prior to the closing of the construction loan financing of the Facility, a written assessment of whether the Facility can be reasonably expected to operate as specified in Section 5.1. ICL shall cause its architect/engineering firm selected pursuant to Section 5.1 to make all changes to the Facility's design and construction that the independent engineering firm determines are necessary to result in the Facility being capable of (i) timely completion and (ii) reliable operation as specified in Section 5.1 unless (i) ICL disagrees with such determination(s), (ii) ICL provides FPL with a written explanation of the basis for such disagreement and the basis for ICL's belief that the proposed change is not needed to assure the timely completion and reliable operation of the Facility as specified in Section 5.1, and (iii) (a) FPL concurs or (b) a second qualified independent engineering firm which shall be chosen by ICL and approved by FPL (which approval shall not be unreasonably withheld or delayed) concludes, and provides a reasonable explanation thereof, that the change recommended by the first qualified independent engineering firm is not needed to assure (i) the timely completion and (ii) the reliable operation of the Facility as specified in Section 5.1. FPL's agreement for ICL not to implement changes recommended by the independent engineering firm shall be

administrative in nature and shall not relieve ICL of its obligations, duties and responsibilities hereunder.

- 5.5 ICL shall submit its integrated engineering, procurement and construction schedule for FPL's review at least sixty calendar days prior to starting Facility construction, and a start-up and test schedule for the Facility at least sixty calendar days prior to start-up and testing of the Facility. ICL shall submit progress reports in a form reasonably satisfactory to FPL every calendar month until the Commercial Operation Date, and shall notify FPL of any changes in such schedules in a timely manner. FPL shall have the right to monitor the construction, start-up and testing of the Facility. ICL shall comply with all reasonable requests of FPL for information resulting therefrom. ICL shall cooperate in such physical inspections of the Facility as may be reasonably required by FPL during and after completion of construction. FPL's technical review and inspections of the Facility and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility.
- 5.6 ICL shall provide FPL with the generator manufacturer's capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams and alternating current and direct current elementary diagrams for review and inspection by FPL no later than two hundred forty calendar days prior to the Initial Synchronization Date. Within sixty calendar days of receiving such material, FPL shall inform

ICL, in writing, whether the proposed protective relay types and protective relay settings are acceptable. If these are not acceptable to FPL, ICL agrees to comply with any reasonable FPL requests to provide acceptable relay types and protective relay settings. ICL shall also provide to FPL, for its review, the Facility design heat balance, flow diagrams and a major equipment list by a date to be specified in the Interconnection Agreement which will allow FPL sufficient time to incorporate the information into equipment specifications. All information must be submitted in a manner reasonably acceptable to FPL, particularly the turbine generator data, which shall be used for FPL's inspections and transient stability analysis. Complete turbine generator data must be submitted by a date to be specified in the Interconnection Agreement which will allow FPL sufficient time to incorporate the information into equipment specifications.

- 5.7 ICL and FPL shall mutually develop written operating procedures no later than sixty calendar days prior to the Initial Synchronization Date. The operating procedures will be intended as a guide on how to integrate the Facility's Energy and Committed Capacity into FPL's electrical system. Topics covered shall include, but not necessarily be limited to, deliveries of Energy during start-up and testing of the Facility; the method of day-to-day communications; key personnel lists for both ICL and FPL operating centers; clearance and switching practices; outage scheduling; daily Capacity availability and Energy reports; Facility operations log; and reactive power output. The Operating Representatives, designated

pursuant to Section 15.0, OPERATING REPRESENTATIVE, shall be responsible for modifying, from time to time, these operating procedures in writing, to reflect agreed upon changes.

- 5.8 ICL shall prepare an annual schedule and plan for ongoing maintenance and spare parts inventory, including an operation and maintenance plan for less frequent major overhaul work when required on the Facility's generator, turbine, boilers and auxiliary equipment. ICL shall, at ICL's expense, cause an independent engineering firm or such other party with recognized experience in the electrical generation power industry as may be chosen by ICL and approved by FPL (which approval shall not be unreasonably withheld or delayed) to conduct a review of the proposed operation and maintenance plan to ascertain whether such plan is (i) effective and consistent with Good Engineering and Operating Practices and (ii) adequate to allow the Facility to operate with a Capacity Billing Factor of at least 87% during the initial term of this Agreement.
- 5.9 The evaluation of the initial operation and maintenance plan by the independent engineering firm, or such other party as appropriate, specified in Section 5.8, shall be provided to FPL, in writing, at least sixty calendar days prior to the Initial Synchronization Date. ICL shall make all changes to the proposed operation and maintenance plan developed pursuant to Section 5.8, which the independent engineering firm, or such other party as appropriate, determines are necessary for such plan to be (i) effective and consistent with Good Engineering and Operating Practices and (ii) adequate to allow the Facility to operate as specified in Section 5.8, unless (i) ICL

disagrees with such determination(s), (ii) ICL provides FPL with a written explanation of the basis for such disagreement and the basis for ICL's belief that the proposed change is not needed to assure the reliable operation of the Facility as specified in Section 5.8, and (iii) (a) FPL concurs or (b) a second qualified independent engineering firm which shall be chosen by ICL and approved by FPL (which approval shall not be unreasonably withheld or delayed) concludes, and provides a reasonable explanation thereof, that the change recommended by the first qualified independent engineering firm is not needed (i) under Good Engineering and Operating Practices or (ii) to assure the reliable operation of the Facility as specified in Section 5.8. ICL shall perform Facility maintenance in accordance with such plan. FPL's agreement for ICL not to implement changes recommended by the independent engineering firm shall be administrative in nature and shall not relieve ICL from its obligations, duties and responsibilities hereunder.

5.10 ICL shall, at least sixty calendar days prior to the Initial Synchronization Date, submit to FPL, in writing, the proposed Scheduled Maintenance Periods for the first five Agreement Years of the Facility's operations and a detailed plan for the remainder of the current calendar year after the Commercial Operation Date plus the following calendar year. FPL shall notify ICL, in writing, whether the requested Scheduled Maintenance Periods in the detailed plan are acceptable. If FPL cannot accept any of the requested Scheduled Maintenance Periods, FPL shall advise ICL of the time period closest to the requested period(s) when the outage(s) can be

scheduled. ICL shall only schedule outages during periods approved by FPL, and such approval shall not be unreasonably withheld. Notwithstanding the previous sentence, ICL shall not, without the prior written approval of FPL, schedule a maintenance shutdown of its Facility in its initial plan during the On-peak Hours that would decrease the capacity output of the Facility below the Committed Capacity in the calendar months of December, January or February and during the period from June 1 through September 15 of any year. Once the schedule for the first Agreement Year has been established and approved, any Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. ICL acknowledges that FPL may experience possible load problems during the period from September 15 through October 15 and agrees to accommodate any FPL request to delay ICL's Scheduled Maintenance Period under such circumstances by at least two weeks when practical and consistent with Good Engineering and Operating Practices.

- 5.11 ICL shall provide written notice to FPL confirming the projected Initial Synchronization Date no less than four calendar months prior to such projected date, which synchronization shall not occur before July 1, 1994. FPL and ICL shall agree on the Initial Synchronization Date and FPL shall have the right to have representatives present at such time.
- 5.12 FPL reserves the right to postpone the Initial Synchronization Date due to any problem(s) with the Facility which could adversely affect

FPL's operations. In such event, FPL shall give ICL written notice of such problem(s) and ICL shall remedy any such problem(s) with facilities or equipment prior to revising the Initial Synchronization Date. The proposed revised date shall be deemed acceptable if FPL is in agreement that the remedy was successful.

- 5.13 ICL shall designate a pre-operation Committed Capacity and provide FPL written notice of such designation on or before June 1, 1993. The pre-operation Committed Capacity shall be at least 270 MW and not greater than 330 MW, unless ICL requests a greater Committed Capacity prior to December 1, 1993 and FPL, at its sole option, agrees. The actual Committed Capacity of the Facility shall be determined by Capacity Test as described in Section 12.0, TESTING AND CAPACITY RATING.

#### 6.0 SALE OF ENERGY AND CAPACITY BY ICL

- 6.1 Commencing on the Initial Synchronization Date and until the Commercial Operation Date, FPL will purchase Energy, but not Capacity, in excess of ICL's internal consumption of electrical energy in accordance with Section 8.1, BASIS FOR PAYMENTS BY FPL. FPL shall have the sole right to purchase Energy and Capacity from the Facility.
- 6.2 Commencing on the Commercial Operation Date, ICL shall sell to FPL and FPL shall purchase from ICL all Energy and Capacity in excess of ICL's internal consumption of energy and capacity in accordance with Section 8.0, BASIS FOR PAYMENTS BY FPL, except to the extent that FPL is not obligated to purchase such Energy and Capacity under

the terms of this Agreement. FPL shall have the sole right to purchase Energy and Capacity from the Facility.

6.3 FPL shall not be obligated to purchase, and may require interrupted or reduced deliveries of, Energy (i) to the extent FPL determines to be necessary for safe and reliable operation and maintenance of any part of FPL's system, (ii) if FPL determines that a failure to interrupt or reduce deliveries of Energy is likely to endanger life or property, or is likely to result in significant disruption of electric service to FPL's customers, or (iii) at those times as determined by Dispatch, pursuant to Section 13.0, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. FPL shall resume normal acceptance of Energy as quickly as practicable pursuant to (i) and (ii) of this Section 6.3.

6.4 ICL acknowledges that throughout the term of this Agreement FPL will have a need for the Committed Capacity and Energy, will be relying on the Facility to meet those needs, and would have no adequate remedy at law in the event ICL were to supply such Committed Capacity or Energy to any person or entity other than FPL in breach of this Agreement, and agrees that in such event FPL would be entitled to specific performance of ICL's obligations to supply Committed Capacity and Energy to FPL.

#### 7.0 DELIVERY OF ENERGY AND CAPACITY

7.1 Prior to January 1, 1992, FPL and ICL shall enter into an Interconnection Agreement in compliance with FPSC Rule 25-17.087.



- 7.2 FPL shall install, at ICL's expense, metering facilities for purposes of measuring Energy and Capacity deliveries from the Facility to FPL.
- 7.3 ICL shall be responsible for the costs incurred by FPL in maintaining and upgrading the metering facilities necessary to measure Energy and Capacity deliveries to FPL.
- 7.4 FPL shall provide and install, at its own expense, the initial metering facilities required to measure sales of retail electric service to the Facility.
- 7.5 The delivery of Energy and Capacity from the Facility pursuant to this Agreement shall be on a net output basis; that is, the internal electrical requirements of the Facility shall be provided by the Facility itself and any excess will be made available for purchase by FPL.
- 7.6 FPL shall provide electric service to the Facility under FPL's applicable rate schedules on file with the FPSC. Any security deposit required for such electric service shall be in accordance with the provisions contained in FPL's applicable rate schedules, as they may be subsequently amended from time to time.
- 7.7 ICL shall give FPL at least four calendar months written notice before initial deliveries of Energy, which deliveries shall not occur before July 1, 1994.
- 8.0 BASIS FOR PAYMENTS BY FPL
- 8.1 FPL shall pay ICL for each MWh of Energy at an hourly rate equal to the Unit Energy Payment Cost times the Unit Hourly Efficiency Factor.

- 8.2 At least thirty calendar days prior to the Commercial Operation Date and by the fifteenth business day of every calendar month thereafter, ICL shall provide FPL with a report, as detailed in Appendix G, FACILITY ACTUAL NET GENERATION AND FUEL COST, showing the previous month's fuel cost data. The items in Appendix G may be changed by mutual agreement of the Operating Representatives.
- 8.3 Calculation of the Monthly Energy Payment to ICL shall be (i) the sum, over all hours of the Monthly Billing Period, of the product of each hour's applicable rate as set forth in Section 8.1, times the purchases of Energy by FPL for that hour, plus (ii) any applicable adjustments pursuant to Section 8.4.
- 8.4 Within ninety calendar days after the end of each Agreement Year, ICL shall provide FPL a report, consistent with Appendix D, ICL'S ACTUAL ENERGY COST, showing the previous Agreement Year's Actual Energy Cost data. FPL and ICL will share the difference between the sum of the Actual Energy Costs for the Agreement Year and the sum of the Adjusted Energy Costs for such Agreement Year as calculated below.
- 8.4.1 If the Actual Energy Cost for the Agreement Year is less than or equal to the sum of the Adjusted Energy Costs for such Agreement Year, then the adjustment shall be (i) the sum of the Adjusted Energy Costs for the Agreement Year plus (ii) one-half of (a) the Actual Energy Cost minus (b) the sum of such Adjusted Energy Costs minus (iii) the sum of the Monthly Energy Payments during the applicable Agreement Year.

8.4.2 If the Actual Energy Cost for the Agreement Year is greater than the sum of the Adjusted Energy Costs for such Agreement Year but less than 110% of such Adjusted Energy Costs, then the adjustment shall be (i) the sum of such Adjusted Energy Costs plus (ii) four tenths of (a) the Actual Energy Cost minus (b) the sum of such Adjusted Energy Costs minus (iii) the sum of the Monthly Energy Payments during the applicable Agreement Year.

8.4.3 If the Actual Energy Cost for the Agreement Year is greater than or equal to 110% of the sum of the Adjusted Energy Costs for such Agreement Year, then the adjustment shall be (i) the sum of such Adjusted Energy Costs times 1.04 minus (ii) the sum of the Monthly Energy Payments during the applicable Agreement Year.

All adjustments in this Section 8.4 shall become part of the Monthly Energy Payment during the Monthly Billing Period following the calculation of such adjustment. FPL will have no obligation with respect to the Actual Energy Cost beyond 110% of the sum of the Adjusted Energy Costs.

8.5 In the event the Actual Energy Cost and the total of the Monthly Energy Payments for the Agreement Year differ by more than 4%, then the Operating Representatives will annually adjust the Unit Energy Payment Cost to better reflect Actual Energy Cost with the objective of minimizing the difference calculated in Section 8.4 for the subsequent Agreement Year.

- 8.6 Beginning on the Commercial Operation Date, FPL shall pay to ICL the Monthly Capacity Payments at rates set forth in Appendix A, MONTHLY CAPACITY AND FIXED O&M PAYMENT CALCULATION, provided that FPL shall have no obligation to make any Monthly Capacity Payments if any Event of Default shall have occurred. However, if any Event of Default occurs under Sections 3.5.1, 3.5.2, 3.5.3, 3.5.6, 3.5.7 and 3.5.9, and ICL completes a timely cure, with respect to an Event of Default under Section 3.5.8, ICL enters into fuel contract(s) and is otherwise in compliance with the terms of the Agreement, and with respect to Events of Default under Sections 3.5.4 or 3.5.5, the Facility resumes delivery of Energy and Capacity and is otherwise in compliance with the terms of this Agreement, FPL shall resume Monthly Capacity Payments. FPL shall pay to ICL for the Monthly Billing Period in which the Commercial Operation Date occurs the Monthly Capacity Payment times the lesser of (i) Available Run Hours divided by 730 hours or (ii) 1.00.
- 8.7 Except as provided in Section 8.9, if, at the end of any Monthly Billing Period during the term of this Agreement, the Facility has not operated at a Capacity Billing Factor of at least 55%, based on the Committed Capacity, FPL shall not be obligated to make a Monthly Capacity Payment during such Monthly Billing Period. ICL shall not be relieved of any of its obligations under this Agreement in the event FPL is not obligated to make payments under this Section 8.7.
- 8.8 Beginning on the Commercial Operation Date, FPL shall pay ICL the Start-up Cost incurred by ICL as a direct result of starting the Facility following an FPL-required shutdown of the Facility pursuant

to Section 13.0, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. The payment shall be the sum of all Start-Up Costs during the Monthly Billing Period.

- 8.9 During each of the first nine Monthly Billing Periods immediately following the Commercial Operation Date, one-half of the difference between the amount which ICL could have earned at a Capacity Billing Factor of 87% and the amount ICL actually earned for that Monthly Billing Period shall be paid to ICL if (i) the Annual On-peak Capacity Factor calculated at the end of the applicable Monthly Billing Period during such nine Monthly Billing Periods is greater than or equal to 55%, (ii) the Special Capacity Factor is equal to or greater than 87% and (iii) the Annual On-peak Capacity Factor for the tenth through eighteenth Monthly Billing Periods immediately following the Commercial Operation Date is not less than 87%. The additional payment, if any, due to ICL shall be paid to ICL in one payment at the end of the eighteenth Monthly Billing Period immediately following the Commercial Operation Date. ICL shall not be relieved of any of its obligations under this Agreement in the event FPL is not obligated to make payments under this Section 8.9.
- 8.10 FPL shall pay to ICL all interest accrued on the earnest money payments, if any, which FPL receives from ICL pursuant to Section 4.0, COMPLETION SECURITY, at the average of the three-year treasury note rate for the accrual period as reported by the Federal Reserve. Payments will be made by wire transfer by the last business day of each calendar quarter, beginning in the quarter in which FPL first receives the earnest money payment.

8.11 Any refunds of the earnest money pursuant to Section 4.0, COMPLETION SECURITY, shall be made by wire transfer within thirty business days after the applicable refund situation occurs.

8.12 In the event that ICL is declared in default of any of its agreements (including sale/leaseback arrangements) with any lender or group of lenders, the result of which has given rise to a demand of acceleration or foreclosure, and further provided that no Event of Default has occurred and continued full payment for Energy and Capacity by FPL as provided under this Agreement would result in a net increase in the Termination Fee, then, FPL may retain the portion of the Energy and Capacity payment which would result in such net increase to the Termination Fee as additional security for FPL until ICL's default to its lender is cured, or if the lender has foreclosed, until the lender or the operator installed by the lender is able to demonstrate, to the satisfaction of FPL in its reasonable judgment, that it is capable of fulfilling all of its obligations under this Agreement, in either of which events FPL will pay the withheld amount plus accrued interest to ICL or, if the lender has foreclosed, then to the lender. Any portion of Energy and Capacity payments which does not provide a net increase to the Termination Fee shall be due and payable as otherwise provided under this Agreement.

#### 9.0 BILLING AND PAYMENT

9.1 On a monthly basis, FPL shall prepare a Monthly Billing Statement summarizing the quantities of Energy and Capacity received by FPL for the preceding Monthly Billing Period and any payments,

calculated in accordance with Section 8.0, BASIS FOR PAYMENTS BY FPL, due to ICL arising from such receipts. The Monthly Billing Statement shall contain at least the following information:

- 9.1.1 For the Monthly Billing Period, the total number of hours, the total number of Available Run Hours, the total number of Available Run On-peak Hours, the total number of Dispatch Hours and a list of which hours the Facility was actually Dispatched, each separately stated;
- 9.1.2 The current Committed Capacity, the current Unit Energy Cost and the current Unit Energy Payment Cost;
- 9.1.3 The Energy received by FPL during each hour in the Monthly Billing Period;
- 9.1.4 The total Energy received by FPL in excess of that which could be produced by the Committed Capacity and which FPL did not request;
- 9.1.5 The total Energy received by FPL during On-peak Hours in excess of that which could be produced by the Committed Capacity plus 10%;
- 9.1.6 The Energy received by FPL during all hours and the On-peak Hours;
- 9.1.7 The Daily Capacity Factor and the Daily On-peak Capacity Factor for each applicable calendar day of the Monthly Billing Period;
- 9.1.8 The Capacity Billing Factor, Annual Capacity Factor and Annual On-peak Capacity Factor for the Monthly Billing Period;

- 9.1.9 The Unit Hourly Efficiency Factor and the rate paid by FPL for Energy during each hour in the Monthly Billing Period;
  - 9.1.10 The Adjusted Energy Cost for the Monthly Billing Period and the sum of the Adjusted Energy Costs for the current Agreement Year;
  - 9.1.11 The calculated Monthly Energy Payment during the Monthly Billing Period;
  - 9.1.12 The Monthly Capacity Payment during the Monthly Billing Period;
  - 9.1.13 The calculated ICL Fuel Cost during each hour in the Monthly Billing Period;
  - 9.1.14 The sum of each hourly ICL Fuel Cost during the Monthly Billing Period and the sum of each hourly ICL Fuel Cost during the current Agreement Year;
  - 9.1.15 The Start-up Costs during the Monthly Billing Period; and
  - 9.1.16 Such other information, data or calculations as FPL or ICL reasonably deems necessary to adequately calculate payment amounts.
- 9.2 Not later than the fifteenth business day following the calendar day that ends the billing cycle, FPL shall send to ICL the Monthly Billing Statement and pay all the amounts due by wire transfer.
- 9.3 Within thirty calendar days of its receipt of a Monthly Billing Statement, ICL shall review its contents and advise FPL in writing of any errors or misstatements contained therein.



9.4 If any errors or misstatements arise in connection with any portion of any Monthly Billing Statement, FPL and ICL agree to proceed in good faith to settle any such items expeditiously. After any such items are settled between the Parties, adjustments in prior months' invoices shall be added to, or credited against, the next Monthly Billing Statement.

9.5 FPL will provide ICL with such information pertaining to rates and delivery of Energy and Capacity as ICL may reasonably request. FPL may comply with any request for information of ICL by providing access to relevant materials at FPL's business offices during normal business hours. ICL shall pay all expenses incurred by FPL in complying with requests for information made pursuant to this Section 9.5.

9.6 In the event FPL becomes liable for additional taxes, assessments or impositions arising out of its purchases of Energy and Capacity from ICL as a result of changes in tax laws occurring after the execution of this Agreement and for which it would not have been liable if it had produced the Energy and/or constructed the Facility itself, FPL may bill ICL monthly for such additional expenses or may offset them against amounts due ICL. In the event of any changes in tax law(s) resulting in material increases in tax liability, the Parties will enter into negotiations in an attempt to formulate an appropriate amendment to this Agreement.

#### 10.0 RECORDS AND AUDITS

10.1 ICL and its fuel, fuel transportation, lime and ash disposal suppliers' books, records and accounts, correspondence, accounting

procedures and practices and any other supporting evidence relating to fuel supply, fuel transportation, lime supply and ash disposal (all the foregoing hereinafter referred to as "Records") shall be open to inspection, audit and reproduction, during normal working hours, by FPL or its authorized representative to the extent necessary to permit adequate evaluation and verification of any invoices, payments or claims based on ICL's actual costs or its suppliers' actual costs incurred to the extent that the price to ICL is determined by reference to the suppliers' actual costs, or units expended. For the purpose of evaluating or verifying such actual or claimed costs incurred or units expended, FPL and its authorized representative shall have access to said Records from the effective date of this Agreement until two years after the date of the final payment by FPL to ICL.

- 10.2 FPL or its authorized representative shall have access during normal working hours to all necessary facilities of ICL and its suppliers, and shall be provided adequate and appropriate work space, in order to conduct the audits in compliance with the provisions of this Section 10.0. FPL shall give ICL and its suppliers reasonable notification of intended audits.
- 10.3 ICL shall require its suppliers of fuel, fuel transportation, lime and ash disposal to comply with the provisions of this Section 10.0 by insertion in such suppliers' contracts the requirements that the supplier maintain complete and accurate documentation of the type described in Section 10.1 to support all invoices to ICL, and that

ICL and FPL be given adequate opportunity to review such documentation to assess that it is complete and accurate.

#### 11.0 TERMINATION FEE STATEMENT

11.1 Starting with the Commercial Operation Date, FPL shall prepare a statement ("Monthly Termination Fee Statement") at the end of each Monthly Billing Period summarizing the Termination Fee. The Monthly Termination Fee Statement shall include the amount of the Termination Fee as of the end of such Monthly Billing Period and such other information, data or calculations as FPL or ICL deems reasonably necessary to adequately advise ICL of the status of the Termination Fee.

11.2 FPL shall mail the Monthly Termination Fee Statement to ICL within twenty business days after the close of each Monthly Billing Period.

11.3 Within thirty calendar days of the date the Monthly Termination Fee Statement is received, each Party shall use reasonable efforts to notify, in writing, the other Party of any errors, misstatements or other problems with the Monthly Termination Fee Statement.

#### 12.0 TESTING AND CAPACITY RATING

12.1 The initial Committed Capacity shall be based on the Continuous Capability of the Facility which shall be determined by a Capacity Test as described in this Section 12.0 and determined at least two calendar days prior to the Commercial Operation Date. ICL shall notify FPL, in writing, of the date and time when ICL will perform the first such test ("Initial Test"). ICL shall perform and FPL may monitor the Initial Test at a mutually agreed upon time within fourteen calendar days of FPL's receipt of such notice.

- 12.2 If the Initial Test is completed successfully to the satisfaction of ICL (provided the conditions in Section 12.7 are met), ICL may, for purposes of determining the Commercial Operation Date, set the initial Committed Capacity at any level not less than 150 MW and not to exceed the Continuous Capability, as determined by the Initial Test, except that, for purposes of Capacity Payments under this Agreement, ICL shall not set the initial Committed Capacity above 330 MW or below 270 MW unless, at FPL's sole option, FPL approves such level. If the Initial Test is not completed successfully to the satisfaction of ICL, ICL shall provide written notice to FPL as to when the Facility will be ready for a rescheduled Initial Test. ICL shall perform and FPL may monitor the new Initial Test at a mutually agreed upon time within fourteen calendar days of FPL's receipt of such notice.
- 12.3 Following a successful Initial Test, ICL may perform up to two additional Capacity Tests, completed successfully to the satisfaction of ICL, provided FPL is notified in writing at least seventy-two hours in advance, during a period of three months immediately following the Commercial Operation Date. Upon completion of such additional Capacity Tests, if any, ICL shall set the new Committed Capacity at a level equal to or greater than the prior Committed Capacity, except that ICL shall not set the Committed Capacity at any level in excess of the new Continuous Capability as determined by such additional Capacity Test or 330 MW, whichever is less, unless, at FPL's sole option, FPL approves such level.

- 12.4 At least thirty calendar days prior to the first Demonstration Period immediately following the Commercial Operation Date and every subsequent Demonstration Period throughout the term of this Agreement, ICL shall provide written notice to FPL stating when an annual Capacity Test is scheduled. ICL shall perform and FPL may monitor each such Capacity Test.
- 12.5 ICL may set the new Committed Capacity at any level not to exceed the Continuous Capability as determined in Section 12.4, except that ICL shall not set the new Committed Capacity above 330 MW or below 270 MW unless, at FPL's sole option, FPL approves such level.
- 12.6 ICL may perform up to two additional Capacity Tests, completed successfully to the satisfaction of ICL, during a Demonstration Period provided FPL is notified in writing at least seventy-two hours in advance. Upon completion of such additional Capacity Tests, if any, ICL shall set the new Committed Capacity at a level equal to or greater than the prior Committed Capacity, except that ICL shall not set the Committed Capacity at a level in excess of the new Continuous Capability as determined by such additional Capacity Test or 330 MW, whichever is less, unless, at FPL's sole option, FPL approves such level.
- 12.7 Testing of the Continuous Capability of the Facility shall be in accordance with the following Capacity Test:
- 12.7.1 Test results shall be based on the seventy-two consecutive hour period commencing at a time designated by ICL prior to, or commensurate with, such test period,

provided FPL is notified in advance of the test's approximate start time.

12.7.2 All Capacity Tests conducted pursuant to Sections 12.1, 12.2, 12.3, 12.4 and 12.6 shall be adjusted to such ambient conditions as are defined in Appendix E, FACILITY PERFORMANCE CONDITIONS. If the Capacity Tests conducted pursuant to Sections 12.1, 12.2, and 12.3 do not occur between 12:00 midnight on June 30 and ending at 12:00 midnight on the following October 15, the Operating Representatives shall determine if any additional adjustments shall be required for ambient conditions.

12.7.3 The tested Continuous Capability shall be the average capacity measured over the entire period of testing as specified in Section 12.7.1.

12.7.4 Normal station service use of unit auxiliaries, including (without limitation) cooling towers and other equipment required by regulatory and/or governmental authority, is required during the period when a Capacity Test is conducted; however, no deliveries of cogenerated steam to the steam customer will be required during the period when a Capacity Test is conducted, provided the Facility does not deliver any cogenerated steam to the steam customer during the Demonstration Period.

### 13.0 DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY

13.1 Power supplied by ICL hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of

230,000 volts (230 kV) and power factor dispatchable and controllable in the range of 85% lagging to 85% leading as measured at the Interconnection Point to maintain system operating parameters, as specified by FPL, with a net generation Capacity equal to the Committed Capacity.

- 13.2 ICL shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL's system, except for normal testing and repair in accordance with Good Engineering and Operating Practices. ICL shall have qualified personnel test and calibrate all protective equipment at regular intervals not to exceed two years. A unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with Good Engineering and Operating Practices and as agreed by the Parties. If, at any time, FPL has reason to doubt the integrity of the Facility's protective equipment and suspects that such loss of integrity would jeopardize the reliability of FPL's supply of electric energy to its customers, ICL shall be required to demonstrate to FPL's satisfaction the correct calibration and operation of the equipment in question.
- 13.3 If the Facility is separated from the FPL system for any reason, under no circumstances shall ICL reclose into FPL's system without first obtaining FPL's specific approval, as determined by the Operating Representatives.

- 13.4 ICL shall not, without prior written approval of FPL, make or cause to make any additions, deletions or alterations to the Facility's protective equipment.
- 13.5 Except as provided in Section 14.0, DATA ACQUISITION, ICL shall purchase and own such telemetering equipment for the Facility as may reasonably be required in order to allow FPL to receive telemetry and control the Energy and Capacity from the Facility as required to optimize economic and reliable operation of the FPL electric system. Such equipment shall meet FPL's reasonable specifications for transmission of metered data to locations specified by FPL. ICL shall install and maintain such telemetering equipment including, but not limited to, the generator control unit and the generator control panel. ICL shall, at no cost to and as specified by FPL, install transducers, meters, test switches for transducers and metering, alternating current and direct current sources, telephone lines, and interconnecting wiring with proper identification for supervisory and communications equipment.
- 13.6 Consistent with Section 13.7, FPL shall have Dispatch And Control Rights to commit and decommit the Facility and to control the real and reactive power delivered from the Facility to FPL's system in any manner which FPL deems appropriate, subject to FPL's Operating Limits. Control of Capacity and Energy shall be ICL's responsibility except during any Dispatch Hour. During Dispatch, control of the Facility will either be by ICL manual control under the direction of FPL or by Automatic Generation Control by FPL's system control center as determined by FPL. FPL may at times



request that the real power output be equal to the Peak Capability of the Facility but shall not reduce the real power output of the Facility below the Minimum Load without decommitting the Facility. ICL shall meet this request or, within thirty calendar days, notify FPL in writing of the engineering or operational circumstances which prevented ICL from complying with FPL's request. FPL's request shall be made orally with as much prior notice to ICL as practicable. Failure to operate at any point above the Committed Capacity pursuant to such request shall not be deemed to be an Unscheduled Outage nor a Scheduled Maintenance Period.

- 13.7 For purposes of exercising certain Dispatch And Control Rights, FPL agrees that the minimum notice for shutdown shall be eight hours and the minimum run time between start-up and shutdown shall be eight hours. FPL may request ICL to decommit the Facility, provided that such requests will not exceed the FPL Operating Limits. Unless FPL notifies ICL that purchases from ICL at that time should be interrupted due to circumstances specified in Section 6.3 (i) and (ii), SALE OF ENERGY AND CAPACITY BY ICL, ICL may, at its sole discretion, continue to operate the Facility at or below Minimum Load and deliver Energy to FPL. However, any hour or part of an hour that ICL elects to continue to operate the Facility rather than decommit the Facility as requested by FPL, shall not be considered a Dispatch Hour. Once FPL requests the Facility to again produce generation above the Minimum Load, the first hour subsequent to such request shall be a Dispatch Hour.

- 13.8 During the term of this Agreement, ICL shall provide FPL, on a weekly basis, projections of the amounts of Energy and Capacity for each calendar day of the following week. Such estimates shall be furnished by 3:00 p.m. on the Thursday prior to the week for which such schedule is required, unless otherwise agreed in writing by the Parties, and shall be updated on a daily basis by 12:00 noon of the calendar day preceding the day to which the estimates are to apply. Notwithstanding the above, ICL shall keep FPL informed at all times as to any change in the generation capability of the Facility including, without limitation, Available Committed Capacity, any Unscheduled Outages and applicable Scheduled Maintenance Periods. ICL shall operate the Facility consistent with FPL's Dispatch And Control Rights.
- 13.9 FPL shall, by 4:00 p.m. prevailing Eastern time each calendar day, provide ICL with an estimated schedule of operations pursuant to FPL Operating Limits for the following calendar day, including a Ready For Control, if applicable. If the Facility fails to meet the Ready For Control specified by FPL, ICL shall declare the difference between the scheduled Ready For Control and the actual Ready For Control an Unscheduled Outage of the Facility provided the specified Ready For Control was within the FPL Operating Limits of the Facility and consistent with Section 13.7. Any hour or part of an hour between the scheduled Ready For Control and the actual Ready For Control shall not be considered a Dispatch Hour. Additionally, FPL shall have Dispatch And Control Rights to control the Facility within the FPL Operating Limits up to the Available Committed

Capacity and to schedule a desired voltage for the Facility to maintain.

- 13.10 For each instance where ICL fails, after oral notification from FPL, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the operating level equal to the Available Committed Capacity, as prescribed by FPL pursuant to Section 13.9 above, the difference between Available Committed Capacity and the actual level shall be designated as an Unscheduled Outage for the previous twenty-four hour period.
- 13.11 During the term of this Agreement, ICL shall submit to FPL, in writing, by April 1 of each calendar year, ICL's desired Scheduled Maintenance Periods for the next five calendar years and a detailed plan for the first calendar year of the five calendar year schedule. By October 31 of each calendar year, FPL shall notify ICL in writing whether the requested Scheduled Maintenance Periods in the detailed plan are acceptable. If FPL cannot accept any of the requested Scheduled Maintenance Periods, FPL shall advise ICL of the time period closest to the requested period(s) when the outage(s) can be scheduled. ICL shall only schedule outages during periods approved by FPL, and such approval shall not be unreasonably withheld. Notwithstanding the previous sentence, ICL shall not, without the prior written approval of FPL, schedule a maintenance shutdown of the Facility during the On-peak Hours in the calendar months of December, January or February and during the On-peak Hours that would decrease the capacity output of the Facility below the Committed Capacity during the period from June 1 through September

15 of any calendar year. Once the schedule for the detailed plan has been established and approved, any Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. ICL acknowledges that FPL may experience possible load problems during the period from September 15 through October 15 and agrees to accommodate any FPL request to delay ICL's Scheduled Maintenance Period under such circumstances by at least two weeks when practical and consistent with Good Engineering and Operating Practices.

13.12 FPL shall have the right, upon six months prior written notice, to revise the calendar dates as specified in Section 5.10, PRE-OPERATION PERIOD, and Section 13.11 above during which ICL shall not, unless mutually agreed, schedule a Scheduled Maintenance Period, provided FPL's revised calendar dates adequately accommodate with reasonable flexibility for ICL the ten-week Major Maintenance Outage.

13.13 Each Party shall keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement.

13.13.1 ICL shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power production for each clock hour; (ii) changes in operating status, Scheduled Maintenance Periods, and outages and deratings using the NERC

operating guidelines detailed in Appendix F, NERC GUIDELINES; and (iii) any unusual conditions found during inspections.

13.13.2 Starting with the second calendar month immediately following the Initial Synchronization Date, ICL shall provide a report to FPL by the fifteenth business day of each calendar month utilizing the format detailed in Appendix H, FACILITY ACTUAL PERFORMANCE DATA, as may be revised by FPL.

13.13.3 Either Party shall have the right from time to time, upon fourteen calendar days written notice to the other Party, to examine the records and data of the other Party relating to this Agreement at any time during the period the records are required to be maintained.

13.14 ICL shall, at its own expense, cause an independent engineering firm or such other party with recognized experience in the electrical generation power industry as may be chosen by ICL and approved by FPL (which approval shall not be unreasonably withheld or delayed) to conduct a review of the Facility's operation and maintenance records, practices and plan after the second and before the third anniversary of the Commercial Operation Date and, unless the Parties otherwise agree, every five Agreement Years thereafter. In addition, such a review shall be conducted at FPL's written request in any calendar year following a two-calendar-year period in which the Capacity Billing Factor averages less than 75%. Such review shall include an assessment of whether

the Facility can reasonably be expected to operate consistent with Good Operating and Engineering Practices and with a Capacity Billing Factor of at least 87% for the remainder of the initial term of this Agreement.

13.15 ICL shall cause the independent engineering firm or such other party with recognized experience in the electrical generation power industry, as appropriate, to issue (i) a written report describing the extent to which the operation and maintenance practices, plan and schedule described in Section 13.14 are being followed, (ii) a description of, and a statement of the reasons for, any justified departure from such practices, plan or schedule, (iii) a description of any deficiencies in the Facility's operation and maintenance practices and plan and (iv) its recommendations, if any, for improving future operation and maintenance practices and plan which could result in an improved Capacity Billing Factor. ICL shall provide FPL with a copy of all written reports developed pursuant to this Section 13.15. ICL shall implement any recommendations made by the independent engineering firm or such other party, as appropriate, as necessary to (i) comply with Good Engineering and Operating Practices and (ii) operate as specified in Section 13.14, unless (i) ICL disagrees with such determination(s), (ii) ICL provides FPL with a written explanation of the basis for such disagreement and the basis for ICL's belief that the proposed change is not needed to assure the reliable operation of the Facility as specified in Section 13.14, and (iii) (a) FPL concurs or (b) a second qualified

independent engineering firm which shall be chosen by ICL and approved by FPL (which approval shall not be unreasonably withheld or delayed) concludes, and provides a reasonable explanation thereof, that the change is not needed (i) under Good Engineering and Operating Practices or (ii) to assure the reliable operation of the Facility as specified in Section 13.14. ICL shall perform Facility maintenance in accordance with such plan. ICL shall keep and make available adequate maintenance records for use by the independent engineering firm or such other party, as appropriate, and/or FPL for the purpose of this review. FPL's agreement for ICL not to implement changes recommended by the independent engineering firm shall be administrative in nature and shall not relieve ICL from its obligations, duties and responsibilities hereunder.

13.16 During the financing term and to the extent that ICL has access, ICL will ensure that FPL receives copies of any maintenance evaluations or maintenance reports to be provided to any third party with a financial security interest in or lien on the Facility, including evaluations or reports generated at the request of such third party or performed by an engineer employed by such third party.

13.17 During the term of this Agreement, ICL shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPL. ICL shall ensure that such personnel are on duty at all times, twenty-four hours a calendar day and seven calendar days a week. Additionally, during the term

of this Agreement, ICL shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder.

- 13.18 The Parties recognize that FPL is a member of NERC and that, to ensure continuous and reliable electric service, FPL operates its system in accordance with the operating criteria and guidelines of NERC. If an emergency is declared by FPL, FPL shall verbally notify ICL's personnel and, if requested by FPL, ICL's personnel shall place the Capacity of the Facility within exclusive control of FPL for the duration of such emergency. Without limiting the generality of the foregoing, FPL may require ICL's personnel to raise or lower production of Energy generated by the Facility to maintain safe and reliable load levels and voltages on FPL's transmission and/or distribution system; provided however, any changes in the level of the Energy required of the Facility hereunder shall be implemented in a manner consistent with safe operating procedures and within the FPL Operating Limits of the Facility.
- 13.19 ICL shall cooperate with FPL in establishing emergency plans, including, without limitation, recovery from a local or widespread electrical blackout, voltage reduction in order to effect load curtailment, and other plans which may be necessary. ICL shall make technical references available concerning start-up times, black-start capabilities and minimum load-carrying ability.
- 13.20 ICL shall, during an emergency, supply such Energy as the Facility is able to generate and FPL is able to receive. If the Facility has any Unscheduled Outages and/or Scheduled Maintenance Periods,



and such Unscheduled Outages and/or Scheduled Maintenance Periods occur or would occur coincident with an emergency, ICL shall make all good faith efforts to reschedule the outage(s) or, if the outage(s) have begun, expedite the completion thereof.

13.21 ICL shall operate the Facility with all available automatic control and protection equipment, speed governors and voltage regulators in-service whenever the Facility is connected to, or operated in parallel with, the FPL system.

13.22 FPL-authorized representatives may, from time to time during regular working hours and with reasonable advance written notice, have access to inspect the operation and maintenance records of the Facility or for other purposes necessary to determine ICL's performance under the terms of this Agreement, provided that FPL's inspections do not unreasonably interfere with ICL's operation and maintenance of the Facility.

#### 14.0 DATA ACQUISITION

14.1 Except as provided in Section 13.0, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, each Party shall be responsible, at its own expense, for the purchase, installation, maintenance and replacement of its respective data acquisition equipment. This data acquisition equipment shall include remote terminal units ("RTUs"), telephone equipment and leased telephone circuits necessary to transmit data to remote locations, and any other equipment or service necessary to provide for the telemetry requirements of FPL or ICL under this Agreement.

- 14.2 The data acquisition equipment shall monitor analog and digital signals deemed desirable by FPL or ICL to implement the provisions of this Agreement. Such data acquisition equipment shall be state-of-the-art at the time when it is purchased, be compatible at all times with the computer master equipment receiving the telemetry signals (including Automatic Generation Control), and supply status information, kWh, voltage, MW and MVAR analog information, as well as any other data required by FPL or ICL from time to time.
- 14.3 The "FPL RTU" shall be installed exclusively to provide telemetry to the FPL system control center. The FPL RTU shall be in addition to any other RTUs which in the future may be installed to supply data to either Party. The FPL RTU shall be owned by FPL. FPL shall, at its own expense, design, purchase, install, repair, maintain, replace, relocate or remove the FPL RTU.
- 14.4 The "Facility RTU" or other equivalent equipment shall be installed to provide telemetry to the control center of the Facility. The Facility RTU shall perform the functions necessary to implement the provisions of this Agreement. The Facility RTU shall be owned by ICL. ICL shall, at its own expense, design, purchase, install, repair, maintain, replace, relocate or remove the Facility RTU. It is understood and agreed by the Parties that FPL will provide a freeze contact each hour to the Facility RTU and the metering equipment will be capable of providing a pulse contact (proportioned to MWh) as required for ICL's use.

15.0 OPERATING REPRESENTATIVE

15.1 At least two hundred forty calendar days prior to the Initial Synchronization Date, each Party shall appoint a member and an alternate member as Operating Representatives, and provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The respective Operating Representatives shall meet as necessary at a mutually agreed upon time upon prior written notice. The Operating Representatives shall hold other meetings at the request of either Party, at a time and place as agreed to by the Operating Representatives. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations of each respective power system. The Operating Representatives shall represent the Parties in all matters arising under this Agreement which may be delegated to them by mutual agreement of the Parties.

15.2 The duties of the Operating Representatives shall include those specifically identified elsewhere in this Agreement, plus the following:

15.2.1 Coordinate operation outage schedules;

15.2.2 Establish control and operating procedures consistent with the provisions of this Agreement;

15.2.3 Provide a list of Operating Representatives of each Party; and

15.2.4 Such other duties as may be conferred upon them by mutual agreement of the Parties.

15.3 Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be referred by the Operating Representatives to their principals for decision. All decisions and agreements made by the Operating Representatives or principals shall be evidenced in writing.

16.0 INSURANCE

16.1 ICL shall procure or cause to be procured a policy of liability insurance issued by an insurer satisfactory to FPL on a standard "Insurance Services Office" commercial general liability form. Said policy shall cover liabilities which might arise under, or in the performance or nonperformance of, this Agreement. An FPL certificate of insurance in accordance with Section 16.4 shall be delivered to FPL at least fifteen calendar days prior to the start of any interconnection work. At a minimum, said policy shall contain (i) an endorsement providing coverage, including, but not limited to, products liability/completed operations coverage for a period of three years, and (ii) a broad form contractual liability endorsement for FPL Entities. Effective at least fifteen calendar days prior to the synchronization of the Facility with FPL's system, the policy shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards.

- 16.2 The policy in Section 16.1 shall have a minimum limit of Twenty Million Dollars (\$20,000,000) per occurrence, and in the annual Facility-specific aggregate combined single limit, for bodily injury (including death) or property damage; provided, however, in the event that such insurance becomes totally unavailable or procurement becomes commercially impracticable, such unavailability shall not constitute an Event of Default under this Agreement, but FPL and ICL shall enter into negotiations to develop substitute protection for FPL Entities which FPL, in its reasonable judgement, deems adequate. Any premium assessment or deductible shall be for the account of ICL and not FPL Entities.
- 16.3 In the event that the policy is on a "claims made" basis, the retroactive date of the policy shall be the effective date of this Agreement or such other date as to protect the interests of FPL Entities. Furthermore, if the policy is on a "claims made" basis, ICL's duty to provide such coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort; if coverage is on an "occurrence" basis, such insurance shall be maintained by ICL during the entire period of interconnection and performance by the Parties under this Agreement. The policy shall not be canceled or materially altered without at least thirty calendar days written notice to FPL. Coverage must be reasonably acceptable to FPL.
- 16.4 ICL shall provide to FPL evidence of such liability insurance coverage on FPL Form 1364-23, without modification except that ICL

may delete the sentence "It is agreed that a copy of these policies will be delivered to Florida Power & Light Company prior to interconnection."; an example of such form is attached hereto as Appendix C, INSURANCE. A copy of the policy(ies) shall be made available for inspection by FPL at ICL's offices upon reasonable request.

16.5 FPL Entities shall be designated as an Additional Named Insured for all policies, and the policy shall be endorsed to be primary to any insurance which may be maintained by, or on behalf of, FPL Entities.

#### 17.0 INDEMNIFICATION

17.1 ICL agrees to protect, defend and hold FPL Entities free and unharmed against any liabilities whatsoever arising out of claims by ICL's employees or its suppliers or subcontractors, including court costs and attorneys' fees related to any claim, pretrial, trial or appellate proceeding, resulting from or in connection with this Agreement or the performance of the work by ICL, its employees or its suppliers or subcontractors, whether or not such liabilities are due to or caused by negligence of FPL Entities.

17.2 ICL agrees to protect, defend and hold FPL Entities free and unharmed against any liabilities whatsoever, arising out of claims from third parties, excluding those claims of ICL's employees, suppliers and subcontractors referred to in Section 17.1, including court costs and attorneys' fees related to any claim, pretrial, trial or appellate proceeding, resulting from or in connection with this Agreement or the performance of the work by

ICL, its employees or its suppliers or its subcontractors, occasioned wholly or in part by the fault of ICL, its employees or its suppliers or its subcontractors.

17.3 It is the intention of the Parties that ICL's obligations to provide liability insurance under Section 16.0, INSURANCE, and indemnification of FPL Entities under this Section 17.0 are not additive in nature, such that ICL's annual aggregate contractual obligations under Section 17.0 shall not exceed the sum of Twenty Million Dollars (\$20,000,000) for bodily injury (including death) or property damage.

#### 18.0 LIMITATIONS OF LIABILITY

18.1 Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture between ICL and FPL. No payment by FPL to ICL for Energy or Capacity shall be construed as payment by FPL for the acquisition of any ownership or property interest in the Facility. Each Party shall be individually and severally liable for its own obligations under this Agreement.

18.2 In no event shall ICL be liable (in contract or in tort, including negligence, or otherwise) to FPL for indirect, incidental or consequential damages resulting from ICL's performance, nonperformance or delay in performance of its obligations under this Agreement.

18.3 In no event shall FPL Entities be liable (in contract or in tort, including negligence, or otherwise) to ICL or its suppliers or its subcontractors for indirect, incidental or consequential damages

resulting from FPL's performance, nonperformance or delay in performance of its obligations under this Agreement. ICL shall secure the limitations of liability contained in this Section 18.3 in all of its contracts with suppliers and subcontractors.

19.0 COMPLIANCE WITH LAWS, RULES AND REGULATIONS

19.1 ICL hereby agrees to seek, obtain and maintain, at its sole expense, any and all governmental permits, certifications or other authorizations which are required by law as prerequisites to engaging in the activities envisioned by this Agreement.

19.2 ICL shall conform to the requirements, where applicable, of the Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 relative to Equal Employment Opportunity and the Implementing Rules and Regulations of the Office of Federal Contracts Compliance.

19.3 This Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.

19.4 Notwithstanding any other provision of this Agreement, if FPL, at any time during the term of this Agreement, fails to obtain or is denied the authorization of the FPSC, or the authorization of any other legislative, administrative, judicial or regulatory body which now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover from its customers any or all of the payments required to be made to ICL pursuant to Section 8.0, BASIS FOR PAYMENTS BY FPL, under the terms of this Agreement or any



subsequent amendment hereto, FPL may, at its sole option, adjust the payments made under this Agreement to the amount(s) which FPL is authorized to recover from its customers. If such determination of disallowance is subsequently reversed and FPL recovers such payments previously disallowed, FPL shall pay all withheld payments as recovered, without interest. ICL acknowledges that any amounts initially received by FPL from its customers, but for which recovery is subsequently disallowed and charged back to FPL, may be offset or credited, without interest, against subsequent payments to be made by FPL to ICL under this Agreement. If, at any time, FPL receives notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its customers of any and all payments required to be made under the terms of this Agreement or any subsequent amendment to this Agreement, then FPL shall, within thirty calendar days of FPL's receipt of such notice, give written notice thereof to ICL. FPL shall use its best efforts to defend and uphold the validity of this Agreement and its right to recover from its customers all payments required to be made by FPL hereunder, and will cooperate in any effort by ICL to intervene in any proceeding challenging, or to otherwise be allowed to defend, the validity of this Agreement and the right of FPL to recover from its customers all payments to be made by it hereunder. In the event of any disallowance or adjustment to payments as aforesaid which materially alters the Parties' obligations and rights under this

Agreement, ICL may, by at least sixty calendar days prior written notice to FPL, terminate this Agreement. If ICL exercises such option to terminate this Agreement, the Parties agree that, upon ICL's request, they will proceed in good faith to attempt to negotiate either a new power purchase agreement covering the electrical output of the Facility or a transmission service agreement pursuant to which FPL would, with the approval of the FERC, transmit the electrical capacity and energy to another investor-owned, municipal or cooperative electric utility interconnected with FPL within the State of Florida. The Parties' obligation to attempt to negotiate such purchase or transmission agreement shall survive the termination of this Agreement. In the event of such termination pursuant to the foregoing, the Parties shall have no further obligation to each other under this Agreement, except that such termination shall not affect the liability of either Party for obligations arising prior to termination (including, in particular, ICL's obligation to pay the Termination Fee, if any, calculated in accordance with Appendix B, TERMINATION FEE) or for damages, if any, resulting from any breach of this Agreement.

20.0 FORCE MAJEURE

20.1 Except as otherwise provided in this Agreement, each Party shall be excused from performance when its nonperformance was caused directly or indirectly by Force Majeure.

20.2 In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall

promptly notify the other in writing of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires.

- 20.3 Any Party suffering an occurrence of Force Majeure shall, with all reasonable efforts, remedy the cause(s) preventing its performance of this Agreement; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and it shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.
- 20.4 If ICL suffers an occurrence of Force Majeure, upon notice to FPL, ICL may, during the Force Majeure period, utilize any remaining Scheduled Maintenance Periods, provided such Scheduled Maintenance Periods shall not be used to extend the Force Majeure. If the Force Majeure period continues into a subsequent Agreement Year, ICL may utilize the subsequent Agreement Year's Scheduled Maintenance Periods during the Force Majeure period. If ICL desires to perform additional maintenance beyond the Force Majeure period, it may request to reschedule any remaining Scheduled Maintenance Periods. FPL, at its sole option, shall determine whether to grant such revised schedule. In addition, ICL may request that a Major Maintenance Outage be rescheduled to an earlier Agreement Year to be completed concurrently with the cure

for the Force Majeure. FPL, at its sole option, shall determine whether to grant such revised schedule.

20.5 Capacity payments will be made to ICL during the period(s) of Force Majeure, provided the Capacity Billing Factor for the then current Monthly Billing Period is greater than or equal to 55%.

## 21.0 SECURITY

21.1 On or before the Commercial Operation Date, ICL shall provide FPL with Termination Fee security in the form of either (i) an unconditional and irrevocable direct pay letter of credit issued by a bank acceptable to FPL in form and substance acceptable to FPL or (ii) a payment or performance bond issued by a company acceptable to FPL in form and substance acceptable to FPL or (iii) other security in form and substance acceptable to FPL, equal to the total Termination Fee in each year, however, the level of such Termination Fee security need not exceed (i) Thirteen Million Dollars (\$13,000,000) in Agreement Year 1, (ii) Twenty-three Million Dollars (\$23,000,000) in Agreement Year 2, (iii) Thirty-two Million Dollars (\$32,000,000) in Agreement Year 3, (iv) Forty Million Dollars (\$40,000,000) in Agreement Year 4, and (v) Fifty Million Dollars (\$50,000,000) in Agreement Year 5. Thereafter, the Termination Fee security need not exceed Fifty Million Dollars (\$50,000,000) or 10% of the Termination Fee, whichever is lower. The obligation to maintain such Termination Fee security shall continue until ICL's obligation to pay the Termination Fee under Section 3.0, TERM AND TERMINATION, and Appendix B, TERMINATION FEE, has expired.

21.2 Beginning sixty calendar days after the Commercial Operation Date, ICL shall establish and make regular contributions (at a minimum of Five Hundred Thousand Dollars (\$500,000) per Agreement Year inclusive of accrued interest with a total of Five Million Dollars (\$5,000,000) to be contributed no later than ten years from the Commercial Operation Date) into a reserve fund for use in the event of a loss of qualifying facility status including, but not limited to, the steam customer defaulting on its obligations to buy steam from the Facility. Such fund shall be deposited by ICL into a bank in the United States having capital and surplus in excess of Two Hundred Fifty Million Dollars (\$250,000,000) and shall include a recognition of FPL's security interest by the bank in form and in substance reasonably satisfactory to FPL. The monies in such reserve fund shall be utilized by ICL to maintain (or reinstate) the "qualifying" statuses of both ICL and the Facility by taking all necessary actions on a timely basis, including, but not limited to, (i) building a new steam-using facility, (ii) constructing a steam pipeline to any neighboring steam user(s), and/or (iii) modifying elements of the steam customer to use steam in an acceptable manner. FPL and ICL may agree in writing to terminate this reserve fund. ICL will not reduce this reserve fund below Five Million Dollars (\$5,000,000) without FPL's concurrence. FPL shall have a first lien upon this fund to secure performance of all ICL obligations under this Agreement, including payment of the Termination Fee.

21.3 The Parties acknowledge that construction of the Facility will require financing by a lender or lenders and that such lender(s) require(s) the financing to be secured by a first lien upon the Facility, including a collateral assignment of this Agreement; provided, however, any takeover of the Facility and the rights of ICL under this Agreement by any lender(s), or the foreclosure and sale of the Facility and the assignment of ICL's rights under this Agreement to a new operator, shall be on terms requiring compliance with all provisions of this Agreement; and provided further that the designation of any new operator shall be subject to the approval of FPL (which approval shall not be unreasonably withheld or delayed). FPL shall also execute a consent and agreement with respect to a collateral assignment hereof in the form attached hereto as Appendix J, CONSENT TO COLLATERAL ASSIGNMENT FORM, or in form and in substance as may be agreed to by the Parties upon request of the lender(s) in connection with the project financing, provided ICL shall reimburse FPL for all reasonable costs incurred by FPL in connection therewith, including reasonable attorneys' fees, and further provided that FPL's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent to assignment is delivered. ICL agrees that the financing agreements into which it enters with the Facility lenders will require the lenders to give FPL written notice of any default by ICL and afford FPL sixty days following such notice, or longer as

the lender may permit, to cure any such default. Any amounts advanced by FPL for payment of taxes, insurance, sums due to senior lienors or other such items shall be secured by the lien of the security interest provided for in Section 21.5.

21.4 ICL shall establish and maintain a cash reserve fund of at least Thirty Million Dollars (\$30,000,000). Beginning no later than the Commercial Operation Date, ICL shall make regular contributions including any accrued interest, to this reserve fund at the rate of at least 10% per Agreement Year of the total required amount. Such reserve fund shall contain a total of Thirty Million Dollars (\$30,000,000) no later than ten years from the Commercial Operation Date. ICL shall not reduce this reserve fund below Thirty Million Dollars (\$30,000,000) without FPL's concurrence; provided however, after twenty years from the Commercial Operation Date, ICL may withdraw amounts from the reserve fund for such purposes and subject to such conditions as are set forth in Section 21.4.1 or 21.4.2, whichever is applicable, so long as this reserve fund contains a minimum of Ten Million Dollars (\$10,000,000) at all times. In lieu of cash deposits, ICL may obtain unconditional and irrevocable direct pay letter(s) of credit issued by banks acceptable to FPL, in form and substance acceptable to FPL, in amounts equal to the cash contributions set forth above.

21.4.1 If the Facility lenders require ICL to establish and maintain a reserve fund or letter(s) of credit in amounts meeting or exceeding each of the requirements

set forth in Section 21.4, then those requirements in Section 21.4 will be deemed satisfied and FPL shall have a secondary lien on such amounts. ICL's right to make withdrawals will be governed by the loan agreement. Such lien shall be subordinate in all respects to the lien and rights of the lenders (whether the original lenders, or with FPL's concurrence, which will not be unreasonably withheld, replacement lenders pursuant to refinancing), and FPL shall have no right to realize its secondary interest unless and until the original lenders, or the replacement lenders (with FPL's concurrence as aforesaid), have either exercised their own prior rights or have waived such rights in writing. Within sixty calendar days of their execution, copies of the portions of the loan agreements, and any amendments thereto requiring the establishment of the reserve fund or letter(s) of credit, shall be provided to FPL. FPL may review the entirety of the loan agreements, and any amendments thereto, at ICL's office upon reasonable advance notification. ICL shall also provide to FPL quarterly reports regarding the status of the reserve fund or letter(s) of credit, as applicable.

21.4.2 In the event that ICL's loan agreements do not require the establishment and maintenance of a reserve fund or letter(s) of credit meeting all requirements set forth in Section 21.4, during the entire term of this



Agreement, ICL shall be required by this Agreement to do so. Withdrawals from such reserve fund (or drawings on such letter(s) of credit) may be made and applied only to overhaul the Facility, including major maintenance. FPL shall have the first lien on all amounts in such reserve fund to secure performance of ICL's obligations under this Agreement, including payment of the Termination Fee. At least thirty calendar days after the Commercial Operation Date, ICL shall provide to FPL, in writing, proof that such reserve fund has been created and, thereafter, shall provide to FPL quarterly reports regarding the status of such reserve fund.

21.5 On or before the Commercial Operation Date, ICL shall secure all of its obligations under this Agreement, including the obligation to pay the Termination Fee, by delivering a second mortgage and security agreement encumbering the Facility (i) in the form attached hereto as Appendix K, FORM OF SECOND MORTGAGE AND SECURITY AGREEMENT, or (ii) in form and in substance as may be agreed by the Parties, and by delivering security agreements encumbering the reserve funds provided in Sections 21.2 and 21.4 (i) in the form attached hereto as Appendix L, FORM OF SECURITY AGREEMENT, or (ii) in form and in substance as may agreed by the Parties. At such time as ICL's obligation to pay the Termination Fee under Section 3.0, TERM AND TERMINATION, is reduced to zero for a period of three consecutive months, FPL hereby covenants and agrees that it will immediately deliver a good and sufficient

satisfaction of mortgage and satisfaction and termination of the security agreement to ICL and shall at FPL's sole expense, record such satisfaction of mortgage in the public records of Martin County and with respect to the termination of the security agreement with the Florida Secretary of State, in order to fully evidence the discharge of the mortgage and security agreements. However, in the event that the Termination Fee as calculated in accordance with Appendix B, TERMINATION FEE, should thereafter become greater than zero, ICL will execute and deliver mortgage and security agreements in the forms contained in Appendices K, FORM OF SECOND MORTGAGE AND SECURITY AGREEMENT and L, FORM OF SECURITY AGREEMENT, or provide such other security as the Parties may agree upon. Such mortgage and security agreements shall be subordinate in all respects to the lien(s) and rights of the construction and permanent financing lenders under their loan documents (whether the original lenders, or with FPL's concurrence, which will not be unreasonably withheld, all future replacement lenders pursuant to refinancing) including all further and future advance of funds or obligations which may from time to time be secured by the lien(s) thereof (and any extensions, consolidations, renewals, amendments, modifications or supplements of the loan documents). FPL will execute and deliver to the lenders, in recordable form if so requested, such subordination agreements and instruments as the lenders shall reasonably request to effect the subordination provided in this Section 21.5. FPL will bear the costs assessed by any governmental agencies

attendant to the perfection and recording of such security agreements.

21.6 So long as it has any obligation to pay a Termination Fee, ICL will assure that the following condition is met:

A + B - (C + D + E) shall never exceed F where

A - the balance due to all lenders under financing agreements pertaining to the Facility;

B - the levelization payment as set forth in Appendix M, LEVELIZATION PAYMENT, for the applicable Agreement Year on that date;

C - the amount of Termination Fee security in effect pursuant to Section 21.1;

D - the balance in the reserve fund maintained pursuant to Section 21.2;

E - the balance in the reserve fund maintained pursuant to Section 21.4;

F - the greater of (i) 98% of the fair market value of the Facility as determined in accordance with Section 21.8 or (ii) Six Hundred Million Dollars (\$600,000,000).

21.7 ICL will assure that the permanent project financing shall include no less than 10% equity. Any refinancing of the project will be limited to an amount not to exceed the sum of (i) any outstanding debt and (ii) any net increase in the fair market value of the Facility since the original permanent project financing; provided however, that ICL will not be subject to the foregoing limitation

at any time after the earlier of (i) that date which is ten years after the Commercial Operation Date, (ii) the date that the fair market value of the Facility, less the outstanding debt, plus the sum of (a) the amount of the Termination Fee security referenced in Section 21.1, and (b) the balance in the reserve funds maintained pursuant to Sections 21.2 and 21.4 equals or exceeds Two Hundred Twenty-one Million Dollars (\$221,000,000) or (iii) that date on which the Termination Fee is reduced to zero for a period of twelve consecutive months. For purposes of this Section 21.7, the fair market value of the Facility shall be determined pursuant to Section 21.8. ICL will not enter into any lease financings which do not meet the requirements set forth above.

21.8 For purposes of determining the fair market value of the Facility pursuant to Sections 21.6 and 21.7, ICL shall, at ICL's expense, cause two qualified independent engineering firms or such other parties with recognized experience in the electrical generation power industry as may be chosen by ICL and approved by FPL, which approval shall not be unreasonably withheld or delayed, to determine fair market value, which shall be the replacement cost of an equivalent new facility including owner costs, capitalized interest during construction and other transaction costs typically associated with project financing, as adjusted to reflect the Facility's age, condition and the remaining useful life based on the then existing state of the Facility at the time of determination. Each firm will prepare a report setting forth the bases for its determination and submit its report to FPL and ICL.

The fair market value shall be the average of the two determinations.

- 21.9 So long as ICL has any obligation to pay a Termination Fee, it will make no distributions or payments to its partners, and the general partners will pay no dividends unless, at the time thereof, the provisions of Sections 21.6 and 21.7 are satisfied. Beginning with the Commercial Operation Date, ICL will provide FPL with a letter from a nationally recognized independent certified public accounting firm on a quarterly basis certifying that the conditions specified in Section 21.6 and 21.7 have been met.
- 21.10 ICL represents that it and PG&E-Bechtel Generating Company are partnerships in which wholly-owned direct or indirect subsidiaries of PG&E Enterprises and Bechtel Enterprises are the general partners. ICL covenants that, for at least the first fifteen Agreement Years, the Facility will be managed through a management contract with the PG&E-Bechtel Generating Company or directly by an ICL general partner(s); provided, however, that (i) ICL may admit additional general partners to ICL; (ii) ICL will be relieved of the obligation to comply with this covenant if necessary to prevent ICL, the general partners or the PG&E-Bechtel Generating Company or any affiliate thereof from being subject to regulation as a utility company under any state or federal law; and (iii) ICL may, with FPL's approval (which approval shall not be unreasonably withheld) change the entity responsible for managing the Facility.

21.11 Promptly upon request by ICL, FPL shall provide an estoppel certificate addressed to ICL and its lenders stating, as of the date thereof, (i) that it knows of no default or event which, with the giving of notice or passage of time or both, would constitute a default under the mortgage or security agreement, or in the event such an event exists, the nature and circumstances of such event, (ii) that all charges which have become due and payable under the mortgage or security agreements have been paid in full or in the event they have not been paid in full the outstanding amount, (iii) the dollar amount, including the accrued but unpaid interest, outstanding under the mortgage or security agreements, and (iv) that the mortgage and security agreements which are attached to the estoppel certificate are true and correct copies of the same. FPL shall provide such additional documents as may reasonably be requested in connection with such estoppel certificate.

22.0 NOTICES

22.1 Notices required to be in writing under this Agreement shall be delivered in person or sent by certified mail, return receipt requested, as specified below:

To ICL:

Indiantown Cogeneration, L.P.

Attention: Joseph P. Kearney

7475 Wisconsin Avenue

Bethesda, Maryland 20814-3422

(301) 913-5858

To FPL:

Florida Power & Light Company  
Attention: J. W. Williams, Jr.  
Post Office Box 029100  
Miami, Florida 33102  
(305) 552-4117

22.2 ICL shall provide written notice of the appropriate person(s) and address(es) of its lenders. Failure of ICL to provide prompt notice related to such lenders, including any changes in information related to such lenders, shall relieve FPL of any of its obligations related to such lenders.

22.3 Notices shall be effective upon receipt.

22.4 Either Party may, at any time, by written notice designate any different person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

### 23.0 PROPRIETARY AGREEMENT

Each Party shall keep the terms of this Agreement confidential in accordance with its practices for handling its own confidential information. However, the Parties acknowledge that this Agreement will be submitted to the FPSC in connection with FPL's request for approval, and that either Party may seek confidential treatment by the FPSC of appropriate provisions of this Agreement. The Parties also acknowledge that either Party may disclose this Agreement or its contents in accordance with law, regulation or at the request of any regulatory body having jurisdiction over such Party or over the subject matter of the Agreement. In addition, ICL may disclose this Agreement to its lenders

in accordance with its practices for handling its own confidential information.

24.0 MISCELLANEOUS

- 24.1 Except as provided in Section 21.3, SECURITY, ICL may not assign any of its obligations under this Agreement without the prior written consent of FPL, which consent shall not be unreasonably withheld.
- 24.2 This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.
- 24.3 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter.
- 24.4 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- 24.5 Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.



- 24.6 FPL shall use its reasonable efforts to support ICL's efforts to obtain the FPSC determination of need as required of ICL under Section 3.5.1, TERM AND TERMINATION.
- 24.7 FPL will cooperate with ICL in identifying sulfur dioxide emission offsets, if any, required by a material change in applicable environmental law in existence as of the effective date of this Agreement, to the extent such offsets are not needed for FPL's requirements to maintain an adequate, reliable and cost effective power supply for its customers. ICL will pay for and assume the risk of obtaining such offsets.
- 24.8 Upon FPL's request, in the event that reduction of effluents or pollutants at or emanating from the Facility, which reduction is beyond limits required by law or achievable by the Facility, could result in allowances or credits which FPL determines would be of benefit to FPL, ICL shall permit FPL to effect such reduction in a manner acceptable to ICL so long as ICL remains economically neutral as a result of such reduction relating to the Facility. In order to assure such neutrality, FPL shall pay all actual direct and indirect costs of such reduction and all reasonable expenses, including present or future lost revenues associated with Energy, Capacity or steam sales to ICL's steam customer, arising therefrom. FPL shall be entitled to receive such allowances or credits resulting from such reduction, but ICL shall have title to any improvements or modifications to the Facility, at no cost to ICL, upon acceptance by ICL of such improvements or modifications following a reasonable demonstration test. Upon

FPL's request, ICL shall permit FPL to effect the removal of any or all of the improvements or modifications installed pursuant to this Section 24.8, in a manner acceptable to ICL, so long as ICL remains economically neutral as a result of such removal. The value to ICL, if any, of the improvements or modifications shall not be considered in determining the economic neutrality of such removal. ICL agrees to cooperate with FPL in connection with such reduction and/or removal.

- 24.9 At FPL's request, the Parties agree to meet and negotiate in good faith the option of FPL assuming responsibility for coal supply, coal transportation, lime and ash disposal, or any portion thereof, if economies of scale would result.
- 24.10 The Parties explicitly recognize that FPL's reviews, agreement, approvals, disapprovals and authorizations pursuant to this Agreement are administrative in nature and do not relieve ICL of its obligation for the design, construction, operation and maintenance of the Facility or impose any such obligations on FPL.
- 24.11 This Agreement and the Interconnection Agreement contemplated in Section 7.1, DELIVERY OF ENERGY AND CAPACITY, are intended as the complete and exclusive statement of the agreement between the Parties. This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set

forth in a written instrument authorized and executed with the same formality as this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

FLORIDA POWER & LIGHT COMPANY

INDIANTOWN COGENERATION, L.P.

By:

LMW  
SWS/190

J. W. Williams, Jr.  
Senior Vice President

5.17.90

By:

J. P. Kearney  
President and Chief  
Executive Officer

Date

5/21/90

APPENDIX A

MONTHLY CAPACITY AND FIXED O&M PAYMENT CALCULATION

A.1 Starting with the Commercial Operation Date, the Monthly Capacity Payment for each Monthly Billing Period shall be computed according to the following:

A.1.1 In the event that the Capacity Billing Factor is less than 55%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = \$0$$

A.1.2 In the event that the Capacity Billing Factor is at least equal to 55% but less than 87%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(\text{BCC} + \text{OMC}_F) \times (.02 \times ((\text{CBF} \times 100) - 37))] \times \text{CC}$$

A.1.3 In the event that the Capacity Billing Factor is at least 87% but not greater than 92%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (\text{BCC} + \text{OMC}_F) \times \text{CC}$$

A.1.4 In the event that the Capacity Billing Factor is greater than 92% but not greater than 97%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(\text{BCC} + \text{OMC}_F) \times (1 + (.02 \times ((\text{CBF} \times 100) - 92)))] \times \text{CC}$$

A.1.5 In the event that the Capacity Billing Factor is greater than 97%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(\text{BCC} + \text{OMC}_F) \times 1.10] \times \text{CC}$$

Where:

- MCP - Monthly Capacity Payment in dollars.
- BCC - Base capacity credit in \$/MW-Month pursuant to Section A.3.
- OMC<sub>F</sub> - Fixed operation and maintenance credit in \$/MW-Month pursuant to Section A.2.
- CBF - Capacity Billing Factor (expressed as a decimal).
- CC - Committed Capacity in MW.

A.2 During the first quarter of the first Agreement Year, the OMC<sub>F</sub> shall be Five Thousand One Hundred Seventy Dollars per MW-Month (\$5,170/MW-Month) based on January 1996 dollars, indexed quarterly thereafter. Each quarter thereafter, the OMC<sub>F</sub> shall be the previous quarter's OMC<sub>F</sub> adjusted by applying the percentage increase in the Electric Utility Operation and Maintenance Costs; Combined Materials and Services Steam Production Plant Expenses Index as reported in DRI/McGraw Hill Utility Cost Information Service Review for the prior quarter.

A.3 The base capacity credit shall be derived from the following schedule where "Year 1" equals the first Agreement Year:

<u>Year</u>	<u>BCC</u> <u>\$/MW-MO</u>
1	23,000
2	23,000
3	23,000
4	23,000
5	23,000
6	23,000
7	23,000
8	23,000
9	23,000
10	23,000
11	23,000
12	23,000
13	23,000

14	23,000
15	23,000
16	23,000
17	23,000
18	23,000
19	23,000
20	23,000
21	12,500
22	12,220
23	11,940
24	11,670
25	11,390
26	11,110
27	10,820
28	10,560
29	10,280
30	10,000

APPENDIX B

TERMINATION FEE

B.1 The Termination Fee shall be the cumulative sum of the values for each month starting with the Commercial Operation Date, through the month of termination computed according to the following formula:

$$\text{TERMINATION FEE} = \sum_{i=1}^n [(\text{MPMT}_i) - (\text{MCTF}_i + \text{MEA}_i)] 1.00949^{(n-i)}$$

$i$  = Number of the Monthly Billing Period commencing with the Commercial Operation Date (i.e., for the Commercial Operation Date,  $i = 1$ ).

$n$  = The total number of Monthly Billing Periods which have elapsed from the Commercial Operation Date through the month of termination.

$\text{MPMT}_i$  = The sum of the Monthly Capacity Payment and the Monthly Energy Payment made to ICL corresponding to the Monthly Billing Period  $i$ .

$\text{MCTF}_i$  = The monthly Capacity portion of the Termination Fee corresponding to the Monthly Billing Period  $i$ , calculated in accordance with the formula and schedule set forth below.

$\text{MEA}_i$  = Monthly energy cost for the FPL avoided unit for Monthly Billing Period  $i$ . These costs shall be equal to the product of (a) the monthly Energy in MWh purchased from ICL (b) the combined-cycle heat rate of 7.620 MMBtu/MWh and (c) the average FPL gas price at its Putnam power plant from Schedule A5 filed monthly with the FPSC.

In the event the computation of the Termination Fee above yields a value less than zero, the value of the Termination Fee shall be equal to zero.

B.2 The monthly Capacity portion of the Termination Fee ("MCTF") for each Monthly Billing Period shall be computed according to the following:

B.2.1 In the event that the Capacity Billing Factor is less than 55%, then the monthly Capacity portion of the Termination Fee shall be zero. That is:

$$\text{MCTF} = \$0$$

B.2.2 In the event that the Capacity Billing Factor is at least equal to 55% but less than 87%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(\text{BCC} + \text{OMC}_p) \times (.02 \times (\text{CBF} \times 100 - 37))] \times \text{CC}$$

B.2.3 In the event that the Capacity Billing Factor is at least 87% but not greater than 92%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = (\text{BCC} + \text{OMC}_p) \times \text{CC}$$

B.2.4 In the event that the Capacity Billing Factor is greater than 92% but not greater than 97%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(\text{BCC} + \text{OMC}_p) \times (1 + (.02 \times ((\text{CBF} \times 100) - 92)))] \times \text{CC}$$



B.2.5 In the event that the Capacity Billing Factor is greater than 97%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(\text{BCC} + \text{OMC}_F) \times 1.10] \times \text{CC}$$

Where:

- MCTF - Monthly Capacity portion of the Termination Fee in dollars.
- BCC - Base capacity credit in \$/MW-Month pursuant to Section B.3.
- OMC<sub>F</sub> - Fixed operation and maintenance credit in \$/MW-Month pursuant to Section B.3.
- CBF - Capacity Billing Factor (expressed as a decimal).
- CC - Committed Capacity in MW.

B.3 The base capacity credit shall be Six Thousand Seven Hundred Dollars per MW-Month (\$6,700/MW-Month) for the first Agreement Year, indexed at 5.4% annually and the fixed operation and maintenance credit shall be Two Thousand Sixty-two Dollars and Fifty Cents per MW-Month (\$2,062.50/MW-Month) for the first Agreement Year, indexed at 5.4% annually.

APPENDIX C

INSURANCE

**CERTIFICATE OF INSURANCE – INTERCONNECTION AGREEMENT**

Form 1364-23 (Non-Stocked) Rev. 1/85

**THIS CERTIFICATE OF INSURANCE MUST BE APPROVED BY THE RISK MANAGEMENT DEPARTMENT OF FLORIDA POWER & LIGHT COMPANY BEFORE WORK UNDER THE INTERCONNECTION AGREEMENT MAY BEGIN**

1. Insured: \_\_\_\_\_  
 (PLEASE MAKE SURE THAT NAMED INSURED AGREES WITH NAME ON INTERCONNECTION AGREEMENT)
2. Address of Insured: \_\_\_\_\_
3. Date of Interconnection Agreement \_\_\_\_\_

	FORM OF COVERAGE*	INSURER	POLICIES IN FORCE		LIMITS OF LIABILITY (in thousands)	
			Policy Number	Exp. Date	Bodily Injury	Property Damage
4.	Comprehensive General Liability				\$ Each Occ.	\$ Each Occ.
5.	Homeowners					
6.						

- \*Policy provides a severability of interest clause.
- \*Policy is primary to any insurance which may be maintained by Florida Power & Light Company, it's parent, subsidiaries or affiliates.
- \*Policy is free of exclusions excluding coverage for interruption of or curtailment of power supply.
- \*Policy contains a broad form contractual liability endorsement insuring against the liabilities assumed in the Indemnification Agreement or includes Florida Power and Light Company, it's parent, subsidiaries and affiliates as an additional named insured.
- \*If Homeowners, policy does not exclude coverage for business pursuits pertaining to the cogenerating facility.

THIS IS TO CERTIFY that all policies of insurance as described above have been issued to the above named insured and are in full force and effect at this time. It is agreed that none of these policies will be cancelled or changed so as to affect the interest(s) of Florida Power & Light Company, it's parent, subsidiaries or affiliates until thirty days after written notice of such cancellation or changes has been delivered to the Risk Management Department of Florida Power & Light Company. It is agreed that a copy of these policies will be delivered to Florida Power & Light Company prior to interconnection.

Date Issued: \_\_\_\_\_

**PLEASE SEND ORIGINAL TO:**  
 Florida Power & Light Company  
 Risk Management Department  
 P. O. Box 029100  
 Miami, Florida 33102

Signature of Authorized Agent \_\_\_\_\_  
 Issuing Agency or Insurance Company \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City, State, Zip Code \_\_\_\_\_

APPENDIX D

ICL'S ACTUAL ENERGY COST

D.1 ICL's Actual Energy Cost shall equal the following:

A + (B - C) - (D + E) + F where

- A - the sum of the actual invoiced costs to ICL for coal supply, coal transportation, lime supply and ash disposal incurred in an Agreement Year as further described in D.2;
- B - the value at the end of the Agreement Year of the starting inventory of coal and lime for such Agreement Year;
- C - the value at the end of the Agreement Year of the ending inventory of coal and lime for such Agreement Year;
- D - the costs of energy incurred to produce cogenerated steam for the steam customer for the Agreement Year as calculated in Section D.3;
- E - the sum of the monthly ICL Fuel Costs for the Agreement Year;
- F - the natural gas and fuel oil consumption in MMBtus used to produce Energy (excluding fuel consumed during Facility start-up) times the Unit Energy Cost, provided such MMBtus do not exceed 5% of the total MMBtus used to produce Energy during the Agreement Year as calculated in D.4.

D.2 The permitted components of the actual invoiced costs to ICL (net of any discounts taken) for coal supply, coal transportation, lime supply and ash disposal are listed below.

D.2.1 Coal supply and coal transportation costs include all costs associated with the supply and delivery of coal to the Facility's coal receiving hopper, including but not limited to:

D.2.1.1 The invoiced price of fuel;

D.2.1.2 Freight, switching, demurrage and other transportation charges;

D.2.1.3 Taxes, insurance, and other expenses directly assignable to the variable cost of delivered fuel; and

D.2.1.4 Operation, maintenance, lease and rental cost or amortization of capital for transportation equipment.

D.2.2 Lime supply costs include all costs associated with the supply and delivery of lime to the Facility's receiving hopper, including but not limited to:

D.2.2.1 The invoiced price of lime;

D.2.2.2 Freight and other transportation charges; and

D.2.2.3 Taxes, insurance, and other expenses directly assignable to the variable cost of delivered lime.

D.2.3 Ash disposal costs include all costs associated with the removal and disposal of ash (including fly ash, bottom ash, and SO<sub>2</sub> by-products) from the Facility's ash storage silo or ash hopper, including but not limited to:

D.2.3.1 Operation, maintenance, lease and rental cost or amortization of capital associated with transportation equipment;

D.2.3.2 Freight, switching, demurrage and other transportation charges;

D.2.3.3 All off-site landfill operating, maintenance, lease and rental cost or amortization of capital, including applicable disposal or tipping fees, associated with the receiving and disposal of ash at the landfill site; and

D.2.3.4 Taxes, insurance, and other expenses directly assignable to the variable cost of ash transportation and disposal.

D.3 The costs of energy incurred during the Agreement Year to produce cogenerated steam for the steam customer shall equal:

$\text{MMBtus steam} \times [0.1 \text{ MWh/MMBtu}] \times \text{Unit Energy Cost in } \$/\text{MWh}$

where the MMBtus of steam are measured at the steam customer meter for the Agreement Year.

D.4 Gas and oil used to produce Energy excluding fuel consumed during Facility start-ups shall equal:

$\text{MMBtus of fuel oil and natural gas consumed to produce Energy} \times [0.1 \text{ MWh/MMBtu}] \times \text{Unit Energy Cost in } \$/\text{MWh}$

APPENDIX E

FACILITY PERFORMANCE CONDITIONS

The following conditions shall be used in the Capacity Test described in Section 12.0, TESTING AND CAPACITY RATING:

Ambient Temperature	75°F (Dry Bulb)
Relative Humidity	65%
Ambient Pressure	14.7 psia
Generation Power Factor	85%
Boiler Blowdown	0%
Process Steam Extraction	0%
Circulating Water Inlet Temperature	88°F

## APPENDIX F

### NERC GUIDELINES<sup>1</sup>

#### F.1 Equations

##### F.1.1 Equivalent Availability Factor (EAF)

$$((AH - (EUDH + EPDH))/PH) \times 100 (\%)$$

##### F.1.2 Equivalent Forced Outage Rate (EFOR)

$$((FOH + EFDH)/(FOH + SH)) \times 100 (\%)$$

##### F.1.3 Forced Outage Factor (FOF)

$$(FOH/PH) \times 100 (\%)$$

##### F.1.4 Net Output Factor (NOF)

$$[NAG/(SH \times NMC)] \times 100 (\%)$$

##### F.1.5 Scheduled Outage Factor (SOF)

$$(SOH/PH) \times 100(\%)$$

#### F.2 Operations and Outage States

F.2.1 Available - the state in which the Facility is capable of providing services, whether or not it is actually in service, regardless of the capacity level that can be provided.

F.2.2 Forced Derating (D1, D2, D3) - an unplanned component failure (immediate, delayed, postponed) or other condition that requires that the load on the unit be reduced immediately or before the next weekend.

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<sup>1</sup>The NERC guidelines set forth herein are the current version as of the time of execution of this Agreement and are stated solely for the convenience of the Parties. The NERC guidelines may change from time to time and the applicable NERC guidelines will be those in effect at the time.



- F.2.3 **Forced Outage (U1, U2, U3, SF)** - an unplanned component failure (immediate, delayed, postponed, start-up failure) or other condition that requires that the unit be removed from service immediately or before the next weekend.
- F.2.4 **Maintenance Derating (D4)** - the removal of a component for scheduled repairs that can be deferred beyond the end of the next weekend, but requires a reduction of capacity before the next Planned Outage.
- F.2.5 **Maintenance Outage (MO)** - the removal of a unit from service to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the unit be removed from service before the next Planned Outage. Typically, a MO may occur any time during the year, have flexible start dates, and may or may not have a predetermined duration.
- F.2.6 **Planned Derating (PD)** - the removal of a component for repairs that is scheduled well in advance and has a predetermined duration.
- F.2.7 **Planned Outage (PO)** - the removal of a unit from service to perform work on specific components that is scheduled well in advance and has a predetermined duration (e.g., annual overhaul, inspections, testing).
- F.2.8 **Reserve Shutdown (RS)** - the state of the Facility when it is available, but not electrically connected for economic reasons.
- F.2.9 **Scheduled Derating (PD, D4)** - a combination of Planned Deratings and Maintenance Deratings of the Facility.

F.2.10 Scheduled Derating Extension (DE) - the extension of a Maintenance or Planned Derating.

F.2.11 Scheduled Outage (PO, MO) - a combination of Planned Outages and Maintenance Outages of the Facility.

F.2.12 Scheduled Outage Extension (SE) - the extension of a Maintenance or Planned Outage.

### F.3 Time

F.3.1 Available Hours (AH) - Period Hours (PH) less Planned Outage Hours (POH), Forced Outage Hours (FOH), and Maintenance Outage Hours (MOH).

F.3.2 Equivalent Forced Derated Hours (EFDH)<sup>2</sup> - the product of the Forced Derated Hours (FDH) and the size of reduction, divided by Net Maximum Capacity (NMC).

F.3.3 Equivalent Planned Derated Hours (EPDH)<sup>2</sup> - the product of the Planned Derated Hours (PDH) and the size of reduction divided by the Net Maximum Capacity (NMC).

F.3.4 Equivalent Unplanned Derated Hours (EUDH)<sup>2</sup> - the product of the Unplanned Derated Hours (UDH) and the size of reduction, divided by the Net Maximum Capacity (NMC).

F.3.5 Forced Derated Hours (FDH) - sum of all hours experienced during Forced Deratings (D1, D2, D3).

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<sup>2</sup>Equivalent hours are computed for each derating and then summed. Size of reduction is determined by subtracting the Net Available Capacity (NAC) from the Net Dependable Capacity (NDC). In cases of multiple deratings, the size of reduction of each derating is the difference in the Net Available Capacity of the unit prior to the initiation of the derating and the reported Net Available Capacity as a result of the derating.

- F.3.6 **Forced Outage Hours (FOH)** - sum of all hours experienced during Forced Outages (U1, U2, U3, SF).
- F.3.7 **Maintenance Derated Hours (MDH)** - sum of all hours expressed during Maintenance Deratings (D4) and Scheduled Derating Extensions (DE) for any Maintenance Deratings (D4).
- F.3.8 **Maintenance Outage Hours (MOH)** - sum of all hours experienced during Maintenance Outages (MO) and Scheduled Outage Extensions (SE) of any Maintenance Outages (MO).
- F.3.9 **Period Hours (PH)** - number of hours a unit was in active state (assume 8,760 hours).
- F.3.10 **Planned Derated Hours (PDH)** - sum of all hours experienced during Planned Deratings (PD) and Scheduled Derating Extensions (DE) of any Planned Deratings (PD).
- F.3.11 **Planned Outage Hours (POH)** - sum of all hours experienced during Planned Outages (PO) and Scheduled Outage Extensions (SE) of any Planned Outages (PO).
- F.3.12 **Reserve Shutdown Hours (RSH)** - total number of hours the unit was available for serving but not electrically connected to the transmission system for economic reasons.
- F.3.13 **Scheduled Outage Hours (SOH)** - sum of all hours experienced during Planned Outages (PO) - Maintenance Outages (MO) + Scheduled Outage Extensions (SE) of any Maintenance Outages (MO) or Planned Outages (PO).
- F.3.14 **Service Hours (SH)** - total number of hours a unit was electrically connected to the system.

F.3.15 Unavailable Hours (UH) - sum of all Forced Outage Hours (FOH), Maintenance Outage Hours (MOH) and Planned Outage Hours (POH).

F.3.16 Unplanned Derated Hours (UDH) - sum of all hours experienced during Forced Deratings (D1, D2, D3), Maintenance Deratings (D4), and Scheduled Derating Extensions (DE) of any Maintenance Derating (D4).

F.4 Electric Energy and Capacity

F.4.1 Gross Available Capacity (GAC) - greatest capacity at which a unit can operate with a reduction imposed by a derating.

F.4.2 Gross Dependable Capacity (GDC) - GMC modified for seasonal limitations over a specified period of time.

F.4.3 Gross Maximum Capacity (GMC) - maximum capacity a unit can sustain over a specified period of time when not restricted by seasonal or other deratings.

F.4.4 Net Available Capacity (NAC) - GAC less the unit capacity utilized for that unit's station service or auxiliaries.

F.4.5 Net Actual Generation (NAG) - actual number of electrical megawatt-hours generated by the unit during the period being considered less any generation (MWh) utilized for that unit's station service or auxiliaries.

F.4.6 Net Dependable Capacity (NDC) - GDC less the unit capacity utilized for that unit's station service or auxiliaries.

F.4.7 Net Maximum Capacity (NMC) - GMC less the unit capacity utilized for that unit's station service or auxiliaries.

**FACILITY ACTUAL NET GENERATION AND FUEL COST**

**MONTH OF: \_\_\_\_\_**

	MONTH	YEAR TO DATE	PREVIOUS 12 MONTHS
COMMITTED CAPACITY (MW)			
NET GENERATION (MWH)			
NET OUTPUT FACTOR (%)			
AVERAGE NET HEAT RATE (BTU/KWH)			
FUEL TYPE	COAL	COAL	COAL
FUEL BURNED (TONS)			
FUEL HEAT VALUE (MMBTU/TON)			
FUEL BURNED (MMBTU)			
AS BURNED FUEL COST (\$)			
FUEL COST PER KWH (¢/KWH)			
COST OF FUEL (\$/TON)			
FUEL COST PER MMBTU (\$/MMBTU)			

START-UP FUEL TYPE	OIL	GAS	WT. AVG.*
START-UP FUEL COST PER MMBTU (\$/MMBTU)			

\* As determined by the Operating Representatives

**FACILITY ACTUAL NET GENERATION AND FUEL COST**

**MONTH OF: \_\_\_\_\_**

**MONTH**

**YTD**

PUR.	ACT.	PROJ.	VAR.	ACT.	PROJ.	VAR.
Units (Tons)						
Unit Cost (\$/Ton)						
Amount \$						

**PREVIOUS 12 MONTHS**

PUR.	ACT.	PROJ.	VAR.
Units (Tons)			
Unit Cost (\$/Ton)			
Amount \$			

**MONTH**

ENDING INVENTORY	ACT.	PROJ.	VAR.
Units (Tons)			
Unit Cost (\$/Ton)			
Amount \$			

**APPENDIX H  
FACILITY ACTUAL PERFORMANCE DATA**

**MONTH OF:** \_\_\_\_\_

		MONTH	YEAR TO DATE	PREVIOUS 12 MONTHS
1	EAF (%)			
2	PH			
3	SH			
4	RSH			
5	UH			
6	POH			
7	FOH			
8	MOH			
9	PDH			
10	EPDH			
11	FDH			
12	EFDR			
13	MDH			
14	EUDH			
15	NDC (MW)			
16	OPER BTU (MMBTU)			
17	NET GEN (MWh)			
18	ANOHR (BTU/KWH)			
19	NOF (%)			
20	NMC (MW)			

**NOTE:** LINE 16 IS DATA WHEN THE UNIT IS SYNCHRONIZED TO THE SYSTEM ONLY.





## APPENDIX I

### UNIT ENERGY COST CALCULATION

- I.1 Prior to the Commercial Operation Date, ICL and FPL shall agree on the relative weighting of anticipated costs for F.O.B. mine coal and the remaining cost components (i.e., coal transportation, lime supply and ash disposal) of the Unit Energy Cost, based on ICL's contracts for such items. Such relative weighting shall be included in the calculation in Section I.3 to determine the Unit Energy Cost for the first Agreement Year. Such Unit Energy Cost shall be retroactively adjusted as provided in Section I.2 subsequent to the end of the first Agreement Year.
- I.2 At the end of each Agreement Year, based on the information provided by ICL pursuant to Section 8.4, BASIS FOR PAYMENT BY FPL, ICL shall provide FPL with the actual relative weighting of ICL's F.O.B. coal price and the remaining cost components of its Actual Energy Cost described in Appendix D, ICL's ACTUAL ENERGY COST. Such items shall be used to adjust the Adjusted Energy Cost for the Agreement Year immediately preceding such adjustment. It shall also be used as the estimated Unit Energy Cost for the subsequent Agreement Year.
- I.3 For the period January 1, 1990 until the effects of the 1992 Shamrock and Ashland contract reopeners have been reflected in the weighted average St. Johns River Power Park domestic coal contract price ("Phase 1"), the Unit Energy Cost shall be \$23.20 dollars/MWh, effective January 1, 1990, indexed quarterly. The index shall be composed of (i) the F.O.B. mine coal proportion referenced in Section I.1 multiplied by the percent change in the F.O.B. mine spot price for low/medium sulfur (0.60% to 2.00%),

medium/high Btu (11,000 Btu/lb. to 13,500 Btu/lb.) coal, provided such coal comprises at least 20% of the total coal delivered to St. Johns River Power Park during a quarter (if the total is less than 20% for a given quarter, the Parties will meet and agree upon an equivalent index for that period reflecting spot coal prices to Florida utilities) plus (ii) the remaining cost components proportion referenced in Section I.1 multiplied by the percentage change in the transportation index for carrier equipment contained in the then current rail transportation contract for the St. Johns River Power Park. As of the effective date of this Agreement, the rail transportation index for the St. Johns River Power Park is composed of the following weighted average index:

- 50.0% Rail Cost Adjustment Factor (RCAF) unadjusted for productivity, ICC, "Railroad Cost Recovery Procedures," prescribed by the ICC in Ex Parte No. 290 (Sub. No. 2) and published in Title 49 of the Code of Federal Regulations, Part 1102, Section 1102.1, or as the same may hereafter be amended.
- 12.5% Producer Price Index (PPI) all commodities, Producer Prices and Price Index Data, Monthly Report, U.S. Department of Labor, Bureau of Labor Statistics, U.S. Government Printing Office.
- 12.5% Gross National Product - Implicit Price Deflator, United States Government Printing Office, Economic Indicators, prepared for the Joint Economic Committee by the Council of Economic Advisors.
- 12.5% Personal Consumption - Implicit Price Deflator, United States Government Printing Office, Economic Indicators, prepared for the Joint Economic Committee by the Council of Economic Advisors.

12.5% Producer Price Index - Industrial Commodities Less Fuel and Power Expenditures, Producer Prices and Price Index Data, Monthly Report, U.S. Department of Labor, Bureau of Labor Statistics, U.S. Government Printing Office.

I.4 For the remaining term of this Agreement ("Phase 2"), the then current Unit Energy Cost shall be indexed quarterly. The index shall be composed of (i) the F.O.B. mine coal proportion referenced in Section I.1, or I.2, as appropriate, multiplied by the weighted average percent change in (a) St. Johns River Power Park's Appalachian coal contract(s)' (at least one year in duration) F.O.B. mine price for low/medium sulfur, medium/high Btu coal and (b) St. Johns River Power Park's spot contract(s)' (less than one year in duration) F.O.B. mine spot price for low/medium sulfur, medium/high Btu coal, provided such spot coal comprises at least 20% of the total coal delivered to St. Johns River Power Park during a quarter (if the total is less than 20% for a given quarter, the spot price information will not be included in the analysis for the period) plus (ii) the remaining cost components proportion referenced in Section I.1 or I.2, as appropriate, multiplied by the percent change in the transportation index for carrier equipment contained in the then current rail transportation contract for the St. Johns River Power Park.

I.5 The following is a sample unit energy cost calculation for first quarter 1996 using the criteria provided in this Appendix I:

Assumptions:

1.	Unit Energy Cost	\$23.20/MWH	(Base 1 Qtr 1990)
	% Coal (F.O.B. Mine)	50%	
	% Other	50%	

2.	Phase 1 Index (Coal)		
	Average Spot Price	\$26/ton	(1/1/90 Phase 1 Base)
	for Coal (F.O.B. Mine)	\$28/ton	(1/1/93 Phase 1 Final)
3.	Phase 2 Index (Coal)		
	Average Cost of all		
	Appalachian Coal rail	\$30/ton	(1/1/93 Phase 2 Base)
	delivered (F.O.B. Mine)	\$33/ton	(1/1/96 Phase 2 Final)
4.	Phase 1 Index (Other)	100	(1 Qtr 1990 Phase 1 Base)
		120	(1 Qtr 1993 Phase 1 Final)
5.	Phase 2 Index (Other)	120	(1 Qtr 1993 Phase 2 Base)
		125	(1 Qtr 1996 Phase 2 Final)

Calculation for 1 Qtr 1996:

1. Base Unit Energy Cost at the end of Phase 1

a) Base Unit Energy Cost \$23.20/MWh (1 Qtr 1990)

b) Adjustment for Coal Pricing

Coal Unit Energy (Phase 1 Base) \$11.60/MWh (1 Qtr 1990 50% of \$23.20)

Coal Index (Phase 1) \$26/ton (1/1/90 Phase 1 Base)  
\$28/ton (1/1/93 Phase 1 Final)

Phase 1 Coal Index Adjustment  $\frac{28}{26} = 1.077$

Coal Unit Energy (1 Qtr 1993) \$11.60 x 1.077  
= \$12.49

c) Adjustment for Other Pricing

Other Unit Energy \$11.60/MWh (1 Qtr 1990 50% of \$23.20)

Other Index (Phase 1) 100 (1 Qtr 1990 Phase 2 Base)  
120 (1 Qtr 1993 Phase 2 Final)

Phase 2 Other Index Adjustment  $\frac{120}{100} = 1.20$

Other Unit Energy                  \$11.60 x 1.20  
1 Qtr 1993                              - \$13.92/MWh

d) Unit Energy Cost for 1 Qtr 1993

Coal                                     \$12.49/MWh  
Other                                    \$13.92/MWh  
    \$26.41/MWh

2. Base Unit Energy Cost for 1 Qtr 1996

a) Base Unit Energy Cost        \$26.41/MWh                          (1 Qtr 1993)

b) Adjustment for Coal Pricing

Coal Unit Energy                  \$13.205/MWh                          (1 Qtr 1993 50% of  
(Phase 2 Base)    \$26.41)  
  
Coal Index (Phase 2)                \$30/ton                                (1/1/93 Phase 2 Base)  
    \$33/ton                                (1/1/96 Phase 2 Final)

Phase 2 Coal Index                 33 - 1.10  
Adjustment                            30

Coal Unit Energy                  \$13.205 x 1.10  
(1 Qtr 1996)                          - \$14.53

c) Adjustment for Other Pricing

Other Unit Energy                  \$13.205 MWh                          (1 Qtr 1993 50% of  
    \$26.41)  
  
Other Index (Phase 2)                120                                      (1 Qtr 1993 Phase 2  
    Base)  
    125                                      (1 Qtr 1996 Phase 2  
    Final)

Other Index                             125 - 1.042  
Adjustment                            120

Other Unit Energy                  \$13.205 x 1.042  
1 Qtr 1996                              - \$13.76/MWh

d) Unit Energy Cost for 1 Qtr 1996

Coal                                     \$14.53/MWh  
Other                                    \$13.76/MWh  
    \$28.29/MWh

APPENDIX J

CONSENT TO COLLATERAL ASSIGNMENT FORM

CONSENT AND AGREEMENT OF FLORIDA POWER & LIGHT COMPANY

TO

ASSIGNMENT OF AGREEMENT FOR THE PURCHASE OF

FIRM CAPACITY AND ENERGY

BETWEEN INDIANTOWN COGENERATION, L. P.

AND FLORIDA POWER & LIGHT COMPANY

DATED AS OF \_\_\_\_\_, 1990

("Consent and Agreement")

Florida Power & Light Company, a Florida corporation ("FPL"), hereby acknowledges notice of and consents to all of the terms of the Assignment of Agreement for the Purchase of Firm Capacity and Energy ("FPL Agreement"), dated as of March 31, 1990, between Indiantown Cogeneration, L.P. ("ICL"), a Delaware limited partnership, and \_\_\_\_\_ ("Assignee") (herein called the "Assignment" the defined terms therein being used herein with the same meaning except as otherwise indicated herein), and hereby confirms to ICL and the Assignee that with respect to the FPL Agreement:

- (i) all obligations of FPL under the FPL Agreement shall inure to the benefit of the Assignee to the same extent as if the Assignee were originally a party thereto in the place of ICL;
- (ii) the Assignee shall not be liable for any of the obligations or duties of ICL under the FPL Agreement, nor shall the Assignment give rise to any duties or obligations whatsoever on the part of the Assignee owing to FPL; provided, however, any takeover of the Facility and the rights of ICL under the FPL Agreement by the Assignee, or the foreclosure and sale of the Facility and the

assignment of ICL's rights under the FPL Agreement to a new operator, shall be on terms requiring compliance with all provisions of the FPL Agreement; and provided further that the designation of a new operator shall be subject to the approval of FPL, which approval shall not be unreasonably withheld or delayed; and

- (iii) FPL will continue to pay to ICL all payments which FPL may be required to make under or pursuant to the FPL Agreement, the right to receive which has been assigned under the Assignment, unless and until FPL shall have received written notice from the Assignee, addressed to it at Post Office Box 029100, Miami, Florida, Attention: J. W. Williams, Jr., of a Default or Event of Default, whereupon FPL will make any and all payments which it may be required thereafter to make under or pursuant to the FPL Agreement, subject to Section 8.12 of the FPL Agreement, the right to receive which has been assigned under the Assignment, directly to the Assignee at its address at \_\_\_\_\_, unless and until FPL shall have received notice in writing from the Assignee that all Defaults and all Events of Default have been cured or waived pursuant thereto, whereupon FPL will make all payments which FPL may be required thereafter to make under or pursuant to the FPL Agreement to ICL. Any party may, at any time, by written notice designate any different person(s) or address(es) for receipt of notices and correspondence.



Pursuant to Section 21.3 of the FPL Agreement, FPL will send copies of notices required to be sent to ICL under the FPL Agreement to the Assignee at \_\_\_\_\_.

FPL hereby represents and warrants to the Assignee that:

- (i) FPL is a corporation duly organized and existing in good standing under the laws of the State of Florida;
- (ii) the making and performance of the FPL Agreement and this Consent and Agreement have been duly authorized by all necessary corporate action on the part of FPL, do not require any stockholder approval and do not contravene any law binding on FPL or contravene FPL's charter documents or by-laws or any material term of any indenture, credit agreement or other contractual agreement to which FPL is a party or by which it is bound;
- (iii) each of the FPL Agreement and this Consent and Agreement is the legal, valid and binding obligation of FPL, enforceable against FPL in accordance with its respective terms, except as limited by bankruptcy, insolvency and other laws pertaining to creditors rights generally and equitable limitations on the enforceability of specific remedies; and
- (iv) (a) FPL has duly performed and complied with all covenants, agreements and conditions contained in the FPL Agreement and this Assignment required to be performed or complied with by it on or before the date hereof; (b) the FPL Agreement, as of the date hereof, is in full force and effect and has not been amended; and (c) to FPL's knowledge without investigation, no event has occurred and is continuing or would result from the consummation

of any transaction contemplated by the FPL Agreement and this Assignment to take place on the date hereof that constitute, or with the giving of notice or the passage of time or both would constitute, an Event of Default as defined in the FPL Agreement and this Assignment or a breach thereof or would give any party thereto the right to terminate either thereof; and

- (v) FPL has not been given notice of any other assignment of the FPL Agreement; provided, however, that FPL makes no representation or warranty that there have been no other assignments of the FPL Agreement of which FPL has not received notice;

Notwithstanding any of the other provisions of this Consent and Agreement, nothing contained herein shall alter the terms of the FPL Agreement or relieve ICL of any of its obligations thereunder.

Dated as of \_\_\_\_\_, 1990

FLORIDA POWER & LIGHT COMPANY

By: \_\_\_\_\_

Title

APPENDIX K

FORM OF SECOND MORTGAGE AND SECURITY AGREEMENT

SECOND MORTGAGE AND SECURITY AGREEMENT

THIS SECOND MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is executed this \_\_\_ day of \_\_\_\_\_, 19\_\_\_, by and between INDIANTOWN COGENERATION, L.P., a limited partnership organized and existing under the laws of the State of Delaware having its principal place of business in Bethesda, Maryland ("ICL"), whose mailing address is 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422 and FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida having its principal place of business in Miami, Florida ("FPL"), whose address is Post Office Box 029100, Miami, Florida 33102.

W I T N E S S E T H:

For good and valuable consideration and to secure the performance and payment of all indebtedness, obligations and liabilities of ICL to FPL now or hereafter existing, incurred or created under that certain Agreement for the Purchase of Firm Capacity and Energy, dated as of March 31, 1990, between ICL and FPL (the "Power Sale Agreement"), which has a termination date of December 1, 2025, and any and all other sums secured by this Mortgage and all sums due or which may become due from ICL to FPL and any renewals, extensions, consolidations or modifications of all of the foregoing, ICL does grant, mortgage and convey unto FPL, its successors and assigns, in fee simple, all of that certain tract of land of which ICL is now seized and possessed and in actual possession, situate in the County of Martin, State of Florida, which is more fully described in Exhibit A attached hereto and made a part hereof, together with the buildings

and improvements thereon erected or to be erected and fixtures installed therein or thereon (all hereinafter referred to as the "Premises");

TOGETHER with the following property rights;

(a) All right, title and interest of ICL in and to all leases or subleases covering the Premises or any portion thereof now or hereafter existing or entered into, and all right, title and interest of ICL thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

(b) All right, title and interest of ICL in and to all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises owned or hereafter acquired;

(c) All interests, estate or other claims, both in law and in equity, which ICL now has or may hereafter acquire in the Premises;

(d) All easements, rights-of-way and rights used in connection therewith or as a means of access thereto and all tenements, hereditaments and appurtenances thereof and thereto, all right, title and interest of ICL in and to any streets and roads abutting said Premises to the center lines thereof and in and to any strips or gores of land therein, all water, sanitary and storm systems that are now or hereafter located on or adjacent to the Premises and all gas and oil rights, mineral rights, timber rights and riparian and littoral rights pertaining to the Premises;

(e) All awards and proceeds to which ICL is entitled by virtue of any taking of all or part of the Premises by condemnation or exercise of the right of eminent domain or other taking, as hereinafter more particularly set forth;  
and

(f) All rents, issues and profits of the Premises and all estate, right, title and interest of every nature whatsoever of ICL in and to the same, as hereinafter more particularly set forth.

The Premises and all of the property, rights, privileges and franchises granted herein by ICL to FPL are collectively referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD all and singular the Mortgaged Property hereby conveyed, the tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining to the Mortgaged Property and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all estate, right, title, interest, property, possession, claim and demand whatsoever as well in law, as in equity of ICL in and to the same and every part and parcel thereof unto the said FPL in fee simple.

PROVIDED, HOWEVER, that these presents are upon the condition that if ICL shall perform all of its obligations under the Power Sale Agreement and pay all amounts secured by this Mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by ICL, and shall keep, perform and observe all and singular the covenants and promises in the Power Sale Agreement, and any renewal, extension, consolidation or modification thereof, and in this Mortgage expressed to be kept, performed and observed by and on the part of ICL, all without fraud or delay, then this Mortgage and all properties, interest and rights granted, mortgaged and conveyed shall cease, terminate and be void, and upon such time as the Termination Fee (as defined in the Power Sale Agreement) is reduced to zero for a period of three (3) consecutive months, this Mortgage shall be satisfied

of record, but until same shall occur, this Mortgage shall otherwise remain in full force and effect.

## ARTICLE 1

### COVENANTS AND AGREEMENTS OF ICL

To protect the security of this Mortgage, ICL further covenants, warrants and agrees with FPL as follows:

1.01 Payment of Secured Obligations. ICL shall perform each and every obligation imposed upon it by the Power Sale Agreement and this Mortgage.

1.02 Title Warranties and Representations. ICL hereby covenants with FPL that: (a) ICL is indefeasibly seized of said Premises in fee simple, (b) ICL has full power and lawful right to convey the same in fee simple as aforesaid, (c) it shall be lawful for FPL at all times to peaceably and quietly enter upon, hold, occupy and enjoy said Premises and every part thereof, except as may be reflected in Exhibit B hereto, (d) ICL will make such further assurances to perfect the fee simple title to said Premises in FPL, as may reasonably be required, (e) the Mortgaged Property is free of all liens and encumbrances except as reflected in Exhibit B hereto and for taxes for the current year, and (f) ICL does hereby fully warrant title to the Mortgaged Property and every part thereof and will defend same against the lawful claims of all persons whomsoever, subject only to those matters set forth in Exhibit B.

1.03 Required Insurance. ICL will, at ICL's sole cost and expense, maintain or cause to be maintained with respect to the Mortgaged Property, and each part thereof, insurance against loss or damage to the building improvements on the land and the fixtures therein (hereinafter referred to as the

"Improvements") by fire and any of the risks covered by insurance of the type known as "all-risk." Coverage shall be in an amount not less than the full replacement cost of the Improvements, provided, however, insurance in the amounts and types required by the First Mortgagee (as defined in Section 5.18 below), shall satisfy the requirements of this Section 1.03 unless such requirements are demonstratively insufficient.

1.04 Delivery of Policies, Payment of Premiums. All policies of insurance shall be issued by companies and in amounts satisfactory to FPL. All policies of insurance shall have attached thereto a loss payment endorsement for the benefit of FPL, but subject to the prior claim of the First Mortgagee (as defined in Section 5.18 below), in form satisfactory to FPL. At least fifteen days prior to expiration of each such policy, ICL shall furnish FPL with evidence satisfactory to FPL of payment of premium and reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended, including any amendment which shall in any way reduce the scope or limits of coverage, without at least thirty days prior written notice to FPL. In the event ICL fails to provide, maintain, keep in force or deliver and furnish to FPL the policies of insurance or certificates thereof, as required by this Section 1.04, FPL may procure such insurance or single interest insurance for such risks covering FPL's interest. Repayment shall be made by ICL to FPL for such expenditures together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.



1.05 Insurance Proceeds. After the happening of any casualty to the Mortgaged Property or any part thereof, ICL shall give prompt written notice thereof to FPL. ICL shall apply such proceeds to repairs or restorations or reduction of debt as required by the First Mortgagee (as defined in Section 5.18 below), or if such first mortgage is satisfied:

(a) in the event of damage to or destruction of the Improvements, ICL shall apply the proceeds as it sees fit unless (i) any Event of Default under the Power Sale Agreement shall have occurred and shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement or (ii) to the extent such proceeds are not applied for the restoration of the Improvements, such application would cause an Event of Default to exist. In either such case under which ICL shall not have the right to apply the proceeds as it sees fit, FPL shall have the option, in its sole discretion, of applying or paying all or part of the insurance proceeds (i) to any obligation secured hereby and in such order as FPL may determine (ii) to the restoration of the Improvements, or (iii) to ICL;

(b) FPL agrees not to unreasonably withhold consent to the use of insurance proceeds for restoration of the Improvements following a partial casualty loss, subject to (i) ICL maintaining this Mortgage free from default at all times and (ii) ICL providing evidence that adequate funds are available to restore the Improvements and advancing any additional funds required prior to the disbursement of insurance proceeds; and

(c) in the event of such loss or damage, if there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, all proceeds of insurance shall be payable to FPL and ICL hereby authorizes and

directs any affected insurance company to make payment of such proceeds directly to FPL and ICL, jointly and if a First Mortgage exists, to FPL, ICL and the First Mortgagee (as defined in Section 5.18 below), jointly. If there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, FPL is hereby authorized and empowered by ICL to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance, and ICL hereby irrevocably appoints FPL its attorney-in-fact coupled with an interest with the power and authority to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.

Nothing herein shall relieve ICL from its obligations under the Power Sale Agreement and any other obligation of ICL secured hereby.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of ICL in and to all policies of insurance required by this Mortgage shall inure to the benefit of and pass to the successor in interest to ICL or the purchaser or grantee of the Mortgaged Property.

1.07 Indemnification; Waiver of Offset. If FPL is made a party defendant to any litigation (including without limitation, any litigation brought by ICL whether initially or by counterclaim) arising out of this Mortgage or from FPL's status of mortgagee, then ICL shall indemnify, defend and hold FPL harmless from all liability by reason of said litigation, including reasonable attorneys' fees, expenses and paralegal charges, including appellate proceedings, and expenses incurred by FPL in any such litigation, whether or not such litigation is

prosecuted to judgment, save and except such indemnification shall not apply to an action by ICL against FPL if ICL is the prevailing party. The obligations and liabilities of ICL hereunder shall in no way be released or discharged (except as expressly provided herein or in the Power Sale Agreement) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof, (ii) any destruction, prevention of or interference with any use of the Mortgaged Property or any part thereof, (iii) any title defect, encumbrance or eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise, or (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to ICL, or any action taken with respect to this Mortgage by any trustee or receiver of FPL, or by any court in any such proceeding.

The indemnification of this Section 1.07 is included within the annual limits set forth in Section 17.3 of the Power Sale Agreement.

**1.08 Taxes, Utilities and Impositions.** ICL will pay, or cause to be paid and discharged, on or before the last day on which they may be paid without penalty or interest, all such duties, taxes, sewer rents, charges for water, or for setting or repairing meters, and all other utilities in the Improvements or on the Premises or any part thereof, and any assessments and payments which shall be imposed upon or become due and payable or become a lien upon the Premises or any part thereof and sidewalks or streets in front thereof by virtue of any present or future law of the United States or the State, County or City wherein the Premises are located (all of the foregoing being herein collectively called "Impositions"). In default of any such payment of any Imposition, FPL may pay the same; provided, however, ICL may contest in good faith the legality or amount

of any Imposition by appropriate legal proceedings which do not cause a loss of the Premises. Repayment shall be made by ICL to FPL for such expenditures together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

ICL will make available for review by FPL in ICL's office during reasonable hours the original receipts or other reasonably satisfactory proof of the payment of all Impositions which may affect the Mortgaged Property or any part thereof or the lien of the Mortgage promptly following the last date on which each such Imposition is payable hereunder.

1.09 Eminent Domain. (a) Should the Mortgaged Property or any part thereof or interest therein which materially affects ICL's production of electricity, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation") or should ICL receive any notice or information regarding such Condemnation, ICL shall give prompt written notice thereof to FPL.

(b) FPL shall have a security interest in all compensation, awards, damages, rights of action and proceeds awarded to ICL in connection with such Condemnation (the "Proceeds").

(c) In the event any portion of the Mortgaged Property is so taken, ICL shall apply such Proceeds to restorations or reduction of debt as required by the First Mortgagee (as defined in Section 5.18 below), or if such first mortgage is satisfied:

(i) ICL shall apply the Proceeds as it sees fit unless (x) any Event of Default under the Power Sale Agreement shall have occurred and

shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement or (y) to the extent such Proceeds are not applied for the restoration or replacement of the Improvements, such application would cause an Event of Default to exist. In either such case under which ICL shall not have the right to apply the Proceeds as it sees fit, FPL shall have the option, subject to the provisions of paragraph (ii) below, of applying or paying all or part of the Proceeds (x) to any obligation secured hereby and in such order as FPL may determine, or (y) to the restoration or replacement of the Mortgaged Property, or (z) to ICL;

(ii) FPL agrees not to unreasonably withhold consent to the use of Proceeds for restoration of the Mortgaged Property following a Condemnation, subject to (x) ICL maintaining this Mortgage free from default at all times and (y) ICL providing evidence that adequate funds are available to restore or replace the Mortgaged Property and advancing any additional funds required prior to the disbursement of Proceeds; and

(iii) if there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, all Proceeds shall be payable to FPL and if a First Mortgage exists, to FPL and the First Mortgagee (as defined in Section 5.18 below), jointly. If there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, subject to the prior rights of the First Mortgagee (as defined in Section 5.18 below), FPL shall be entitled to all Proceeds and shall be entitled, at its option, to appear in its own name or ICL's name,

in any action or proceeding relating thereto. In the event of such an appearance, ICL agrees to pay the reasonable attorneys' fees, expenses and paralegal charges, including appellate proceedings, incurred by FPL.

(d) Nothing herein shall relieve ICL from its obligations under the Power Sale Agreement or any other obligation of ICL secured hereby.

1.10 Action of FPL to Preserve Security of this Mortgage. In the event FPL is called upon to pay any sums of money to protect this Mortgage and the Power Sale Agreement as aforesaid, all monies advanced or due hereunder shall be immediately due and payable together with interest at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

1.11 Liens. ICL will not permit any liens, encumbrances, mechanics', laborers', statutory or other liens and charges upon the Mortgaged Property, and shall pay and promptly discharge, at ICL's cost and expense, all such liens, encumbrances and charges upon the Mortgaged Property or any part thereof or interest therein. ICL shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided ICL shall first deposit acceptable security with a court of competent jurisdiction sufficient to eliminate the lien as a lien upon the Premises. If ICL shall fail to transfer the lien to a bond or otherwise discharge any such lien, encumbrance or charge, then in addition to any other right or remedy of FPL, FPL may but is not obligated to discharge same either by paying the amount claimed to be due or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Repayment shall be made by ICL to FPL for such

expenditures together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

1.12 Hazardous Waste. ICL shall not engage in any activity on the Mortgaged Property that violates in any material respect any Environmental Law (as hereinafter defined) and shall promptly, at ICL's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency for clean-up, removal or abatement of any contamination arising from the actions of ICL or its agents after the date that ICL acquired title to the Mortgaged Property and involving any Hazardous Material (as hereinafter defined). The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to the environmental conditions on or in the Mortgaged Property, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601 et seq. and (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste," or a "toxic" substance or material under any Environmental Law. ICL shall provide prompt written notice to FPL of the existence of material quantities of Hazardous Materials on the Mortgaged Property to the extent ICL acquires actual knowledge of the same, and of all notices of violation of Environmental Laws received by ICL.

ICL shall indemnify and hold harmless FPL from and against any and all remediation or abatement costs (including, without limitation, reasonable attorneys' fees, expenses and paralegal charges, including appellate proceedings) or claims for injury or damage to person or property arising from the use, storage, transportation, or disposal of any Hazardous Materials by ICL or ICL's agents or employees to, in, on, under or from the Mortgaged Property occurring after the date that ICL acquired title to the Mortgaged Property.

1.13 Other Mortgage Liens. ICL represents and warrants that it will perform and promptly fulfill all of the covenants contained in any superior or inferior mortgages on any and all of the Premises encumbered hereby. In the event ICL shall fail to do so, FPL may, in addition to the rights otherwise granted FPL hereunder, at its election, perform or fulfill such covenants of any such superior or inferior mortgages without affecting its option to foreclose any of the rights hereunder, and the cost thereof, together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the payment computed from the date of such payment to the date of the actual receipt of payment thereof by FPL, shall be secured hereby. Nothing in this Section 1.13 shall be construed to waive the prohibition of further encumbering the Mortgaged Property without FPL's prior consent.

## ARTICLE 2

### ASSIGNMENT OF LEASES, SUBLEASES, FRANCHISES, ISSUES AND PROFITS

2.01 Collection upon Default. Upon any Event of Default (as defined in Section 4.01 below) under this Mortgage, FPL may, at any time without notice,



either in person, by agent or by a receiver appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Property or any part thereof. FPL may in its own name, sue for or otherwise collect such rents, issues, and profits, including past due and unpaid, and apply same less costs and expenses of operation and collection, including attorneys' fees, expenses and paralegal charges, including appellate proceedings, upon any indebtedness secured hereby and in such order as FPL may determine. The collection of such rents, issues and profits or the entering upon and taking possession of the Mortgaged Property, or application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. In addition (and not as an election of remedies), upon the occurrence of an Event of Default, FPL may apply for a court order requiring ICL to deposit all rents in the court registry pursuant to Florida Statute 697.07, as amended. ICL hereby consents to entry of such an order upon the sworn ex parte motion of FPL that an Event of Default (as defined in Section 4.01 below) has occurred hereunder.

### ARTICLE 3

#### SECURITY AGREEMENT

3.01 Creation of Security Interest. ICL hereby grants to FPL a security interest in all rental and security deposits collected by ICL from tenants in the Premises, if any.

A security interest is also granted to FPL in any sums held by FPL pursuant to the provisions of this Mortgage, or other collateral agreements or any

agreements between ICL, FPL and any escrow agent holding loan proceeds pending disbursements as provided in such agreements where such sums are held for the benefit of FPL.

#### ARTICLE 4

##### EVENT OF DEFAULT AND REMEDIES UPON DEFAULT

4.01 Event of Default. The term "Event of Default" wherever used in this Mortgage, shall mean any one or more of the following events:

(a) any Event of Default under the Power Sale Agreement has occurred and has not been cured during the period, if any, allowed for such cure in the Power Sale Agreement.

(b) Foreclosure proceedings are instituted on any mortgage inferior or superior to this Mortgage, or any foreclosure proceeding is instituted on any lien of any kind which is not dismissed or transferred to a bond within ninety days of the service of foreclosure proceedings on ICL.

(c) ICL, pursuant to Florida Statutes 697.04(1)(b), as amended from time to time, files an instrument of record limiting the maximum amount which may be secured by this Mortgage.

(d) ICL is in default of any material provision of this Mortgage or the security agreement from ICL to FPL dated the date hereof and ICL fails to cure such default within thirty (30) days after receipt of notice of such default from FPL to ICL.

4.02 Acceleration Upon Default, Additional Remedies. In the event one or more "Events of Default" as above provided shall occur, the remedies available

to FPL shall include, but not necessarily be limited to, any one or more of the following:

(a) FPL may declare all obligations of ICL secured hereby, including but not limited to the Termination Fee, immediately due and payable without further notice.

(b) FPL may apply, to any court of competent jurisdiction, for the appointment of a receiver as provided in Section 3.6.2 of the Power Sale Agreement. All expenses, fees and compensation incurred pursuant to a receivership approved by such court, shall be secured by the lien of this Mortgage until paid.

(c) FPL shall have the right to foreclose this Mortgage and in case of sale in an action or proceeding to foreclose this Mortgage, FPL shall have the right to sell the Mortgaged Property covered hereby in parts or as an entirety. It is intended hereby to give to FPL the widest possible discretion permitted by law with respect to all aspects of any such sale or sales.

(d) It shall also not be necessary that FPL pay any Impositions, premiums or other charges regarding which ICL is in default before FPL may invoke its rights hereunder.

(e) FPL may exercise all other remedies available at law or equity in such order as FPL may elicit.

(f) All such other remedies available to FPL with respect to this Mortgage shall be cumulative and may be pursued concurrently or successively. No delay by FPL in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.

(g) The obtaining by FPL of a judgment or decree with respect to any obligation under the Power Sale Agreement, whether in the State of Florida or elsewhere, shall not in anyway affect the lien of this Mortgage upon the Mortgaged Property covered hereby, and any judgment or decree so obtained shall be secured hereby to the same extent as the Power Sale Agreement is now secured.

(h) Upon the occurrence of an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement, FPL shall have no obligation to make any Monthly Capacity Payment (as defined in the Power Sale Agreement), in the same manner as set forth in Section 8.6 of the Power Sale Agreement, provided, that if ICL shall have cured any such Event of Default FPL shall resume Monthly Capacity Payments as may be required by the Power Sale Agreement.

4.03 Expenses. ICL shall pay, or reimburse FPL for all costs, charges and expenses, including reasonable attorneys' fees, expenses and paralegal charges, including appellate proceedings, and disbursements, and costs of abstracts of title incurred or paid by FPL in any action, proceeding or dispute in which FPL is made a party or appears as a party plaintiff or party defendant because of the failure of ICL to promptly and fully perform and comply with all conditions and covenants of this Mortgage, including but not limited to, the foreclosure of this Mortgage, condemnation of all or part of the Mortgaged Property, or any action to protect the security thereof. All costs, charges and expenses so incurred by FPL shall become immediately due and payable whether or not there by notice, demand, attempt to collect or suit pending, together with interest thereon at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance. The amount so paid or incurred by FPL shall be secured by the lien of this Mortgage. This Mortgage shall also secure

all fees, charges, costs, reimbursements and of other sums, if any, that are provided for in the Power Sale Agreement and would be due by ICL to FPL upon prepayment of the obligations of ICL under the Power Sale Agreement, whether such prepayment is voluntary or arises from FPL's acceleration of the obligations under the Power Sale Agreement due to an Event of Default thereunder or hereunder.

## ARTICLE 5

### MISCELLANEOUS PROVISIONS

5.01 Future Advances/Securing Other Obligations. This Mortgage is given to secure not only the existing obligations of ICL to FPL pursuant to the Power Sale Agreement, but also such future obligations up to an additional One Billion Dollars as are incurred within twenty years from the date hereof, plus interest thereon, and any disbursements made by FPL for payment of taxes, insurance or other liens on the property encumbered by this Mortgage, with interest on such disbursements, which advances shall be secured hereby to the same extent as if such future advances were made this date. The total amount of obligations secured hereby may increase or decrease from time to time. The provisions of this Section 5.01 shall not be construed to imply any obligation on FPL except as provided in the Power Sale Agreement.

5.02 Power Sale Agreement. This Mortgage is subject to the Power Sale Agreement, an executed copy of which is in the possession of FPL and is incorporated herein by reference and made a part hereof. Specific provisions for the satisfaction of this Mortgage by FPL are contained in the Power Sale Agreement.

5.03 Ownership by Partnership. So long as the Mortgaged Property is owned by a partnership, such partnership shall maintain its existence and comply with all registration requirements of Florida law.

5.04 Survival of Warranties. The representations, warranties and covenants of ICL contained in Sections 1.07 and 1.12 of this Mortgage shall survive the termination of the Power Sale Agreement and shall remain continuing obligations, warranties and representations of ICL during any time when a portion of the obligations secured by this Mortgage remain outstanding, provided, however, nothing contained in this Section 5.04 shall affect the term of this Mortgage.

5.05 Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of ICL, its successors and assigns (including without limitation subsequent owners of the Premises) and shall be binding upon and shall inure to the benefit of FPL, its successors and assigns.

5.06 Notices. All notices, demands and requests given by either party hereto to the other party shall be in writing. All notices, demands and requests by one party to the other shall be deemed to have been properly given as herein required if sent in accordance with the notice provisions of the Power Sale Agreement.

5.07 Modification in Writing. This Mortgage may not be changed, terminated or modified orally or in any other manner than by an instrument in writing signed by the party against whom enforcement is sought.

5.08 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.09 Maximum Rate of Interest. In no event shall all charges in the nature of interest charged or taken on this Mortgage or the Power Sale Agreement exceed the maximum allowed by law and in the event such charges cause the interest to exceed said maximum allowed by law, such interest shall be recalculated and such excess shall be credited to principal, it being the intent of the parties that under no circumstances shall ICL be required to pay any charges in the nature of interest in excess of the maximum rate allowed by law.

5.10 Further Assurances. ICL will execute and deliver promptly to FPL on demand at any time or times hereafter, any and all further instruments reasonably required by FPL to carry-out the provisions of this Mortgage, as set forth in the following sentence. ICL will, at any and all times at its expense, execute, acknowledge and deliver and, at FPL's expense, file and/or record, refile and/or re-record, all and every such further acts, deeds, powers of attorney, assignment of accounts, conveyances, mortgages, security instruments, documents and financing assurances in law, and will deposit with FPL any certificates of title issuable with respect to any property and notation thereof the security interest hereunder, as FPL shall reasonably require for the better assuring, conveying, pledging, transferring, mortgaging, assigning, and confirming unto FPL all and singular the hereditaments and premises, estates and property hereby, or by subsequent or collateral instruments, conveyed, pledged, transferred or assigned, or intended to be, and for perfecting the security interest of Mortgaged Property and other items of security and collateral now or hereafter held by FPL pursuant to this Mortgage.

5.11 Title Insurance Policy/Survey. ICL will provide FPL with a mortgagee title insurance policy in such amount as may be reasonably requested by FPL, issued by a title company acceptable to FPL and insuring this Mortgage as a valid

mortgage, and subject only to such exceptions shown in Exhibit B hereto, if any, provided, however, such title insurance in the amounts and subject to such exceptions as required by the First Mortgagee (as defined in Section 5.18 below) shall satisfy the requirements of this Section 5.11 unless such requirements are demonstratively insufficient. ICL will also provide a current survey of the Premises encumbered by this Mortgage, prepared and certified by a registered surveyor or engineer showing access to the Property and no condition which would prevent title to the Premises from being good, marketable and insurable as a fee simple title.

5.12 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage or in the Power Sale Agreement shall be held or found invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, or provisions contained herein and in the Power Sale Agreement shall be in no way affected, prejudiced, or disturbed thereby.

5.13 Governing Law and Construction of Clauses. This Mortgage shall be governed and construed by the laws of the State of Florida. No act of FPL shall be construed as an election to proceed under any one provision of the Mortgage or of the applicable statutes of the State of Florida to the exclusion of any other such provision, anything herein or otherwise to the contrary notwithstanding.

5.14 Time of Essence. Time is of the essence of this Mortgage.

5.15 Waiver. No waiver of any covenant herein or in the obligation secured hereby shall at any time hereafter be held to be a waiver of any of the other terms hereof or of the Power Sale Agreement, or future waiver of the same covenant.



5.16 Gender, Etc. The use of any gender shall include all other genders. The singular shall include the plural.

5.17 Mortgage Riders. If any rider is attached to this Mortgage and recorded together with this Mortgage and signed by ICL, it shall be deemed to be incorporated herein and to be fully binding upon ICL as though it were a part of the original Mortgage.

5.18 First Mortgage. The Mortgaged Property is subject to an existing Mortgage, dated \_\_\_\_\_, 19\_\_ from ICL to \_\_\_\_\_ (the "First Mortgagee"), recorded in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_ of the Public Records of \_\_\_\_\_ County, Florida (the "First Mortgage"), which First Mortgage secures the repayment of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). This Mortgage is subject to the First Mortgage to the extent that the First Mortgage constitutes a valid and prior lien on the mortgaged property as of the date hereof.

5.19 Waiver of Jury Trial. ICL HEREBY AND FPL BY ITS ACCEPTANCE OF THIS MORTGAGE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING,

STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FPL ACCEPTING THIS MORTGAGE.

IN WITNESS WHEREOF, ICL has hereunto duly executed this Mortgage as of the day and year first hereinbefore written.

Signed, sealed and delivered  
in the presence of:

INDIANTOWN COGENERATION, L.P.,  
a Delaware limited partnership

By: \_\_\_\_\_

(Title)

By: \_\_\_\_\_

Its:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA :

:ss

COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, as general partner of Indiantown Cogeneration, L.P., a Delaware limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

My Commission Expires

**Exhibit A**  
**Legal Description**

**Exhibit B**  
**Exceptions**

1. [Description of permitted bank financing and items accepted by First Mortgagee].
2. FPL hereby agrees to subordinate the lien of the Second Mortgage and Security Agreement (including, without limitation, the terms contained therein relating to security interests in personalty) to the lien and the rights of a seller, lender or lessor under any security agreement, lease or similar arrangement by which such seller, lender or lessor provides financing or the like to enable ICL to acquire title to, or the use of, any personalty used in the ordinary course of the construction, development or operation of the Premises (and any extensions, consolidations, renewals, amendments, modifications or supplements thereof), provided, however, the full amount of such extensions of credit to which FPL is subordinate will not exceed the limitations set forth in Sections 21.6 and 21.7 of the Power Sale Agreement.

APPENDIX L

FORM OF SECURITY AGREEMENT

## SECURITY AGREEMENT

This SECURITY AGREEMENT ("Security Agreement"), dated as of \_\_\_\_\_, 19\_\_\_ is from INDIANTOWN COGENERATION, L.P., a limited partnership organized and existing under the laws of the State of Delaware having its principal place of business in Bethesda, Maryland ("ICL"), whose mailing address is 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422, to FLORIDA POWER & LIGHT COMPANY, a utility corporation organized and existing under the laws of the State of Florida having its principal place of business in Miami, Florida ("FPL"), whose address is Post Office Box 029100, Miami, Florida 33102.

In consideration of payments and other financial accommodations extended by FPL to ICL, and for other value received by ICL, ICL hereby grants a continuing security interest in, and assigns to FPL, the Collateral to secure payment and performance of all of the Obligations of ICL to FPL.

Section 1. Definitions. Definitions in the Code apply to words and phrases in this Security Agreement and, if Code definitions conflict, definitions in Article 9 (Chapter 679, Florida Statutes) of the Code shall apply. In addition to terms defined in the Code or elsewhere in this Security Agreement or the Power Sale Agreement, the following terms have the meanings indicated below, which meanings shall be equally applicable to both the singular and the plural forms of such terms:

1.1 "Code" means the Uniform Commercial Code as in effect from time to time in the State of Florida (Chapters 671 through 680, inclusive, Florida Statutes).

1.2 "Collateral" means and includes any and all of the following owned by ICL or in which ICL has an interest, whether now owned or existing or hereafter created or acquired:

- (a) accounts;
- (b) chattel paper;
- (c) documents;
- (d) general intangibles;
- (e) goods, including equipment, inventory and fixtures;
- (f) instruments;
- (g) all cash or non-cash proceeds of any of the foregoing, including insurance proceeds and all products thereof;
- (h) all ledger sheets, files, records, documents and instruments (including, but not limited to, computer programs, tapes and related electronic data processing software) evidencing an interest in or relating to the above; and
- (i) any and all property of ICL now or hereafter delivered to or left in or coming into the possession, control or custody of FPL, whether expressly as collateral security or for any other purpose (including cash, stock and other dividends, and all rights to subscribe for securities incident to, declared, or granted in connection with such property), and property described in collateral receipts or other documents signed or furnished by ICL, and any and all replacements of any of the foregoing, whether or not in the possession of FPL.

1.3 "Obligations" shall include:

- (a) all indebtedness, obligations and liabilities of ICL to FPL now or hereafter existing, incurred or created under the Power Sale Agreement, including, but not limited to, the payment of the Termination Fee (as defined in

the Power Sale Agreement), and any and all renewals, modifications, amendments and replacements thereof;

(b) all reasonable costs incurred by FPL to (i) obtain, preserve and enforce this Security Agreement and the security interest created hereunder, (ii) collect the Obligations and (iii) maintain and preserve the Collateral, including, without limitation, taxes, assessments, insurance premiums, repairs, reasonable attorneys' fees, expenses, and paralegal charges, including appellate proceedings, rent storage costs and expenses of sale; and

(c) interest on the above amounts equal to four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period for which interest is computed.

1.4 "Power Sale Agreement" shall mean that certain Agreement for the Purchase of Firm Capacity and Energy, dated as of March 31, 1990, between ICL and FPL, including any exhibits and appendices thereto.

1.5 "Second Mortgage" shall mean that certain Second Mortgage and Security Agreement from ICL in favor of FPL, dated the date hereof.

Section 2. List of Collateral. Contemporaneous with the execution hereof ICL has furnished to FPL a listing of the Collateral presently owned by it; provided, however, FPL shall have a security interest in any and all Collateral whether or not such Collateral is described generally or specifically on such list. ICL warrants and agrees that it is the owner of the Collateral free and clear of all liens and security interests except the security interest granted by this Security Agreement or as set forth on Exhibit A hereto (herein called "Permitted Encumbrances").

Section 3. No Other Security Interests. So long as any Obligation to FPL is outstanding, ICL will not without the prior written consent of FPL grant to



any third party a security interest in any of the Collateral or permit any lien or encumbrance to attach to any part of the Collateral (except for taxes not yet due and payable) or suffer or permit any levy to be made on any part of the Collateral, or permit any financing statement except that of FPL to be on file with respect thereto except with respect to Permitted Encumbrances. ICL will not sell, transfer, lease or otherwise dispose of any of the Collateral or any interest therein, or offer to do so or permit anything to be done to impair the value of the Collateral or the security interest, other than in the ordinary course of its business.

Section 4. Representations, Warranties and Covenants Regarding the Collateral. ICL represents, warrants and covenants that:

4.1. The Collateral shall be kept at the address specified above or specified on Exhibit B attached hereto. If any of the Collateral is located on property which is not owned by ICL, ICL will, on demand of FPL, obtain landlord's waivers of liens in forms satisfactory to FPL as to each such location.

4.2. If any of the equipment is attached to real property, the legal description for said real property is attached hereto as Exhibit C and ICL will, on demand of FPL, furnish FPL with a disclaimer or disclaimers, signed by all persons having an interest in said real estate at the time of such attachment, of any interest in the equipment. ICL is the record owner of the real property where the equipment is kept or, if ICL is not the record owner, the name or names of the record owner or owners is shown on Exhibit C hereto.

4.3. ICL will at all times keep the Collateral insured against loss, damage, theft, and such other risks as FPL may reasonably require in such amounts (in any event, not less than the full insurable value thereof), with such insurance companies, under such policies, in such form and for such periods as

shall be satisfactory to FPL, provided, however, insurance in the amounts and type required by the First Mortgagee (as defined in Section 5.18 of the Second Mortgage) shall satisfy the requirements of this Section 4.3 unless such requirements are demonstratively insufficient. All policies for such insurance shall name FPL as an additional insured, as its interests may appear. After the happening of any casualty to the Collateral or any part thereof, ICL shall give prompt written notice thereof to FPL. ICL shall apply such proceeds to repairs or restorations or reduction of debt as required by the First Mortgagee (as defined in Section 5.18 in the Second Mortgage), or if such first mortgage is satisfied:

(a) in the event of damage to or destruction of the Collateral, ICL shall apply the proceeds as it sees fit unless (i) any Event of Default under the Power Sale Agreement shall have occurred and shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement or (ii) to the extent such proceeds are not applied for the restoration of the Collateral, such application would cause an Event of Default to exist. In either such case under which ICL shall not have the right to apply the proceeds as it sees fit, FPL shall have the option, in its sole discretion, of applying or paying all or part of the insurance proceeds (i) to any obligation secured hereby and in such order as FPL may determine, or (ii) to the restoration or replacement of the Collateral, or (iii) to ICL.

(b) FPL agrees not to unreasonably withhold consent to the use of insurance proceeds for restoration or replacement of the Collateral following a partial casualty loss, subject to (i) ICL maintaining this Security Agreement free from default at all times and (ii) ICL providing evidence that adequate

funds are available to restore or replace the Collateral and advancing any additional funds required prior to the disbursement of insurance proceeds.

(c) in the event of such loss or damage, if there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, all proceeds of insurance shall be payable to FPL and ICL hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to FPL and ICL, jointly and if a First Mortgage (as defined in Section 5.18 of the Second Mortgage) exists, to FPL, ICL and the First Mortgagee, jointly. If there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, FPL is hereby authorized and empowered by ICL to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance, and ICL hereby irrevocably appoints FPL its attorney-in-fact coupled with an interest with the power and authority to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.

Nothing herein shall relieve ICL from its obligations under the Power Sale Agreement or any other obligation of ICL secured hereby. Each such policy shall provide for thirty days written minimum cancellation notice to FPL. Each such policy shall be available for review by FPL at ICL's offices during reasonable hours, and FPL may act as attorney for ICL in obtaining, adjusting, settling, and canceling such insurance and indorsing any drafts. Such policies shall provide that no act or default of ICL shall affect the right of FPL to recover.

4.4 (a) Should the Collateral or any part thereof or interest therein which materially affects ICL's production of electricity, be taken or damaged by

reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation") or should ICL receive any notice or information regarding such Condemnation, ICL shall give prompt written notice thereof to FPL.

(b) FPL shall have a security interest in all compensation, awards, damages, rights of action and proceeds awarded to ICL in connection with such Condemnation ("Proceeds").

(c) In the event any portion of the Collateral is so taken, ICL shall apply such Proceeds to restorations or reduction of debt as required by the First Mortgagee (as defined in Section 5.18 of the Second Mortgage), or if such first mortgage is satisfied:

(i) ICL shall apply the Proceeds as it sees fit unless (x) any Event of Default under the Power Sale Agreement shall have occurred and shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement or (y) to the extent such Proceeds are not applied for the restoration or replacement of the Collateral, such application would cause an Event of Default to exist. In either such case under which ICL shall not have the right to apply the Proceeds as it sees fit, FPL shall have the option, subject to the provisions of paragraph (ii) below, of applying or paying all or part of the Proceeds (x) to any obligation secured hereby and in such order as FPL may determine, or (y) to the restoration or replacement of the Collateral, or (z) to ICL.

(ii) FPL agrees not to unreasonably withhold consent to the use of Proceeds for restoration or replacement of the Mortgaged Property following a Condemnation, subject to (x) ICL maintaining this Security Agreement free from default at all times, and (y) ICL providing evidence that adequate funds are available to restore or replace the Collateral and

advancing any additional funds required prior to the disbursement of Proceeds.

(iii) if there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, all Proceeds shall be payable to FPL and if a First Mortgage exists, to FPL and the First Mortgagee (as defined in Section 5.18 of the Second Mortgage), jointly. If there exists an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure under the Power Sale Agreement, subject to the prior rights of the First Mortgagee (as defined in Section 5.18 of the Second Mortgage), FPL shall be entitled to all Proceeds and shall be entitled, at its option, to appear in its own name or ICL's name, in any action or proceeding relating thereto. In the event of such an appearance, ICL agrees to pay the reasonable attorneys' fees, expenses and paralegal charges, including appellate proceedings, incurred by FPL.

(d) Nothing herein shall relieve ICL from its obligations under the Power Sale Agreement or any other obligation of ICL secured hereby.

4.5. ICL will at all times keep the Collateral in good order and repair and will not waste or destroy the Collateral or any part thereof.

4.6. ICL warrants that no financing statement covering any Collateral or any proceeds thereof is on file in any public office, other than financing statements naming FPL and financing statements filed with respect to Permitted Encumbrances. ICL will promptly, if reasonably requested by FPL, mark its records evidencing its accounts and chattel paper in a manner satisfactory to FPL so as to show the same having been assigned to FPL. ICL authorizes FPL to file

financing statements with respect to the Collateral signed only by FPL. ICL will join with FPL in executing financing statements, notices, affidavits or similar instruments in forms satisfactory to FPL and such other documents as FPL may from time to time request, and filing the same in any public office deemed advisable by FPL. FPL will pay any filing charges. ICL will do such other acts and things, all as FPL may reasonably request, to maintain a valid, first perfected security interest in the Collateral (free of all other liens and claims whatsoever other than Permitted Encumbrances) to secure the payment of the Obligations secured hereby. FPL is hereby appointed ICL's attorney-in-fact to do all acts and things which FPL may reasonably deem necessary to perfect and to continue the perfection of the security interest created hereby and, after the occurrence of an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement, to protect the Collateral.

4.7. ICL will not use the Collateral or permit the same to be used in violation of any statute or ordinance. FPL may examine and inspect the Collateral during normal business hours, wherever located. ICL will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation or upon this Security Agreement or other writing evidencing the Obligations, or any of them.

Section 5. Defaults and Remedies. The term "Event of Default" shall mean a default in any material provision hereof which remains uncured for a period of thirty (30) days after receipt of notice from FPL to ICL, or any Event of Default as defined in the Second Mortgage. If an "Event of Default," shall have occurred and shall not be remedied, then FPL, may in addition to any other rights and remedies which it may have, immediately and without demand exercise any and all

of the rights and remedies granted to a secured party upon default under the Code. FPL and its agents are authorized to enter into or onto any premises where the Collateral may be located for the purpose of taking possession of such Collateral. Any notice of sale, disposition or other intended action by FPL, sent to ICL at the address specified at the beginning of this Security Agreement or at such other address of ICL as may from time to time be shown on FPL's records, at least ten days prior to such action, shall constitute reasonable notice to ICL. Any proceeds of any disposition of any of the Collateral may be applied by FPL toward payment of such of the Obligations and in such order of application as FPL may from time to time elect. Upon the occurrence of an Event of Default under the Power Sale Agreement which shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement, FPL shall have no obligation to make any Monthly Capacity Payment (as defined in the Power Sale Agreement), in the same manner as set forth in Section 8.6 of the Power Sale Agreement, provided, that if ICL shall have cured any such Event of Default FPL shall resume Monthly Capacity Payments as may be required by the Power Sale Agreement.

Section 6. Miscellaneous.

6.1. No waiver by FPL of any Event of Default shall operate as a waiver of any other Event of Default or of the same Event of Default on a future occasion. No delay or omission on the part of FPL in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by FPL of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Time is of the essence of this Security Agreement. The provisions of this Security Agreement are cumulative and in addition to the provisions of any liability of ICL under any note, any

guaranty or any other writing, and FPL shall have all the benefits, rights and remedies of a secured party under this Security Agreement and any other document.

6.2. All rights of FPL hereunder shall inure to the benefit of its successors and assigns, and all Obligations of ICL shall bind the successors and assigns of ICL.

6.3. This Security Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida.

6.4. ICL shall pay on demand all expenses and expenditures of FPL, including reasonable attorneys' fees, expenses, and paralegal charges, including appellate proceedings, incurred or paid by FPL in protecting, enforcing or exercising its security interest, rights or remedies created by, connected with or provided in this Security Agreement or performance pursuant to this Security Agreement.

6.5. At its option, FPL may (i) discharge taxes levied or placed on the Collateral, provided, however, ICL may contest in good faith the legality or amount of any tax by appropriate legal proceedings provided such contest does not cause a loss of the Collateral, (ii) discharge liens or security interests or other encumbrances at any time levied or placed on the Collateral, (iii) pay for insurance on the Collateral, and (iv) pay for the maintenance and preservation of the Collateral. Repayment shall be made by ICL to FPL for such expenditures upon demand together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL. Except as otherwise expressly provided in this Security Agreement, until default ICL may have possession of the Collateral and



use it in any lawful manner not inconsistent with this Security Agreement and not inconsistent with any policy of insurance thereon.

6.6. All notices, demands and requests given by either party hereto to the other party shall be in writing. All notices, demands and requests by one party to the other shall be deemed to have been properly given as herein required if sent in accordance with the notice provisions of the Power Sale Agreement.

6.7. If any of the provisions of this Security Agreement shall contravene or be held invalid under the laws of any jurisdiction, the Security Agreement shall be construed as if not containing such provision and the remainder of this Security Agreement shall be construed and enforced accordingly.

6.8. FPL's rights under the Power Sale Agreement and all documents delivered in connection therewith are cumulative. Without limiting the generality of the foregoing, FPL may enforce its rights hereunder in all or part of the Collateral or in any other security in the order selected by FPL.

6.9. ICL HEREBY, AND FPL BY ITS ACCEPTANCE OF THIS SECURITY AGREEMENT, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS SECURITY AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FPL ACCEPTING THIS SECURITY AGREEMENT.

IN WITNESS WHEREOF this Security Agreement has been dated for convenience as of the date hereinabove first written, but in fact executed on \_\_\_\_\_, 19\_\_.

Signed, sealed and delivered  
in the presence of:

ICL:  
INDIANTOWN COGENERATION, L.P.,  
a Delaware limited partnership

By: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Its:

EXHIBIT A

Permitted Encumbrances

1. [Description of permitted bank financing].
2. FPL hereby agrees to subordinate the lien of the Security Agreement (including, without limitation, the terms contained therein relating to security interests in personalty) to the lien and the rights of a seller, lender or lessor under any security agreement, lease or similar arrangement by which such seller, lender or lessor provides financing or the like to enable ICL to acquire title to, or the use of, any personalty used in the ordinary course of the construction, development or operation of the Facility (as defined in the Power Sale Agreement) (and any extensions, consolidations, renewals, amendments, modifications or supplements thereof), provided, however, the full amount of such extensions of credit to which FPL is subordinate will not exceed the limitations set forth in Sections 21.6 and 21.7 of the Power Sale Agreement.

Exhibit B

Locations at which  
Collateral of ICL is Located

EXHIBIT C

Legal Description of

Real Property to which Fixtures are Attached

APPENDIX M

LEVELIZATION PAYMENT

The levelization payments identified in Section 21.6, SECURITY, shall be fixed according to the following schedule where "Year 1" equals the first Agreement Year:

<u>Year</u>	<u>Levelization Payment (\$000)</u>
1	51,000
2	94,000
3	129,000
4	157,000
5	178,000
6	183,000
7	202,000
8	221,000
9	212,000
10	192,000
11	181,000
12	147,000
13	108,000
14	58,000
15	1,000
16 - 30	0

**ICL INTERCONNECTION AGREEMENT**  
**BETWEEN**  
**FLORIDA POWER & LIGHT COMPANY**  
**AND**  
**INDIANTOWN COGENERATION, L. P.**

# TABLE OF CONTENTS

1		
2	RECITALS . . . . .	1
3	ARTICLE I - DEFINITIONS . . . . .	2
4	Section 1.1 - Data Acquisition Equipment . . . . .	2
5	Section 1.2 - ICL Cogeneration Facility . . . . .	2
6	Section 1.3 - ICL Facilities . . . . .	2
7	Section 1.4 - ICL Switching Station . . . . .	3
8	Section 1.5 - In-Service Date . . . . .	3
9	Section 1.6 - Interconnection Facilities . . . . .	3
10	Section 1.7 - Interconnection Point . . . . .	3
11	Section 1.8 - Metering Equipment . . . . .	3
12	Section 1.9 - Past Due After Date . . . . .	4
13	Section 1.10 - Plant Substation . . . . .	4
14	Section 1.11 - Prime Rate . . . . .	4
15	Section 1.12 - Protective Equipment . . . . .	4
16	Section 1.13 - Transmission Facilities . . . . .	5
17	Section 1.14 - Warfield . . . . .	5
18	ARTICLE II - TERM . . . . .	5
19	Section 2.1 - Term . . . . .	5
20	ARTICLE III - INTERCONNECTION FACILITIES TO BE CONSTRUCTED . . . . .	6
21	Section 3.1 - Transmission Facilities . . . . .	6
22	Section 3.1.1 - Transmission Line Responsibilities of ICL . . . . .	6
23	Section 3.1.2 - Transmission Line Responsibilities of FPL . . . . .	6
24	Section 3.2 - Substation Facilities . . . . .	7
25	Section 3.2.1 - Substation Responsibilities of FPL . . . . .	7
26	Section 3.2.2 - Substation Responsibilities of ICL . . . . .	7
27	Section 3.2.3 - Transfer of Land for Warfield . . . . .	7
28	Section 3.3 - Metering and Data Acquisition Equipment at Warfield . . . . .	9
29	Section 3.4 - ICL Facility . . . . .	9
30	Section 3.5 - Final FPL Design and Configuration . . . . .	10
31	Section 3.6 - Service Dates . . . . .	10
32	Section 3.7 - Status Reports . . . . .	11
33	ARTICLE IV - INTERCONNECTION FACILITIES . . . . .	11
34	Section 4.1 - General . . . . .	11
35	Section 4.1.1 - Hazardous or Unsafe Conditions . . . . .	11
36	Section 4.1.2 - Disconnections . . . . .	12
37	Section 4.1.3 - Synchronization of the ICL Cogeneration Facility . . . . .	12
38	ARTICLE V - OPERATION, MAINTENANCE AND CAPITAL IMPROVEMENTS . . . . .	13
39	Section 5.1 - General . . . . .	13
40	Section 5.2 - FPL's Interconnection Facilities . . . . .	13
41	Section 5.2.1 - Modifications to Metering and Data Acquisition Equipment . . . . .	13
42	Section 5.2.2 - Testing and Maintenance of Metering and Data Acquisition	
43	Equipment . . . . .	14
44	Section 5.3 - ICL Facilities . . . . .	14
45	Section 5.4 - Changes by ICL . . . . .	14
46	Section 5.5 - Reactive Power . . . . .	15



1	ARTICLE VI - RESPONSIBILITY FOR COSTS	15
2	Section 6.1 - ICL's Responsibilities	15
3	Section 6.2 - FPL's Responsibilities	16
4	ARTICLE VII - BILLING AND PAYMENT	17
5	Section 7.1 - Billing and Payment for Interconnection Facilities	17
6	Section 7.2 - Billing and Payment for Other Charges	17
7	Section 7.3 - Disputed Bills	17
8	Section 7.4 - Electric Service for ICL Cogeneration Facility and Warfield	18
9	Section 7.5 - No Reduction	18
10	Section 7.6 - Disconnection of Interconnection Facilities	18
11	Section 7.7 - Taxes	18
12	ARTICLE VIII - OPERATING REPRESENTATIVES	19
13	Section 8.1 - Operating Representatives	19
14	ARTICLE IX - INSURANCE	20
15	Section 9.1 - Insurance	20
16	ARTICLE X - FORCE MAJEURE	21
17	Section 10.1 - Force Majeure	21
18	ARTICLE XI - INDEMNITY	22
19	Section 11.1 - Indemnification	22
20	ARTICLE XII - LIMITATION OF LIABILITY	23
21	Section 12.1 - Limitation of Liability	23
22	ARTICLE XIII - MISCELLANEOUS	23
23	Section 13.1 - Applicable State Law	23
24	Section 13.2 - FPSC Filing of Agreement	24
25	Section 13.3 - Default	24
26	Section 13.4 - Responsibility for ICL Facilities	24
27	Section 13.5 - Electric Service to the ICL Cogeneration Facility and Warfield	25
28	Section 13.6 - Waivers	25
29	Section 13.7 - Successors and Assigns	25
30	Section 13.8 - Effect of Section Headings	26
31	Section 13.9 - Attachments	26
32	Section 13.10 - Relationship of the Parties	26
33	Section 13.11 - No Dedication of any System	26
34	Section 13.12 - Notices	26
35	Section 13.13 - Counterpart Execution	27
36	Section 13.14 - Complete Agreement	27
37	Section 13.15 - Equal Employment Opportunity and Civil Rights	27
38	EXHIBIT A - PRELIMINARY INTERCONNECTION CONFIGURATION AND SITE	A-1
39	EXHIBIT B - INTERCONNECTION FACILITIES COMPONENTS	B-1
40	EXHIBIT C - ESTIMATE OF INTERCONNECTION COSTS	C-1
41	EXHIBIT D - EVIDENCE OF LIABILITY INSURANCE	D-1

1   **ICL INTERCONNECTION AGREEMENT**  
2   **BETWEEN**  
3   **FLORIDA POWER & LIGHT COMPANY**  
  **AND**  
5   **INDIANTOWN COGENERATION, L. P.**

6       This ICL Interconnection Agreement between Florida Power & Light Company and Indiantown  
7       Cogeneration, L. P. ("Agreement"), is made and entered into as of February 24, 1992, by and  
8       between Florida Power & Light Company ("FPL"), a corporation organized and existing under the  
9       laws of the State of Florida, and Indiantown Cogeneration, L.P. ("ICL"), a limited partnership  
10      organized and existing under the laws of the State of Delaware. FPL and ICL may from time to  
11      time be identified individually as a "Party" and are collectively identified herein as the "Parties".

12   **RECITALS**

13      **WHEREAS**, FPL, an investor-owned utility, owns and operates electrical generation, transmission  
14      and distribution facilities in portions of the State of Florida;

15      **WHEREAS**, ICL, a limited partnership, plans to construct, own and operate a cogeneration facility  
16      ("ICL Cogeneration Facility") located in Indiantown, Florida, which has been or will be certified as  
17      a "qualifying cogeneration facility" by the Federal Energy Regulatory Commission ("FERC") as that  
18      term is defined in Section 3(18)(B) of the Federal Power Act, as amended by Section 201 of the  
19      Public Utility Regulatory Policies Act of 1978;

20      **WHEREAS**, FPL and ICL are parties to that certain Agreement for the Purchase of Firm Capacity  
21      and Energy between Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated as  
22      of March 31, 1990 (the "Power Sales Agreement"), which provides the terms and conditions for the  
23      purchase by FPL of firm electric capacity and energy from the ICL Cogeneration Facility; and

24      **WHEREAS**, FPL and ICL desire to establish terms and conditions for the interconnected operation

1 of FPL's system and the ICL Cogeneration Facility and for the development, construction,  
2 installation, operation and maintenance responsibilities for the Interconnection Facilities.

3 NOW, THEREFORE, in accordance with the Parties' respective obligations under FPSC and FERC  
4 rules, the Parties agree as follows:

5 **ARTICLE I**

6 **DEFINITIONS**

7 When used herein with complete or initial capitalization, whether in the singular or in the plural, the  
8 following terms shall have the following defined meanings:

9 **Section 1.1 - Data Acquisition Equipment:** Includes, but shall not be limited to, supervisory  
10 control and data acquisition ("SCADA") remote terminal unit(s) ("RTUs") to obtain information from  
11 Warfield and/or the ICL Switching Station, telephone equipment and leased telephone circuits  
12 necessary to transmit data to remote locations, and any other equipment or service reasonably  
13 necessary to provide for the telemetry requirements of the Parties under this Agreement.

14 **Section 1.2 - ICL Cogeneration Facility:** ICL's nominal net output 300 MW coal-fired electrical  
15 cogeneration resource located adjacent to Caulkins Citrus Processing plant in Indiantown, Florida,  
16 together with all equipment, fuel and other consumables, transformers, switchgear, protective  
17 devices, fuel handling and residue disposable infrastructure, and, except as otherwise provided in the  
18 Power Sales Agreement, any other associated property, both real and personal, on ICL's side of the  
19 Interconnection Point necessary for proper operation of the coal-fired electrical cogeneration facility,  
20 but not including the facilities necessary to interconnect the ICL Cogeneration Facility with FPL's  
21 system through Warfield.

22 **Section 1.3 - ICL Facilities:** All facilities owned by ICL on its side of the Interconnection Point  
necessary to interconnecting the ICL Cogeneration Facility with FPL's system other than the ICL

1 Cogeneration Facility, including, but not limited to, the ICL Switching Station, Plant Substation, and  
2 ICL's Metering Equipment, Data Acquisition Equipment, Protective Equipment and Transmission  
3 Facilities.

4 **Section 1.4 - ICL Switching Station:** All facilities owned by ICL located within the property limits  
5 of ICL's transmission switching station immediately adjacent to Warfield, including, but not limited  
6 to, land, improvements, terminal facilities, transmission facilities, Protective Equipment, Metering  
7 Equipment, Data Acquisition Equipment and other substation facilities as generally shown on Exhibit  
8 A to this Agreement.

9 **Section 1.5 - In-Service Date:** In-Service Date shall be the date when the construction, installation  
10 and/or upgrading of all facilities required to establish the interconnection and synchronized operation  
11 of the ICL Cogeneration Facility with FPL's system are completed, such that those facilities are  
12 capable of performing the functions for which they were designed.

13 **Section 1.6 - Interconnection Facilities:** All FPL and ICL facilities necessary to interconnect the  
14 ICL Cogeneration Facility to FPL's system, including, but not limited to, Warfield, the ICL  
15 Switching Station, Plant Substation, Metering Equipment, Data Acquisition Equipment, Protective  
16 Equipment, Transmission Facilities and the ICL Facilities and related facilities as generally shown  
17 on Exhibit A to this Agreement.

18 **Section 1.7 - Interconnection Point:** The point at which the 230 kV substation bus between  
19 Warfield and the ICL Switching Station traverses the property limits of Warfield as generally shown  
20 on Exhibit A to this Agreement.

21 **Section 1.8 - Metering Equipment:** Includes, but shall not be limited to, state of the art high  
22 accuracy solid state kWh and MWh meters (primary and backup), metering cabinets, metering  
23 panels, conduits, cabling, high accuracy current transformers and high accuracy potential  
24 transformers which directly or indirectly provide input to meters or transducers, meter recording  
devices, telephone circuits, signal or pulse dividers, transducers, pulse accumulators and any other

1 equipment necessary to implement the metering provisions of this Agreement.

2 **Section 1.9 - Past Due After Date:** Twenty (20) days from the date of mailing (as determined by  
3 postmark) or delivery, as the case may be. If the Past Due After Date should fall on a Sunday or  
4 on a Monday which is a holiday, then the Past Due After Date shall be the next business day after  
5 such Sunday or holiday. If the Past Due After Date should fall on a Saturday or on any holiday  
6 other than a Monday holiday, the Past Due After Date shall be the business day prior to such  
7 Saturday or holiday. The following holidays, as observed by FPL, are the only holidays which shall  
8 be considered in the above determinations: New Year's Day (January 1st); Martin Luther King, Jr.  
9 Day (third Monday in January); Washington's Birthday (third Monday in February); Memorial Day  
10 (last Monday in May); Independence Day (July 4th); Labor Day (first Monday in September);  
11 Veterans' Day (November 11th); Thanksgiving Day (fourth Thursday in November); Christmas Eve  
12 Day (December 24th); and Christmas Day (December 25th). If a holiday falls on a Saturday, it is  
13 observed on the prior Friday and, if a holiday falls on a Sunday, it is observed on the following  
14 Monday; however, if Christmas Eve falls on a Friday, it is observed on the prior Thursday or, if  
15 Christmas Day falls on a Monday, it is observed on the following Tuesday.

16 **Section 1.10 - Plant Substation:** ICL's generating unit's substation, including, but not limited to,  
17 Protective Equipment, the ICL Cogeneration Facility's generator step-up transformer ("GSU") and  
18 related equipment as generally shown on Exhibit A to this Agreement.

19 **Section 1.11 - Prime Rate:** The average of the prime lending rates reported in the Money Rates  
20 column of the Wall Street Journal, as the "PRIME RATE", on the last business day of the applicable  
21 month and the last business day of the preceding month. In the event that one or more of such  
22 reports indicate a range of such rate, the average of the two limits shall be used in the calculation.  
23 Similar data from The New York Times may be used if the Wall Street Journal is not published that  
24 day.

25 **Section 1.12 - Protective Equipment:** Includes, but shall not be limited to, protective relays,

1 relaying panels, relaying cabinets, circuit breakers, conduits, cabling, current transformers, potential  
2 transformers, coupling capacitor voltage transformers, wave traps, transfer trip and fault recorders,  
3 which directly or indirectly provide input to relays, fiber optic communication equipment, power line  
4 carrier equipment and telephone circuits, and any other equipment necessary to implement the  
5 protection provisions of this Agreement.

6 **Section 1.13 - Transmission Facilities:** All 230 kV transmission facilities between (i) Plant  
7 Substation and Warfield and (ii) Warfield and the next 230 kV transmission switching station on each  
8 of the 230 kV transmission lines interconnecting the ICL Cogeneration Facility with FPL's system.

9 **Section 1.14 - Warfield:** The new FPL 230 kV transmission substation to be constructed pursuant  
10 to this Agreement for the purpose, together with the remaining Interconnection Facilities, of  
11 interconnecting the ICL Cogeneration Facility with FPL's System and encompassing all facilities  
12 owned by FPL located within the property limits of Warfield Substation (which property is more  
13 fully described in Exhibit A, page A-2 hereto), including, but not limited to, land, improvements,  
14 terminal facilities, Transmission Facilities, Protective Equipment, Metering Equipment, Data  
15 Acquisition Equipment and other related equipment and materials.

## 16 **ARTICLE II**

### 17 **TERM**

18 **Section 2.1 - Term:** The term of this Agreement shall commence on the date of this Agreement and  
19 shall, except as provided in this Section 2.1 and in Section 13.3, continue in effect for an initial term  
20 which shall expire upon the later of (i) December 31, 2025, and (ii) the conclusion of thirty-one (31)  
21 Agreement Years (as defined in the Power Sales Agreement), and thereafter shall automatically be  
22 extended for periods of two (2) years each; however, either Party may terminate this Agreement at  
23 the end of the initial term or at the end of any two (2) year extension hereof upon a minimum of two

1 years' advance written notice to the other Party, or at any time upon mutual consent of the Parties;  
2 provided, however, in the event that FPL terminates the Power Sales Agreement due to ICL's failure  
3 to fulfill the condition provided in Section 3.4(i) of the Power Sales Agreement, this Agreement shall  
4 thereby be terminated. Upon any termination, including, without limitation, automatic termination  
5 upon FPL's termination of the Power Sales Agreement due to ICL's failure to fulfill the condition  
6 of Section 3.4(i) of the Power Sales Agreement, ICL shall reimburse FPL for all costs and expenses  
7 incurred by FPL pursuant to this Agreement.

### 8 **ARTICLE III**

#### 9 **INTERCONNECTION FACILITIES TO BE CONSTRUCTED**

10 **Section 3.1 - Transmission Facilities:** The Parties shall, pursuant to this Agreement, design,  
11 engineer, modify, upgrade, install and construct the transmission facilities necessary to interconnect  
12 the ICL Cogeneration Facility with FPL's system. A list of the estimated major transmission facility  
13 components is provided in Exhibit B to this Agreement.

14 **Section 3.1.1 - Transmission Line Responsibilities of ICL:** ICL shall, at its own expense,  
15 design, engineer, modify, install, construct and own the Transmission Facilities inside and  
16 between the ICL Cogeneration Facility's GSU and the ICL Switching Station as generally  
17 shown on Exhibit A to this Agreement.

18 **Section 3.1.2 - Transmission Line Responsibilities of FPL:** FPL shall, at ICL's expense,  
19 design, engineer, modify, install, construct and own and make any future additions and/or  
20 modifications of that portion of the Transmission Facilities on FPL's side of the  
21 Interconnection Point which FPL determines are necessary to interconnect the ICL  
22 Cogeneration Facility with FPL's system in a safe and reliable manner. ICL shall coordinate

1 with FPL in the construction and routing of the Transmission Facilities into, or out of,  
2 Warfield.

3 **Section 3.2 - Substation Facilities:** The Parties shall, pursuant to this Agreement, design, engineer,  
4 modify, upgrade, install and construct the substation facilities necessary to interconnect the ICL  
5 Cogeneration Facility with FPL's system. A list of the estimated major substation facility  
6 components is provided in Exhibit B to this Agreement.

7 **Section 3.2.1 - Substation Responsibilities of FPL:** FPL shall, at ICL's expense, design,  
8 engineer, modify, upgrade, install, construct and own the facilities at Warfield and other FPL  
9 substations (including, but not limited to, Indiantown Substation, Florida Steel and Martin  
10 Substation), as FPL determines are necessary to interconnect the ICL Cogeneration Facility  
11 with FPL's system in a safe and reliable manner. Further, the design, engineering,  
12 installation and construction shall comply with all applicable laws, regulations and codes,  
13 including the National Electrical Safety Code, and shall be in accordance with prudent utility  
14 practices and FPL standards.

15 **Section 3.2.2 - Substation Responsibilities of ICL:** ICL shall, at its own expense, design,  
16 engineer, install, construct and own the substation facilities at the ICL Facilities, including,  
17 but not limited to, the ICL Switching Station and Plant Substation, necessary to interconnect  
18 the ICL Cogeneration Facility with FPL's system. Further, the design, engineering,  
19 installation and construction shall comply with all applicable laws, regulations and codes,  
20 including the National Electrical Safety Code, and shall be in accordance with prudent utility  
21 practices.

22 **Section 3.2.3 - Transfer of Land for Warfield:** Pursuant to the terms of a Purchase and  
23 Sale Agreement which the Parties hereby agree to enter into on or before May 1, 1992, ICL  
24 shall transfer to FPL, on or before May 21, 1993, (i) good and marketable fee simple title  
25 to, or (ii) in the event that ICL is prevented by law from transferring to FPL good and



1 marketable fee simple title to the property, it shall provide FPL with good, valid and  
2 effective perpetual exclusive easement rights in, to and over, the real property upon which  
3 Warfield is to be constructed, together with all easements, rights-of-way and other property  
4 rights and appurtenances which the Parties mutually agree are necessary or appropriate for  
5 use of such real property as contemplated by the Parties, including, but not limited to,  
6 ingress and egress of water, electric transmission and distribution lines, utilities and vehicles,  
7 which real property and certain other property rights and appurtenances currently  
8 contemplated are more particularly described in Exhibit A, page A-2 hereto. ICL shall not  
9 unreasonably withhold its agreement as to which easements, rights-of-way and other property  
10 rights and appurtenances are necessary and appropriate.

11 ICL shall transfer such property or easement rights, as the case may be, to FPL free and  
12 clear of liens (including, without limitation, lien(s) in favor of any lender as described in the  
13 Power Sales Agreement), claims, encumbrances, restrictions, easements, and other conditions  
14 affecting title, except as may otherwise be agreed to by ICL and FPL in such Purchase and  
15 Sale Agreement. The Purchase and Sale Agreement shall include such representations,  
16 warranties and covenants as FPL may reasonably request, including, but not limited to,  
17 representations, warranties and covenants with respect to title to such real property and the  
18 insurability of the title and/or easement rights conveyed to FPL, commissions due any real  
19 estate broker or other person or party, compliance with applicable governmental laws,  
20 regulations and requirements such as those relating to environmental protection, the existence  
21 of actual or threatened suits or proceedings which may affect ICL or the property, whether  
22 or not toxic or hazardous substances or waste are located on, contaminate or are being  
23 discharged from the property, ICL's organization, existence and authority to enter into this  
24 Agreement and all such separate related agreements, and all documents and information  
25 relating to the property in ICL's possession and delivered to FPL.

1 In the event that ICL fails to comply with the provisions of this Section 3.2.3 or defaults  
2 under the Purchase and Sale Agreement (including, but not limited to, failing to transfer such  
3 property rights to FPL on or before May 21, 1993), FPL shall have no further obligation  
4 under this Agreement and ICL shall reimburse FPL for all costs and expenses incurred by  
5 FPL pursuant to this Agreement.

6 **Section 3.3 - Metering and Data Acquisition Equipment at Warfield:** FPL shall, at ICL's  
7 expense, design, install and own the Metering Equipment and Data Acquisition Equipment at  
8 Warfield that FPL determines is reasonably necessary to implement the provisions of this Agreement.  
9 This Metering Equipment and Data Acquisition Equipment shall be installed for the purpose of  
10 determining the amounts of real and reactive electric capacity and energy received by FPL at the  
11 Interconnection Point from the ICL Cogeneration Facility and for monitoring analog and digital  
12 signals, as required by FPL, at Warfield and/or the ICL Switching Station. A complete set of  
13 continuously operating, redundant, back-up Metering Equipment shall be installed at Warfield to be  
14 used only if the primary meters fail or are out of service for any reason. All Metering Equipment  
15 shall conform to FPL's standards for similar installations. All meters associated with Metering  
16 Equipment shall be sealed and shall be opened only by FPL. The Metering Equipment and Data  
17 Acquisition Equipment shall provide and transmit kWh, MWh and kQh pulses and amp, volts, watt  
18 and var telemetry signals as required by FPL. Data Acquisition Equipment shall be compatible at  
19 all times with the computer master equipment receiving the telemetry signals, and shall supply status  
20 information, kWh, MWh, kQh, voltage, current, MW and Mvar analog information, as well as any  
21 other appropriate data as required by FPL.

22 **Section 3.4 - ICL Facilities:** ICL shall, at its own expense, design, engineer, install, construct and  
23 own the ICL Facilities which interconnect the ICL Cogeneration Facility with FPL's system and  
24 make any additions and/or modifications to the ICL Facilities reasonably required by FPL and  
25 necessary to accommodate such interconnection in a safe and reliable manner.

1 **Section 3.5 - Final FPL Design and Configuration:** The Parties recognize and agree that FPL's  
2 design, configuration and estimated costs of the Interconnection Facilities on FPL's side of the  
3 Interconnection Point (as delineated in Exhibits A, B and C of this Agreement) are based on  
4 preliminary technical data for the ICL Cogeneration Facility and the Interconnection Facilities on  
5 ICL's side of the Interconnection Point provided by ICL, and FPL's design, configuration and  
6 estimated costs can only be finalized upon FPL's receipt of final technical data from ICL. ICL  
7 agrees to coordinate the final design and configuration for its Interconnection Facilities and generator  
8 with FPL to insure proper coordinated operation of the Interconnection Facilities and provide FPL  
9 such final design, configuration and related technical data by no later than September 1, 1992.  
10 Additionally, ICL shall provide FPL with the ICL Cogeneration Facility's design heat balances, flow  
11 diagrams and major equipment list by no later than January 1, 1993, and the complete turbine  
12 generator data by no later than January 1, 1993. FPL may revise its design, configuration and  
13 estimate of costs for FPL's Interconnection Facilities, in accordance with prudent utility practices,  
including, but not limited to, revisions made upon receipt of any additional or revised information.  
15 Further, FPL agrees to provide ICL with FPL's proposed final design and configuration and final  
16 total estimated interconnection costs no later than six (6) months following FPL's receipt of ICL's  
17 final design, configuration and related technical data as provided pursuant to this Section 3.5.

18 **Section 3.6 - Service Dates:** The Parties shall use their best reasonable efforts, in accordance with  
19 prudent utility practices, to complete construction, installation and/or upgrading of facilities necessary  
20 to provide sufficient test power for ICL's testing of the ICL Cogeneration Facility (but not  
21 synchronization of the ICL Cogeneration Facility with FPL's system) no later than July 1, 1994.  
22 Additionally, the Parties shall use their best reasonable efforts, in accordance with prudent utility  
23 practices, to complete the construction, installation and/or upgrading of facilities in their respective  
24 portions of the Interconnection Facilities for an In-Service Date of no later than April 1, 1995. The  
Parties agree that, in the event ICL fails to transfer the real property rights described in Section 3.2.3

1 of this Agreement on or before March 1, 1993, FPL shall receive a day-for-day extension of each  
2 of the dates specified in the next preceding two sentences; provided, however, that if the transfer of  
3 such real property rights does not occur on or before May 21, 1993, FPL shall have no further  
4 obligation under this Agreement and ICL shall reimburse FPL for all costs and expenses incurred  
5 by FPL pursuant to this Agreement.

6 **Section 3.7 - Status Reports:** Each Party shall keep the other Party informed of its construction  
7 schedules for the Interconnection Facilities and of any change(s) that may alter the In-Service Date  
8 and the provision of test power, including the reason(s) for such change(s). Each Party agrees to  
9 provide monthly progress reports on the status of the project, including, but not limited to, any  
10 changes in the final design and configuration of the Interconnection Facilities.

#### 11 **ARTICLE IV**

#### 12 **INTERCONNECTION FACILITIES**

13 **Section 4.1 - General:** ICL agrees that the ICL Cogeneration Facility's interconnection with, and  
14 delivery of electricity to, FPL's system shall comply with FPSC Rule 25-17.087 or any applicable  
15 successor FPSC regulation, and shall be accomplished in accordance with the provisions of this  
16 Agreement. FPL and ICL shall operate and maintain their respective Interconnection Facilities in  
17 a safe and reliable manner and in accordance with prudent utility practices so as to protect the  
18 reliability of FPL's system, the Interconnection Facilities and the ICL Cogeneration Facility.

19 **Section 4.1.1 - Hazardous or Unsafe Conditions:** ICL shall immediately notify FPL's  
20 System Dispatcher by telephone in the event of ICL's discovery of any hazardous or unsafe  
21 condition(s) associated with the Parties' operations that affect the Interconnection Facilities  
22 or FPL's system. If any such condition(s) is (are) detected by FPL, then FPL will likewise  
3 immediately contact the operator of the ICL Cogeneration Facility by telephone. Each Party

1 agrees to immediately take whatever corrective action is necessary and appropriate to  
2 eliminate the hazardous or unsafe condition(s).

3 **Section 4.1.2 - Disconnections:** The ICL Cogeneration Facility shall be promptly  
4 disconnected from FPL's electric system upon oral or written request given by FPL to ICL  
5 whenever FPL reasonably determines that such disconnection is necessary (i) to provide safe  
6 and reliable service to FPL's customers, (ii) to protect FPL's generation, distribution or  
7 transmission facilities, or (iii) when the disconnection is reasonably necessary for the purpose  
8 of maintenance, repairs, replacements or installation of equipment, or for investigations and  
9 inspections of electrical facilities. In addition, the ICL Cogeneration Facility may be  
10 automatically disconnected from FPL's system through the operation of any Protective  
11 Equipment. Following any disconnection of the ICL Cogeneration Facility, re-  
12 synchronization of the ICL Cogeneration Facility with FPL's electric system shall only be  
13 accomplished pursuant to Section 4.1.3.

14 **Section 4.1.3 - Synchronization of the ICL Cogeneration Facility:** Prior to the  
15 synchronization of the ICL Cogeneration Facility with FPL's system, including, but not  
16 limited to, re-synchronization following disconnection of the ICL Cogeneration Facility  
17 pursuant to Section 4.1.2, the Parties' Operating Representatives shall confer regarding such  
18 synchronization. The synchronization of the ICL Cogeneration Facility shall be  
19 accomplished, utilizing ICL's synchronization equipment and ICL's 230 kV circuit breaker,  
20 in a safe and reliable manner consistent with FPL's practices for its own equipment.  
21 Protective Equipment shall be installed by the Parties, at ICL's expense, to prevent  
22 inadvertent synchronization of the ICL Cogeneration Facility with FPL's system.

1 **ARTICLE V**

2 **OPERATION, MAINTENANCE AND CAPITAL IMPROVEMENTS**

3 **Section 5.1 - General:** Each Party shall own and be responsible for the operation and maintenance  
4 of the Interconnection Facilities on its respective side of the Interconnection Point. FPL agrees to  
5 use best reasonable efforts to coordinate scheduled maintenance of its Interconnection Facilities with  
6 ICL.

7 **Section 5.2 - FPL's Interconnection Facilities:** FPL shall own and have the exclusive right to  
8 modify, test, operate and maintain the Interconnection Facilities on FPL's side of the Interconnection  
9 Point. Additionally, FPL shall have the exclusive right to design, engineer, install, construct, own  
10 and exclusively modify, test, operate and maintain any capital improvements and replacements which  
11 FPL reasonably determines are required for the safe and reliable operation of the Interconnection  
12 Facilities on FPL's side of the Interconnection Point. Further, at the expiration or upon termination  
13 of this Agreement, FPL shall have the option to (i) assume all future cost responsibilities for  
14 Warfield, or (ii) remove Warfield and reconfigure FPL's electrical system, at ICL's expense.  
15 Pursuant to Section 6.1 below, ICL shall be responsible for all costs incurred pursuant to this Section  
16 5.2, except as provided in (i) above, which responsibility shall survive the expiration or termination  
17 of this Agreement as the case may be. FPL shall bill ICL for such costs in accordance with Article  
18 VII. Notwithstanding the above, to the extent that FPL makes any capital improvements to the  
19 Interconnection Facilities on FPL's side of the Interconnection Point for purposes other than  
20 accommodating or maintaining the interconnection of the ICL Cogeneration Facility with FPL's  
21 system, ICL shall not be responsible for costs and expenses incurred by FPL in constructing,  
22 operating and maintaining such capital improvements for such other purposes.

23 **Section 5.2.1 - Modifications to Metering and Data Acquisition Equipment:** The Parties  
24 agree that the Metering Equipment and Data Acquisition Equipment installed at Warfield

1 shall remain compatible with associated FPL equipment during the term of this Agreement  
2 and shall, at ICL's expense, be modified or replaced by FPL as FPL determines is  
3 reasonably necessary to conform to technological advances achieved in design and  
4 manufacturing of such equipment during the term of this Agreement and as incorporated in  
5 similar installations on FPL's system.

6 **Section 5.2.2 - Testing and Maintenance of Metering and Data Acquisition Equipment:**

7 FPL shall, at ICL's expense, inspect, operate, maintain, test and calibrate the Metering  
8 Equipment and Data Acquisition Equipment at Warfield consistent with FPL's standards and  
9 practices for inspecting, operating, maintaining, testing and calibrating similar installations  
10 elsewhere on the FPL system. If any test or inspection shows any Metering Equipment to  
11 be inaccurate by more than the accuracy limits according to the manufacturer's specification  
12 for that device, the meter or other related equipment found to be inaccurate or defective shall  
13 be adjusted, repaired or replaced as soon as practicable. In the event that ICL desires  
14 additional inspections, tests and calibrations of the Metering Equipment and Data Acquisition  
15 Equipment at Warfield, ICL shall provide FPL a written request and FPL shall use  
16 reasonable efforts to accommodate such request.

17 **Section 5.3 - ICL Facilities:** ICL shall own, operate and maintain the ICL Facilities. Additionally,  
18 ICL shall design, engineer, install, construct, own, operate and maintain any capital improvements  
19 or replacements which ICL reasonably determines are required for the ICL Facilities. ICL shall  
20 fulfill its obligations under this Section 5.3 at its own expense.

21 **Section 5.4 - Changes by ICL:** ICL shall submit to FPL, for FPL's review and approval, any  
22 proposed change(s) to the ICL Cogeneration Facility or its Interconnection Facilities when such  
23 proposed change(s) could alter the electrical capability of the ICL Cogeneration Facility above the  
24 MW range contemplated in the Power Sales Agreement or adversely affect the reliability of the  
25 Interconnection Facilities or FPL's system. Changes proposed by ICL shall not be made prior to

1 ICL's receipt of FPL's written approval, which approval shall not be unreasonably withheld. FPL's  
2 approval or disapproval shall be provided to ICL as soon as reasonably practicable. ICL shall  
3 provide FPL with sufficient project details and adequate advance written notice to allow FPL to  
4 properly evaluate the effect(s) of the changes on the interconnected operation of the ICL  
5 Cogeneration Facility and the ICL Facilities with FPL's system.

6 **Section 5.5 - Reactive Power:** FPL will establish voltage schedules for the Transmission Facilities  
7 in accordance with FPL system requirements. ICL shall use best reasonable efforts consistent with  
8 the reactive capability of the ICL Cogeneration Facility to comply with these voltage schedules so  
9 as to permit the operation of the ICL Cogeneration Facility in a consistent manner with the operation  
10 of FPL's system. Unless otherwise specified by FPL's Operating Representative, the voltage level  
11 of the Transmission Facilities shall be 241 kV between the hours of 7:00 A.M. and 11:00 P.M. and  
12 238 kV between the hours of 11:00 P.M. and 7:00 A.M.; provided, however, FPL shall not be  
13 obligated to supply or absorb reactive electric energy to or from the ICL Cogeneration Facility when  
14 to do so would interfere with service on FPL's system, would adversely affect FPL's contractual  
15 rights and obligations with respect to any other party, would limit the use of any of FPL's electrical  
16 facilities, or would require the operation of generation or reactive equipment not otherwise required.

## 17 **ARTICLE VI**

### 18 **RESPONSIBILITY FOR COSTS**

19 **Section 6.1 - ICL's Responsibilities:** ICL shall be responsible for, and hereby agrees to reimburse  
20 FPL for, FPL's reasonably incurred costs and expenses in performing its obligations under this  
21 Agreement, including, but not limited to:

- 22 i. All direct and indirect costs of land, other property rights, labor, material, services  
23 and studies incurred by FPL in connection with the ownership, design, construction,



1 operation, maintenance, repair and removal of Warfield and all other Interconnection  
2 Facilities installed, operated and maintained by FPL in performance of its obligations  
3 under this Agreement;

4 ii. Payroll and other expenses of FPL's employees incurred in connection with FPL's  
5 performance of its obligations under this Agreement, including allowances to reflect  
6 the costs of payroll-related taxes, insurance (including that related to Workers'  
7 Compensation, Employers' Liability and Unemployment Compensation Insurance),  
8 pensions, benefits and overheads. Overhead loading rates shall be calculated in  
9 accordance with FPL's then-current jobbing procedures and may include indirect  
10 engineering and supervision expenses, and other overhead expenses;

11 iii. Costs of labor, services and studies performed for FPL by contractors, jobbers and  
12 consultants in connection with FPL's performance of its obligations under this  
13 Agreement, including allowances for overheads as provided in item (i) above;

14 iv. Costs of materials, supplies, tools, machines, equipment, apparatus and spare parts  
15 incurred in connection with FPL's performance of its obligations under this  
16 Agreement, including rental charges, transportation and stores expenses applicable  
17 to such costs; and

18 v. All federal, state and local taxes, impositions or assessments of any character,  
19 including property and income taxes, imposed upon FPL in connection with FPL's  
20 performance of its obligations under this Agreement.

21 **Section 6.2 - FPL's Responsibilities:** FPL shall not be responsible for any costs and expenses  
22 incurred by FPL in fulfilling its obligations pursuant to this Agreement. Additionally, FPL shall not  
23 be responsible for costs and expenses incurred by ICL in fulfilling its obligations pursuant to this  
24 Agreement.

1 **ARTICLE VII**

2 **BILLING AND PAYMENT**

3 **Section 7.1 - Billing and Payment for Interconnection Facilities:** As soon as practicable after the  
4 In-Service Date, FPL shall provide ICL with an invoice for all costs and expenses incurred by FPL  
5 for designing, engineering, modifying, upgrading, installing and constructing FPL's Interconnection  
6 Facilities pursuant to this Agreement in accordance with FPL's then-current procedures. Such  
7 invoice shall be due when rendered and payable on or before the Past Due After Date in immediately  
8 available funds, through wiring of funds or other mutually agreeable method of payment. If the  
9 invoice is not paid, in full, on or before the Past Due After Date, it shall be deemed delinquent and  
10 shall accrue interest thereafter at an interest rate equal to the Prime Rate until fully paid. An  
11 estimate of the costs and expenses FPL expects to incur for designing, engineering, modifying,  
12 upgrading, installing and constructing the Interconnection Facilities is attached as Exhibit C hereto.  
13 Nothing contained in such Exhibit C shall relieve ICL of its obligation to pay FPL for all costs and  
14 expenses actually incurred by FPL pursuant to this Agreement.

15 **Section 7.2 - Billing and Payment for Other Charges:** FPL shall periodically provide ICL with  
16 an invoice for all costs and expenses incurred by FPL for operation, maintenance, modification,  
17 improvement or replacement pursuant to this Agreement in accordance with FPL's then-current  
18 jobbing procedures, except for electric services which shall be billed and paid pursuant to Section  
19 7.4. All such invoices shall be due when rendered and payable on or before the Past Due After Date  
20 in immediately available funds through wiring of funds or other mutually agreeable method of  
21 payment. Invoices not paid on or before the Past Due After Date shall be deemed delinquent and  
22 shall accrue interest thereafter at an interest rate equal to the Prime Rate until fully paid.

23 **Section 7.3 - Disputed Bills:** In the event that any portion of any bill is in bona fide dispute,  
24 payment of the entire billed amount shall be made when due, but the disputed portion of the bill may

1 be paid under protest. Payments made and designated "Paid Under Protest" shall be accompanied  
2 by the reason(s) for such protest and, to the extent possible, the amount paid under protest shall be  
3 specified. Upon final determination of the correct amount, any refunds due ICL resulting from the  
4 settlement of the dispute shall be payable to ICL within fifteen (15) days and shall accrue interest  
5 at the Prime Rate from one day after FPL received such overpayment from ICL, unless the dispute  
6 is resolved by a settlement of the Parties which provides otherwise.

7 **Section 7.4 - Electric Service for ICL Cogeneration Facility and Warfield:** Pursuant to Section  
8 13.5, FPL shall, in accordance with FPL's normal practices for retail accounts, bill ICL monthly  
9 for electric service provided to (i) the ICL Cogeneration Facility and the Interconnection Facilities  
10 on ICL's side of the Interconnection Point and (ii) Warfield. ICL shall promptly pay such bills in  
11 accordance with FPL's normal requirements.

12 **Section 7.5 - No Reduction:** Payments due under this Agreement shall not be subject to any  
13 reduction by offset or otherwise.

14 **Section 7.6 - Disconnection of Interconnection Facilities:** In the event that ICL fails to pay to FPL  
15 any sum when due, FPL shall have the right, in addition to all other rights and remedies available  
16 to FPL under this Agreement and under applicable law, to take all necessary actions to disconnect  
17 the Interconnection Facilities to the extent permitted by law. Pursuant to this Section 7.6, FPL shall  
18 give ICL at least thirty (30) days' advance written notice of its intention to take action to disconnect  
19 the Interconnection Facilities, and ICL shall have such 30-day period in which to pay such sum,  
20 including accrued interest thereon. FPL agrees that, prior to any exercise by FPL of its remedies  
21 under this Section 7.6, FPL will afford ICL's lenders (as described in the Power Sales Agreement)  
22 sixty (60) days following the applicable Past Due After Date to remit to FPL such payment,  
23 including accrued interest thereon.

24 **Section 7.7 - Taxes:** FPL shall periodically bill ICL for an amount equal to the taxes, assessments  
5 and other impositions, if any, for which FPL is liable as a result of its ownership, operation,

1 maintenance, repair, modification, removal and capital improvements or replacements of the  
2 Interconnection Facilities located on FPL's side of the Interconnection Point or as a result of any  
3 change in, or loss of, the ICL Cogeneration Facility's "qualifying" status. Additionally, ICL agrees  
4 to reimburse and indemnify and hold FPL harmless and make it whole for any and all local, Florida  
5 or federal income tax consequences resulting from FPL's receipt of any sum or sums of money from  
6 ICL, or for the construction work performed and facilities conveyed pursuant to this Agreement,  
7 whether or not determined to be gross revenue, contribution in aid of construction or otherwise,  
8 including, without limiting the generality of the foregoing, the payment of interest, penalties or  
9 additional tax on any sum or facilities received hereunder.

## 10 **ARTICLE VIII**

### 11 **OPERATING REPRESENTATIVES**

12 **Section 8.1 - Operating Representatives:** Each Party shall appoint, or cause its designee to  
13 appoint, an Operating Representative who shall be a person responsible for the daily operations for  
14 that Party, and shall notify, or cause its designee to notify, the other Party of such appointment.  
15 Each Party or its designee may also appoint an alternate Operating Representative to act for it in the  
16 absence of the primary Operating Representative, and may change such appointment(s) of primary  
17 or alternate Operating Representative at any time by similar written notice. The Operating  
18 Representatives shall hold meetings at the request of either Party at a time and place agreed to by  
19 the Operating Representatives to review the duties set forth herein or to discuss any other matters  
20 within the scope of their authority. The Operating Representatives shall be responsible for effecting  
21 such duties as may be required of them, including, but not limited to, the preparation of operation  
22 and maintenance schedules, operating procedures associated with day-to-day operations, the dispatch,  
23 start-up and synchronization of the ICL Cogeneration Facility, and any other duties as may be

1 conferred upon them by mutual agreement of FPL and ICL. Each Party shall cooperate in providing  
2 to the Operating Representatives all information required in the performance of their duties. All  
3 decisions and agreements made by the Operating Representatives shall be evidenced in writing and  
4 shall be in accordance with this Agreement.

## 5 **ARTICLE IX**

### 6 **INSURANCE**

7 **Section 9.1 - Insurance:** At least fifteen (15) days prior to the commencement of construction of  
8 the Interconnection Facilities, ICL shall procure, or cause to be procured, a policy or policies of  
9 liability insurance on a standard "Insurance Services Office" comprehensive general liability form  
10 for the benefit of FPL, its parent, its subsidiaries or affiliated entities and each of their officers,  
11 directors, employees, agents and contractors (hereinafter in this Agreement collectively called the  
12 "Company"). Said policy(ies) shall cover generally all liabilities which might arise under, or in the  
13 performance or nonperformance of, this Agreement. At a minimum, said policy(ies) shall contain  
14 endorsements providing coverage, including, but not limited to, broad form contractual liability and  
15 products liability/completed operations coverage for the Company. The policy(ies) shall include  
16 coverage for claims against the Company arising from interruption or curtailment of power supply  
17 in connection with the installation, operation, maintenance, replacement or removal of any  
18 Interconnection Facilities located on either side of the Interconnection Point.

19 The Company shall be designated as either the named insured or an additional named insured, and  
20 the policy(ies) shall be endorsed to be primary to any insurance which may be maintained by or on  
21 behalf of the Company and to any indemnity related obligation(s) of either Party pursuant to Article  
22 XI. The policy(ies) shall be in a minimum limit of Twenty Million Dollars (\$20,000,000) per  
23 occurrence, combined single limit, for bodily injury (including death) or property damage; provided,

1 however, in the event that such insurance becomes totally unavailable or the Parties agree that it is  
2 only available at unreasonable cost, such unavailability shall not constitute a default under this  
3 Agreement, but FPL and ICL shall enter into negotiations to develop substitute protection for the  
4 Company which FPL deems adequate. Any premium assessment or deductible shall be for the  
5 account of ICL and not the Company.

6 The retroactive date(s) of the policy(ies) shall be the effective date of this Agreement or such earlier  
7 date as is necessary to protect the interest of the Company. Furthermore, if the policy(ies) is (are)  
8 on a "claims made" basis, ICL's obligation to provide such coverage shall survive the termination  
9 of this Agreement until the expiration of the maximum statutory period of limitations in the State of  
10 Florida for actions based in contract or in tort, as such period may be changed from time to time;  
11 if coverage is on an "occurrence" basis, such insurance shall be maintained by ICL during the entire  
12 term of this Agreement. The policy(ies) shall not be canceled or materially altered without at least  
13 thirty (30) prior days' written notice to FPL. Coverage must be reasonably acceptable to FPL.

ICL shall provide to FPL evidence of such liability insurance coverage on FPL Form 1364-23,  
15 without modification; said Form is attached to this Agreement as Exhibit D. A copy of the  
16 policy(ies) shall be made available for inspection by FPL within 15 days of a request therefor. To  
17 the extent that ICL's provision of insurance pursuant to Section 16.0, "Insurance," of the Power  
18 Sales Agreement satisfies the requirements of this Section 9.1, ICL shall not be required to provide  
19 additional insurance coverage.

20 **ARTICLE X**

21 **FORCE MAJEURE**

22 **Section 10.1 - Force Majeure:** In the event that either Party should be delayed in, or prevented  
from, performing or carrying out any of the agreements, covenants and obligations to interconnect

1 the ICL Cogeneration Facility with FPL's system made by and imposed upon said Party by this  
2 Agreement, by reason of or through any cause beyond its reasonable control (not attributable to its  
3 or its contractors' or suppliers' neglect or lack of due diligence), including, but not limited to,  
4 strikes, lockouts or other labor disputes or difficulties, riot, fire, flood, ice, invasion, civil war,  
5 hurricanes, insurrection, military or usurped power, actions or inaction of any civil or military  
6 authority including courts and governmental or administrative agencies, explosion, act of God or  
7 public enemies, failure or malfunction of system facilities, then, in each such case or cases, the Party  
8 who is unable to perform shall not be liable to the other Party for or on account of any loss, damage,  
9 injury or expense (including consequential damages and cost of replacement power) resulting from  
10 or arising out of any such delay or prevention from performing; provided, however, the Party  
11 suffering any such delay or prevention shall use due and, in its judgment, practicable diligence to  
12 remove the cause(s) thereof; and provided, further, neither Party shall be required by the foregoing  
13 provisions to settle a strike, lockout or other labor dispute affecting it except when, according to its  
14 own best judgment, such a settlement seems advisable. Events of Force Majeure affecting ICL shall  
15 not excuse ICL from its obligations incurred under Articles IX and XI, or to make payment for any  
16 charges payable pursuant to Agreement.

17 **ARTICLE XI**

18 **INDEMNITY**

19 **Section 11.1 - Indemnification:** FPL and ICL shall each be responsible for its own facilities. FPL  
20 and ICL shall each be responsible for ensuring adequate safeguards for other FPL customers, FPL  
21 and ICL personnel and equipment, and for the protection of its own generating system. ICL and  
22 FPL shall each indemnify and save the other harmless from any and all claims, demands, costs, or

1 expense for loss, damage or injury to persons or property caused by, arising out of, or resulting  
2 from:

- 3 (a) Any act or omission by a Party or that Party's contractors, agents, servants and  
4 employees in connection with the installation or operation of that Party's generation,  
5 transmission and distribution systems or the operation thereof in connection with the  
6 other Party's system;
- 7 (b) Any defect in, failure of, or fault related to, a Party's generation, transmission and  
8 distribution systems;
- 9 (c) The negligence of a Party or negligence of that Party's contractors, agents, servants  
10 and employees; or
- 11 (d) Any other event or act that is the result of, or proximately caused by, a Party.

12 **ARTICLE XII**

13 **LIMITATION OF LIABILITY**

14 **Section 12.1 - Limitation of Liability:** In no event shall either Party be liable (in contract or in  
15 tort, including negligence, or otherwise) to the other Party or its suppliers or its subcontractors for  
16 indirect, incidental or consequential damages resulting from a Party's performance, non-performance  
17 or delay in performance of its obligations under this Agreement.

18 **ARTICLE XIII**

19 **MISCELLANEOUS**

20 **Section 13.1 - Applicable State Law:** This Agreement and the rights, obligations and remedies  
hereunder shall be interpreted and governed in all respects by the laws of the State of Florida.



1 Should any provision of this Agreement be determined to be illegal or in conflict with any law, the  
2 validity of the remaining provisions shall not be impaired.

3 **Section 13.2 - FPSC Filing of Agreement:** The Parties agree that this Agreement will be promptly  
4 filed with the FPSC by FPL so as to fully permit the terms of this negotiated Agreement to govern  
5 the Parties' relationship with respect to the matters set forth herein.

6 **Section 13.3 - Default:** If either Party shall default in any of its material obligations under this  
7 Agreement and such Party fails to cure the default within thirty (30) days after receipt of notice  
8 thereof is given in writing by the other Party, the Party not in default may terminate this Agreement  
9 by written notice thereof to the Party in default, effective thirty (30) days after such notice of  
10 termination is given. If such default is remedied during the thirty-day period following notice of  
11 termination, this Agreement shall not be terminated due to such default; provided, however, if it is  
12 not feasible to correct such default within thirty (30) days after written notice of such default has  
13 been delivered to the defaulting Party by the other, but it is and remains feasible to correct such  
14 default within one year after such notice, it shall not constitute grounds for termination hereunder  
15 until the earliest feasible date within such one-year period when a cure could be effected so long as  
16 (i) corrective action by the defaulting Party is instituted within ten days of the date of such notice,  
17 (ii) such corrective action is diligently pursued, (iii) the defaulting Party provides to the other Party  
18 monthly, written reports as to the nature and progress of such corrective action, and (iv) such default  
19 is cured by the earliest feasible date within such one-year period. FPL agrees that, prior to  
20 terminating this Agreement pursuant to this Section 13.3, FPL will afford ICL's lenders (as described  
21 in the Power Sales Agreement) sixty (60) days following notice of the default to cure such default(s).

22 **Section 13.4 - Responsibility for ICL Facilities:** In no event shall any FPL statement,  
23 representation or lack thereof, either express or implied, relieve ICL of its exclusive responsibility  
24 for the ICL Cogeneration Facility. Without limiting the generality of the foregoing, any FPL  
25 inspection of the ICL Cogeneration Facility shall not be construed as confirming or endorsing its

1 design or its operating and maintenance procedures, nor as a warranty or guarantee as to the safety,  
2 reliability or durability of the ICL Cogeneration Facility or any part thereof. FPL's inspection,  
3 acceptance or its failure to inspect shall not be deemed an endorsement of any ICL Cogeneration  
4 Facility equipment or procedure, nor shall such inspection, acceptance or failure to inspect affect  
5 ICL's liability to FPL for damages suffered by FPL or otherwise recoverable by FPL.

6 **Section 13.5 - Electric Service to the ICL Cogeneration Facility and Warfield:** FPL will provide  
7 the class(es) of electric service requested by ICL to the extent that it (they) is (are) consistent with  
8 applicable tariffs for the ICL Cogeneration Facility, the ICL Interconnection Facilities on ICL's side  
9 of the Interconnection Point and Warfield; provided, however, interruptible service will not be made  
10 available under circumstances where interruptions would impair the ICL Cogeneration Facility's  
11 ability to generate and deliver electricity to FPL's system.

12 **Section 13.6 - Waivers:** Any waiver at any time by either Party hereto of its rights with respect to  
13 the other Party, or with respect to any matter arising in connection with this Agreement, shall not  
14 be considered a waiver with respect to any subsequent default or matter.

15 **Section 13.7 - Successors and Assigns:** This Agreement shall inure to the benefit of, and shall be  
16 binding upon, the Parties hereto and their respective successors and assigns, provided that this  
17 Agreement shall not be assignable or transferable in whole or in part by either Party without the  
18 written consent of the other Party, which consent(s) shall not be unreasonably withheld, except that  
19 such written consent(s) shall not be required:

- 20 (a) with respect to FPL, (i) in the case of an assignment or transfer to a successor in the  
21 ownership or operation of FPL's properties by reason of a merger, consolidation, sale or  
22 foreclosure, where substantially all such properties are acquired by such successor, or (ii)  
23 in the case of an assignment or transfer of all or part of FPL's properties or interests to any  
24 successor or assign of FPL permitted pursuant to the terms of the Power Sales Agreement;  
25 and

1 (b) with respect to ICL, in the case of an assignment or transfer of all or part of ICL's  
2 properties or interest to (i) any successor or assign of ICL permitted pursuant to the terms  
3 of the Power Sales Agreement, or (ii) in the case of a collateral assignment, to the lenders  
4 as permitted by Section 21.3 of the Power Sales Agreement.

5 **Section 13.8 - Effect of Section Headings:** Article and Section headings appearing in this  
6 Agreement are inserted for convenience of reference only and shall in no way be construed to be  
7 interpretations of the text of this Agreement.

8 **Section 13.9 - Attachments:** As used throughout this Agreement, the term "Agreement" shall  
9 include any and all attachments hereto, as such attachments may be amended from time to time.

10 **Section 13.10 - Relationship of the Parties:** Nothing contained in this Agreement shall be  
11 construed to create an association, joint venture, partnership or any other type of entity between  
12 FPL, ICL and any other party.

13 **Section 13.11 - No Dedication of any System:** Any undertaking by either Party to the other Party  
14 under any provision(s) of this Agreement shall not constitute the dedication of the system, or any  
15 portion thereof, of either Party to the public or to the other Party, and it is understood and agreed  
16 that any such undertaking by either of the Parties shall cease upon termination of this Agreement.

17 **Section 13.12 - Notices:** Any notice contemplated by this Agreement shall be made in writing and  
18 shall be delivered either in person, by prepaid telegram, by telex or facsimile transmission, by  
19 deposit in the United States mail, first class, postage prepaid, or by prepaid overnight courier, as  
20 specified below:

21 In the case of FPL:

22 Florida Power & Light Company

23 Attention: Manager, Inter-Utility Markets

24 9250 West Flagler Street

25 Miami, Florida 33174

1 In the case of ICL:

2 Indiantown Cogeneration L. P.

3 Attention: Joseph P. Kearney

4 7475 Wisconsin Avenue

5 Bethesda, Maryland 20814-3422

6 or to such other person(s) as may be designated by FPL or ICL. Any Party's designation of the  
7 person(s) to be notified or the address(es) of such person(s) may be changed by such Party at any  
8 time, or from time to time, by similar notice.

9 **Section 13.13 - Counterpart Execution:** This Agreement may be executed in counterparts, each  
10 of which shall be deemed an original, but all of which shall constitute one and the same agreement.

11 **Section 13.14 - Complete Agreement:** This Agreement is intended as the exclusive, integrated  
12 statement of the agreement between the Parties. This Agreement shall not be amended or modified,  
13 and no waiver of any provision hereof shall be effective, unless set forth in a written instrument  
14 executed by the Parties.

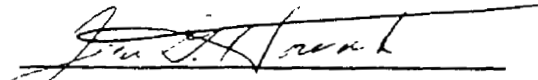
15 **Section 13.15 - Equal Employment Opportunity and Civil Rights:** The Parties hereto hereby  
16 certify that they will comply with Section 202, Paragraphs 1 through 7 of Executive Order 11246,  
17 as amended, and applicable portions of Executive Orders 11701 and 11758, relative to Equal  
18 Employment Opportunity and the Implementing Rules and Regulations of the Office of Federal  
19 Contracts Compliance, which are incorporated herein by this reference.

20 (The next page, page 28, is the signature page)

1 IN WITNESS WHEREOF, FPL and ICL have caused this Agreement to be executed by their  
respective duly authorized officers on the date(s) specified below.

3 ATTEST:

FLORIDA POWER & LIGHT COMPANY<sup>-2003</sup>

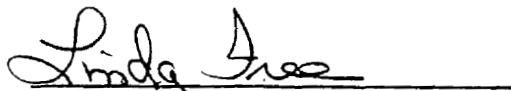
4   
5 Assistant Secretary

  
Senior Vice President

6 Date: \_\_\_\_\_

7 ATTEST:

INDIANTOWN COGENERATION L. P.

8   
9

  
President and Chief Executive Officer

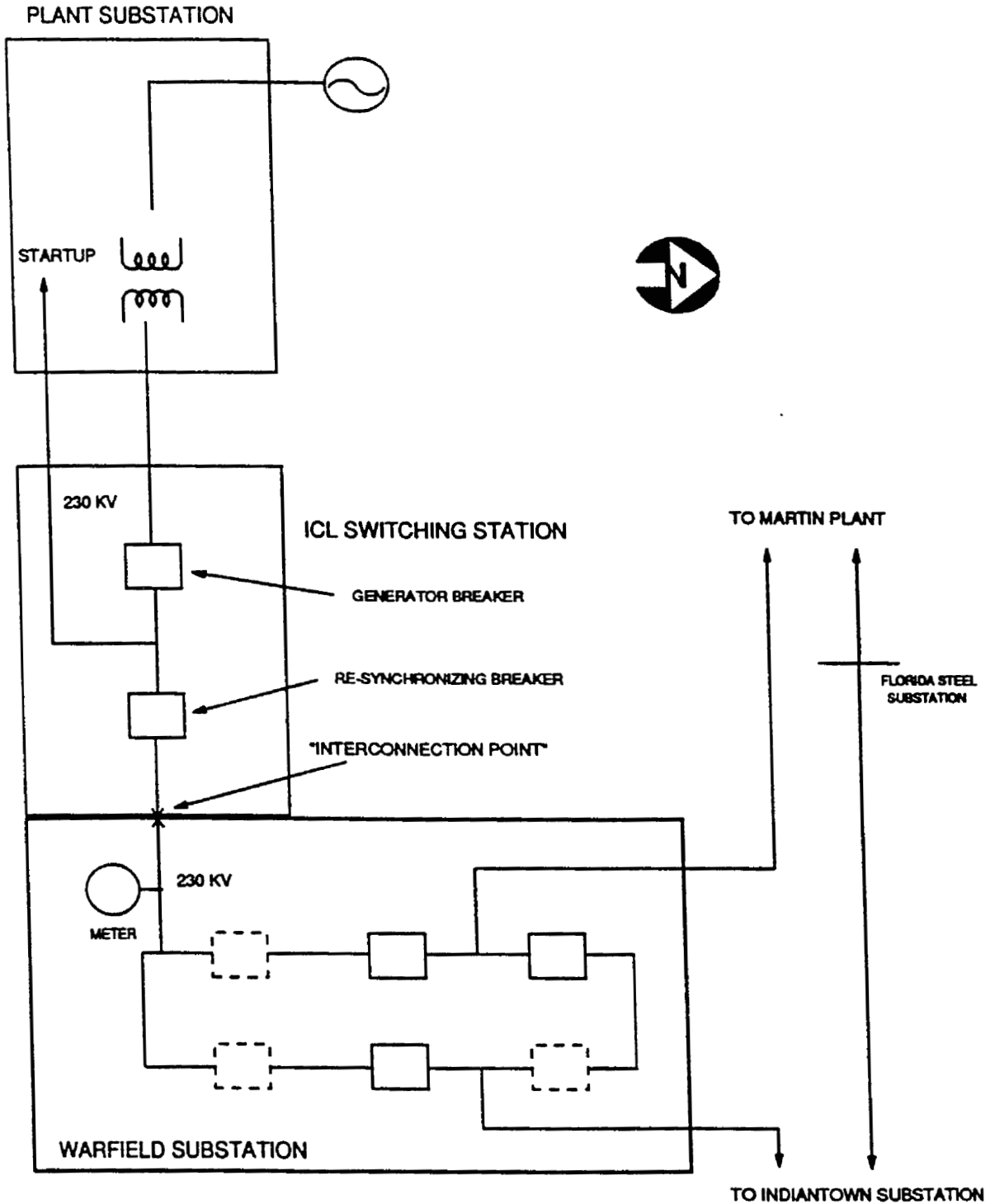
10 Date: 2-26-92

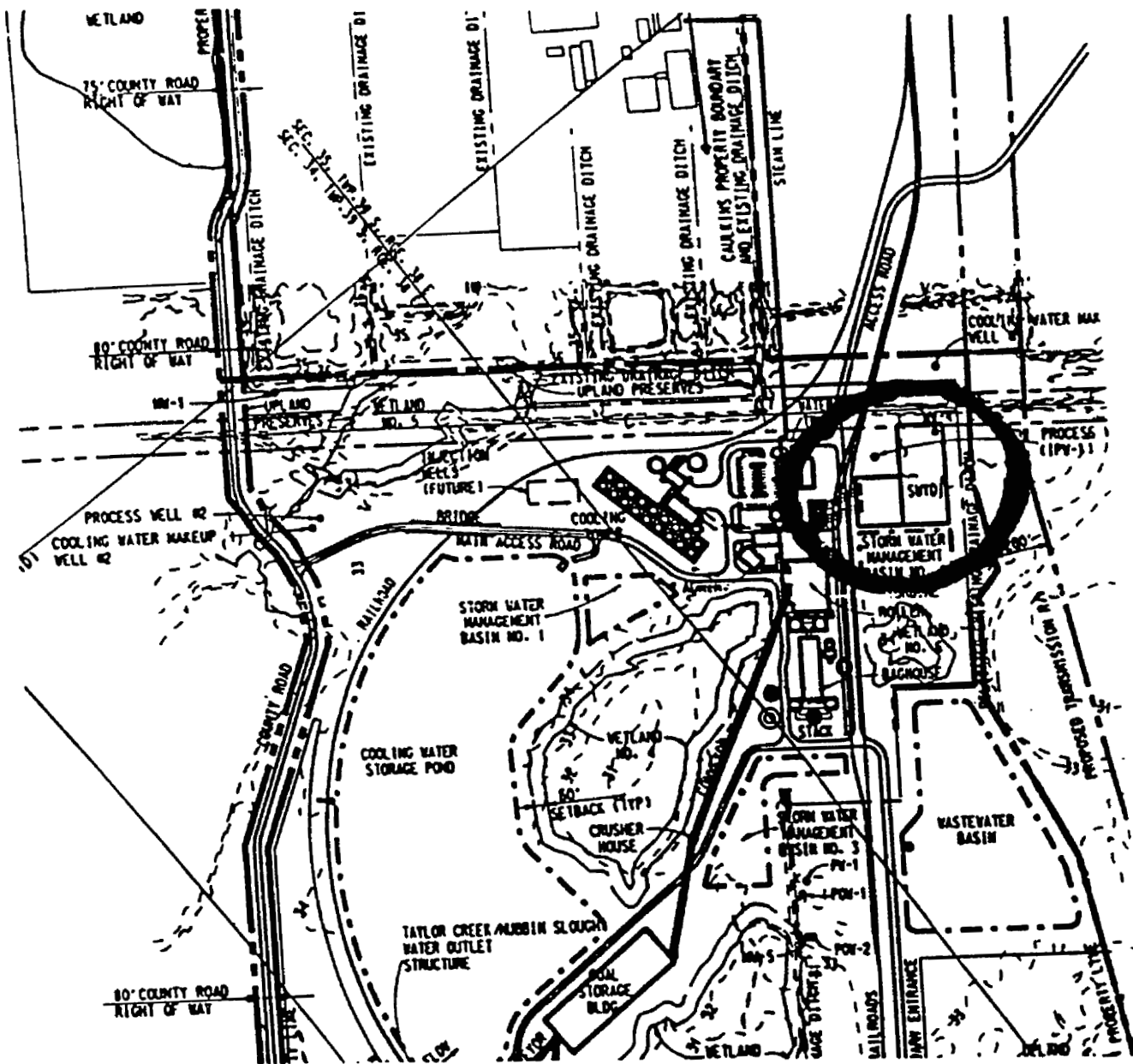
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**EXHIBIT A**

**ICL INTERCONNECTION AGREEMENT**

**PRELIMINARY INTERCONNECTION CONFIGURATION AND SITE**





1 A parcel of land lying in Section 35, Township 39 South, Range 38 East, Martin County, Florida.  
 2 Said parcel being more particularly described as follows:

3 COMMENCING at the Southwest Corner of said Section 35; thence North  $00^{\circ}28'26''$  East, along  
 4 the West line of said Section 35, a distance of 890.01 feet; thence South  $66^{\circ}37'54''$  East, a distance  
 5 of 391.63 feet; thence North  $08^{\circ}45'38''$  East, a distance of 2009.00 feet; thence North  $36^{\circ}33'49''$   
 6 East, a distance of 356.25 feet; thence North  $72^{\circ}24'17''$  East, a distance of 768.66 feet; thence North  
 7  $53^{\circ}39'15''$  West, a distance of 546.41 feet to the POINT OF BEGINNING of the herein described  
 8 parcel of land; thence proceed South  $36^{\circ}20'45''$  West, a distance of 350.00 feet; thence North  
 9  $53^{\circ}39'15''$  West, a distance of 170.00 feet; thence North  $36^{\circ}20'45''$  East, a distance of 350 feet;  
 10 thence South  $53^{\circ}39'15''$  East, a distance of 170.00 feet to the POINT OF BEGINNING of the herein  
 11 described parcel of land.

1. Said parcel containing 1.366 acres.

1 **EXHIBIT B**

2 **ICL INTERCONNECTION AGREEMENT**

3 **INTERCONNECTION FACILITIES COMPONENTS**

4 The following constitute the estimated major components of the Interconnection Facilities required  
5 for the integration of the ICL Cogeneration Facility with FPL's system.

6 1. To be owned by FPL pursuant to the Agreement:

7 A. All facilities at Warfield, including, but not limited to, the following:

- 8 ● Three 230 kV circuit breakers
- 9 ● Substation bus and bus structure
- 10 ● Relay vault
- 11 ● Protective relays and control equipment
- 12 ● Metering instrument transformer and metering cabinet
- 13 ● Transmission line located within Warfield property limits
- 14 ● Enclosure fence
- 15 ● Land comprising Warfield

16 B. All three phase 230 kV transmission lines between the string insulators attached to  
17 the bus structures at Warfield and where the 230 kV transmission lines traverse the  
18 property line of Warfield.

19 C. The control and relaying circuits, duct structure and system neutral cables within the  
20 property limits of Warfield.

21 D. 230 kV metering facilities at Warfield.

22 E. Substation and transmission improvements required at other FPL facilities.

- 23 ● Upgrading terminal equipment to 3000 A at Martin Plant and Florida Steel  
24 and Indiantown Substations.

25 2. To be owned by ICL:

26 A. All facilities at the ICL Cogeneration Facility.

27 B. All three phase 230 kV transmission lines between the string insulators attached to  
28 the bus structures at Plant Substation and the string insulators attached to the bus  
29 structures at the ICL Switching Station.

30 C. The control and relaying circuits, duct structure and system neutral cables outside the  
31 property limits of Warfield, on ICL's side of the Interconnection Point.



1 EXHIBIT C

2 ICL INTERCONNECTION AGREEMENT

3 ESTIMATE OF INTERCONNECTION COSTS

4 Customer: Indiantown Cogenerator

Work Order: \_\_\_\_\_

5 Description: 230 kV Interconnection

Date: \_\_\_\_\_

1 I. TRANSMISSION

2	(A)	Materials & Supplies (Includes Loading)	\$ <u>140,000</u>
3	(B)	Land	<u>0</u>
4	(C)	Fixed Labor	<u>11,000</u>
5	(D)	Variable Labor	<u>0</u>
6	(E)	Contractor Labor	<u>114,000</u>
7	(F)	Fixed Labor - Sickness, Vacation	
8		<u>11.5</u> % of C	<u>1,265</u>
9	(G)	Pension, Welfare, Taxes and Insurance	
10		<u>17.26</u> % of C, D and F	<u>2,178</u>
11	(H)	Applied Engineering	
12		<u>16.92</u> % of A, B, C, D, E, F and G	<u>45,421</u>
13	(I)	Administrative and General Payroll	<u>34.47</u> %
14	(J)	Administrative and General Expenses	
15		<u>34.47</u> % of <u>43.5</u> % = <u>14.99</u> %	
16	(K)	Composite A&G Rate (I+J) =	<u>49.46</u> %
17	(L)	<u>49.46</u> % of C, D, F, G and H	<u>29,609</u>
18	(M)	<b>TOTAL TRANSMISSION</b>	<b>\$ <u>343,473</u></b>

1	<b>II. SUBSTATION</b>	
2	(A) Materials & Supplies (Includes Loading)	\$ <u>2,010,000</u>
3	(B) Land	<u>0</u>
4	(C) Fixed Labor	<u>225,000</u>
5	(D) Variable Labor	<u>100,000</u>
6	(E) Contractor Labor	<u>950,000</u>
7	(F) Fixed Labor - Sickness, Vacation	
8	<u>11.5</u> % of C	<u>25,875</u>
9	(G) Pension, Welfare, Taxes and Insurance	
10	<u>17.26</u> % of C, D and F	<u>62,315</u>
11	(H) Applied Engineering	
12	<u>6.8</u> % of A, B, C, D, E, F and G	<u>229,377</u>
13	(I) Administrative and General Payroll	<u>34.47</u> %
14	(J) Administrative and General Expenses	
15	<u>34.47</u> % of <u>43.5</u> % = <u>14.99</u> %	
16	(K) Composite A&G Rate (I+J) =	<u>49.46</u> %
17	(L) <u>49.46</u> % of C, D, F, G and H	<u>317,814</u>
18	(M) <b>TOTAL SUBSTATION</b>	\$ <u>3,920,381</u>
19	<b>III. PROJECT TOTAL</b>	
20	(A) Total Transmission + Total Substation [I(M)+II(M)]	\$ <u>4,263,854</u>
21	(B) Miscellaneous (Contingency and Omissions 10% of A)	<u>426,385</u>
22	(C) SUBTOTAL	\$ <u>4,690,239</u>
23	(D) Tax Recovery Factor	<u>33.70</u> % of C
24	<b>TOTAL PROJECT COST</b>	\$ <u>4,690,239</u>

25 **ASSUMPTIONS**

- 26 1. Over 95% of total power flows over Interconnection Facilities will consist of ICL  
27 Cogeneration Facility output sold to FPL  
? 2. Estimates are in 1992 dollars  
- 3. Estimates do not include the time value of money during construction

1  
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**EXHIBIT D**  
**ICL INTERCONNECTION AGREEMENT**  
**EVIDENCE OF LIABILITY INSURANCE**

**CERTIFICATE OF INSURANCE – INTERCONNECTION AGREEMENT**

Form 1364-23 (Non-Blocked) Rev. 1/85

**THIS CERTIFICATE OF INSURANCE MUST BE APPROVED BY THE RISK MANAGEMENT DEPARTMENT OF FLORIDA POWER & LIGHT COMPANY BEFORE WORK UNDER THE INTERCONNECTION AGREEMENT MAY BEGIN**

1. Insured: \_\_\_\_\_  
 (PLEASE MAKE SURE THAT NAMED INSURED AGREES WITH NAME ON INTERCONNECTION AGREEMENT)

2. Address of Insured: \_\_\_\_\_

3. Date of Interconnection Agreement \_\_\_\_\_

	FORM OF COVERAGE*	INSURER	POLICIES IN FORCE		LIMITS OF LIABILITY (in thousands)	
			Policy Number	Exp. Date	Bodily Injury	Property Damage
4.	Comprehensive General Liability				\$ Each Occ.	\$ Ex.
5.	Homeowners					
6.						

02

THIS IS TO CERTIFY that all policies of insurance as described above have been issued to the above named insured and are in full force and effect at this time. It is agreed that none of these policies will be cancelled or changed so as to affect the interest(s) of Florida Power & Light Company, its parent, subsidiaries or affiliates until thirty days after written notice of such cancellation or changes has been delivered to the Risk Management Department of Florida Power & Light Company. It is agreed that a copy of these policies will be delivered to Florida Power & Light Company prior to interconnection.

Date Issued: \_\_\_\_\_

**PLEASE SEND ORIGINAL TO:**  
 Florida Power & Light Company  
 Risk Management Department  
 P. O. Box 029100  
 Miami, Florida 33102

Signature of Authorized Agent \_\_\_\_\_  
 Issuing Agency or Insurance Company \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City, State, Zip Code \_\_\_\_\_

CONTROLLED COPY

Orig. of 20

AMENDMENT NO. 1  
TO

AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY BETWEEN

INDIANTOWN COGENERATION, L.P. AND FLORIDA POWER & LIGHT COMPANY

THIS AMENDMENT NO. 1, effective December 5, 1990, hereby amends the Agreement for the Purchase of Firm Capacity and Energy between INDIANTOWN CONGENERATION, L.P., ("ICL"), and FLORIDA POWER & LIGHT COMPANY ("FPL"), effective March 31, 1990.

WITNESSETH:

WHEREAS, the Parties desire to amend the calculation of the Termination Fee to reflect FPL's integrated coal gasification combined cycle unit.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements of the Parties hereinafter set forth, the Parties agree as follows:


- 1.0 Appendix B, TERMINATION FEE, is hereby deleted in its entirety and replaced with a new Appendix B, as attached.
- 2.0 All other terms and conditions of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be executed by their respective duly authorized officers.

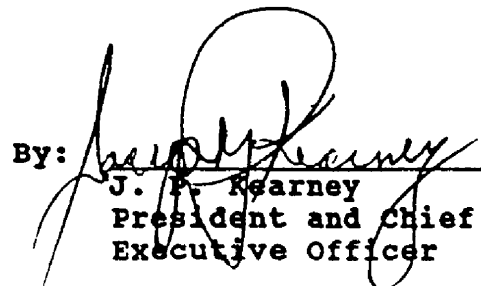
FLORIDA POWER & LIGHT COMPANY

INDIANTOWN COGENERATION, L.P.

By:

  
R. L. Taylor                      Date  
Vice President of  
Operations and Planning

By:

  
J. P. Kearney                      Date  
President and Chief  
Executive Officer

*JK*

**APPENDIX B**

**TERMINATION FEE**

B.1 The Termination Fee shall be the cumulative sum of the values for each month starting with the Commercial Operation Date, through the month of termination computed according to the following formula:

$$\text{TERMINATION FEE} = \sum_{i=1}^n [(MPMT_i) - (MCTF_i + MEA_i)] \times 1.00949^{(n-i)}$$

- $i$  = Number of the Monthly Billing Period commencing with the Commercial Operation Date (i.e., for the Commercial Operation Date,  $i = 1$ ).
- $n$  = The total number of Monthly Billing Periods which have elapsed from the Commercial Operation Date through the month of termination.
- $MPMT_i$  = The sum of the Monthly Capacity Payment and the Monthly Energy Payment made to ICL corresponding to the Monthly Billing Period  $i$ .
- $MCTF_i$  = The monthly Capacity portion of the Termination Fee corresponding to the Monthly Billing Period  $i$ , calculated in accordance with the formula and schedule set forth below.
- $MEA_i$  = Monthly energy cost for the FPL avoided unit for Monthly Billing Period  $i$ . These costs shall be equal to the product of (a) the monthly Energy in MWh purchased from ICL (b) the integrated coal gasification combined-cycle heat rate of 8.780 MMBtu/MWh and (c) the average FPL delivered coal price at its Martin power plant site. Until such time that coal is delivered to the Martin site, the delivered price of coal for purposes of this calculation shall be for each respective year the price of coal according to the table below:

JK

Year	\$/MMBTU	Year	\$/MMBTU
----	-----	----	-----
1996	2.30	2008	5.18
1997	2.46	2009	5.53
1998	2.63	2010	5.97
1999	2.82	2011	6.37
2000	3.02	2012	6.84
2001	3.23	2013	7.33
2002	3.45	2014	7.86
2003	3.70	2015	8.46
2004	3.94	2016	9.06
2005	4.21	2017	9.74
2006	4.53	2018	10.45
2007	4.84		

In the event the computation of the Termination Fee above yields a value less than zero, the value of the Termination Fee shall be equal to zero.

B.2 The monthly Capacity portion of the Termination Fee ("MCTF") for each Monthly billing Period shall be computed according to the following:

B.2.1 In the event that the Capacity Billing Factor is less than 55%, then the monthly Capacity portion of the Termination Fee shall be zero. That is:

$$\text{MCTF} = \$0$$

B.2.2 In the event that the Capacity Billing Factor is at least equal to 55% but less than 87%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = \frac{[(\text{BCC} + \text{OMC}_f) \times (.02 \times (\text{CBF} \times 100 - 37))]}{\text{CC}}$$

B.2.3 In the event that the Capacity Billing Factor is at least 87% but not greater than 92%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = (\text{BCC} + \text{OMC}_f) \times \text{CC}$$

**AMENDMENT NO. 2  
TO  
AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY BETWEEN  
INDIANTOWN COGENERATION, L.P. AND FLORIDA POWER & LIGHT COMPANY**

THIS AMENDMENT NO. 2, effective July 15, 1992, hereby amends the Agreement For The Purchase of Firm Capacity and Energy between INDIANTOWN COGENERATION, L.P., ("ICL"), and FLORIDA POWER & LIGHT COMPANY ("FPL"), effective March 31, 1990, as amended by AMENDMENT NO. 1 thereto dated December 5, 1990 (such Agreement as amended hereinafter, the "Agreement").

**WITNESSETH:**

**WHEREAS**, the Parties desire to amend the Unit Energy Cost Calculation, Appendix I to the Agreement, in order to clarify the methodology used to develop the escalation index and to make other revisions related thereto; and

**WHEREAS**, the Parties desire to amend certain provisions of Section 10.1 of the Agreement regarding the period of time certain books and records should be maintained by ICL and its suppliers; and

**WHEREAS**, the Parties desire to provide ICL with the option to provide a letter of credit to satisfy the reserve fund requirements of Section 21.2 of the Agreement.

**NOW, THEREFORE**, in consideration of the premises and the covenants and agreements of the Parties hereinafter set forth, the Parties agree as follows:

- 1.0 Appendix I, UNIT ENERGY COST CALCULATION, to the Agreement is hereby deleted in its entirety and replaced with Appendix I attached hereto.
- 2.0 Sections 3.5.2 and 3.5.8 of the Agreement are deleted in their entirety and replaced with the new Sections 3.5.2 and 3.5.8 contained in item (A) of Exhibit A attached hereto.
- 3.0 The second sentence of Section 10.1 of the Agreement is hereby deleted in its entirety and replaced with a new sentence contained in item (B) of Exhibit A attached hereto.
- 4.0 Section 21.2 of the Agreement is hereby amended to add as an additional sentence, following the sixth sentence of such section, a new sentence contained in item (C) of Exhibit A attached hereto.



5.0 All other terms and conditions of the Agreement shall remain unchanged.

6.0 The parties acknowledge and agree that this Amendment No. 2 is contingent upon final approval of the Florida Public Service Commission and that in the event such approval is not obtained the above referenced Agreement shall remain in effect and unchanged without reference to this Amendment No. 2.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 2 to be executed by their respective duly authorized officers.

FLORIDA POWER & LIGHT COMPANY

INDIANTOWN COGENERATION, L.P.

By: R. L. Taylor 7-27-92  
R. L. Taylor Date  
Vice President, Power Delivery

By: P. Chrisman Iribe 7-23-92  
P. Chrisman Iribe Date  
Senior Vice President

## APPENDIX I

### UNIT ENERGY COST CALCULATION

- I.1 Prior to the Commercial Operation Date, ICL and FPL shall agree on the relative weighting of anticipated costs for F.O.B. mine coal and the remaining cost components (i.e., coal transportation, lime supply and ash disposal) of the Unit Energy Cost, based on ICL's contracts for such items. Such relative weighting shall be included in the calculation in Section I.3 to determine the Unit Energy Cost for the first Agreement Year. Such Unit Energy Cost shall be retroactively adjusted as provided in Section I.2 subsequent to the end of the first Agreement Year.
- I.2 At the end of each Agreement Year, based on the information provided by ICL pursuant to Section 8.4, BASIS FOR PAYMENT BY FPL, ICL shall provide FPL with the actual relative weighting of ICL's F.O.B. coal price and the remaining cost components of its Actual Energy Cost described in Appendix D, ICL's ACTUAL ENERGY COST. Such items shall be used to adjust the Adjusted Energy Cost for the Agreement Year immediately preceding such adjustment. It shall also be used as the estimated Unit Energy Cost for the subsequent Agreement Year.
- I.3 For the period January 1, 1990 until the effects of the 1992 Shamrock and Ashland contract reopeners have been reflected in the weighted average St. Johns River Power Park (SJRPP) domestic Appalachian coal contract price for one full quarter ("Phase-1"), the Unit Energy Cost shall be \$23.20/MWh, effective January 1, 1990, indexed quarterly, as shown on I.5. The index shall be composed of two parts, (a) the F.O.B. mine coal component, as set forth in (i) and (b) the remaining cost components, as set forth in (ii).
- (i) The F.O.B. mine coal component referenced in Section I.1, multiplied by the percent change in the F.O.B. mine spot price, from the first quarter of 1990 through the end of Phase-1 (based on the "Effective Purchase Price" (\$/ton) as shown on FPSC form 423-2(a) or its equivalent, including quality adjustments, divided by the Btu content as shown on FPSC Form No. 423-2 and converted to units of \$/million Btu, extended to three decimal places) for low/medium sulfur (0.60% to 2.00%), medium/high Btu (11,000 Btu/lb to 13,500 Btu/lb) coal, provided such coal comprises at least 20% of the total coal delivered to SJRPP during the quarter. If the total is less than 20% for a given quarter, the total will be supplemented with additional

quantities of domestic Appalachian spot coal from bid(s) shown on the quarterly "Evaluation Of Spot Coal Bids," which would be the next bid(s) which would have been accepted by FPL, if such purchases were actually made, and which meet the sulfur and Btu criteria set forth herein, up to the amount that would be needed to account for 20% of domestic Appalachian spot coal delivered at SJRPP for the quarter. The corresponding pricing from such additional quantities of coal together with the price of coal delivered to SJRPP will be used to develop the F.O.B. mine price for the quarter (see Example 1).

- (ii) The remaining cost components referenced in Section I.1 will be multiplied by the percentage change in the transportation index for carrier equipment contained in the then current rail transportation contract for the SJRPP. As of the effective date of this Agreement, the rail transportation index for the SJRPP is composed of the following weighted average index:

50%	Rail Cost Adjustment Factor (RCAF) unadjusted for productivity, ICC, "Railroad Cost Recovery Procedures," prescribed by the ICC in Ex Parte No. 290 (Sub. No. 2) and published in the Title 49 of the Code of Federal Regulations, Part 1102, Section 1102.1, or as the same may hereafter be amended.
12.5%	Producer Price Index (PPI) all commodities, Producer Prices and Price Index Data, Monthly Report, U.S. Department of Labor, Bureau of Labor Statistics, U.S. Government Printing Office.
12.5%	Gross National Product - Implicit Price Deflator, United States Government Printing Office, Economic Indicators, prepared for the Joint Economic Committee by the Council of Economic Advisors.
12.5%	Personal Consumption - Implicit Price Deflator, United States Government Printing Office, Economic Indicators, prepared for the Joint Economic Committee by the Council of Economic Advisors.
12.5%	Producer Price Index - Industrial

Commodities Less Fuel and Power Expenditures, Producer Prices and Price Index Data, Monthly Report, U.S. Department of Labor, Bureau of Labor Statistics, U.S. Government Printing Office.

I.4 Following Phase-1, and for the remaining term of this Agreement ("Phase-2"), the then current Unit Energy Cost shall be indexed quarterly, as shown on I.5. The index shall be composed of (i) the F.O.B. mine coal component referenced in Section I.1, or I.2, as appropriate, multiplied by the weighted average percent change from the last quarter of Phase-1 through the quarter for which the Unit Energy Cost is being calculated in (a) SJRPP's Appalachian coal contract(s)' (at least one year in duration) F.O.B. mine price (based on the "Effective Purchase Price" (\$/ton) as shown on FPSC form 423-2(a), including quality adjustments, divided by the Btu content as shown on FPSC Form No. 423-2 and converted to units of \$/million Btu, extended to three decimal places), for low/medium sulfur, medium/high Btu coal and (b) SJRPP's domestic Appalachian spot contract(s)' (less than one year in duration) F.O.B. mine price (based on the "Effective Purchase Price" (\$/ton) as shown on FPSC form 423-2(a), including quality adjustments, divided by the Btu content as shown on FPSC Form No. 423-2 and converted to units of \$/million Btu, extended to three decimal places), for low/medium sulfur, medium/high Btu coal plus (ii) the remaining cost components proportion referenced in Section I.1 or I.2, as appropriate, multiplied by the percent change in the transportation index for carrier equipment contained in the then current rail transportation contract for the SJRPP.

I.5 The following is a sample Unit Energy Cost calculation for first quarter 1996 using the criteria in this Appendix I:

Assumptions (Phase-1):

Unit Energy Cost	\$23.20/MWh	(1Q-90)
% Coal (F.O.B. Mine)	50%	
% Other	50%	
Shamrock/Ashland reopeners resolved during		(4Q-92)
First full quarter reflecting the Shamrock/Ashland reopeners		(1Q-93)
End of Phase-1/beginning of Phase-2		(4/1/93)

Calculation:

Average spot price for coal (F.O.B. Mine)

\$1.050/Million Btu	(1Q-90)
\$1.100/Million Btu	(1Q-93)

Remaining Cost Components Index

100	(1Q-90)
120	(1Q-93)

Unit Energy Cost	(1Q-93)
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Coal:	
$(23.20/2) \times (1.100/1.050)$	= \$12.15/MWh

Remaining Components:	
$(23.20/2) \times (120/100)$	= \$13.92/MWh

Total	= \$26.07/MWh
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Assumptions (Phase-2):

Unit Energy Cost	\$26.07/MWh	(1Q-93)
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Calculation:

Average cost of all Appalachian coal (F.O.B. Mine)

\$1.200/Million Btu	(1Q-93)
\$1.300/Million Btu	(1Q-96)

Remaining Cost Components Index

120	(1Q-93)
140	(1Q-96)

Unit Energy Cost	(1Q-96)
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Coal:	
$(12.15) \times (1.300/1.200)$	= \$13.16/MWh

Remaining Components:	
$(13.92) \times (140/120)$	= \$16.24/MWh

Total	= \$29.40/MWh
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- I.6 In the event of a long term interruption (more than one full quarter) in or permanent cancellation of the delivery of coal to SJRPP, as described in Section I.4 herein, the Parties shall, within one year of such interruption or cancellation, agree upon a comparable replacement index. Until such "replacement index" becomes effective, the Unit Energy Cost will continue to be calculated as described in this Appendix I, but with the following assumptions and adjustments:
- (a) The quantities of coal assumed to be taken from each of the then current long term domestic contract(s) will be the same as they were during the quarter prior to the interruption.
  - (b) The F.O.B. coal price will be escalated according to the indices in the SJRPP long term domestic Appalachian coal contracts which had been in effect until the interruption in deliveries.
  - (c) The remaining components will continue to escalate according to Section I.3(ii).

### Example 1

The following example illustrates how the F.O.B. mine coal price would be adjusted if the total domestic spot purchases for the quarter are less than 20% of the total coal delivered to SJRPP for the same quarter.

1.	Total coal delivered to SJRPP (4th quarter 1991)	<u>154,021</u> Tons
2.	Total domestic Appalachian spot coal delivered to SJRPP (4th quarter 1991)	<u>17,199</u> Tons
3.	Spot as a percent of total	<u>11.17</u> %
4.	Effective F.O.B. mine price of domestic Appalachian spot coal delivered to SJRPP	<u>\$ 0.898</u> /million Btu
5.	Additional domestic Appalachian spot purchases necessary to account for 20% of coal delivered to SJRPP (4th quarter 1991)	
	$[(0.20) 154,021 - 17,199] =$	<u>13,605</u> Tons
6.	Next domestic Appalachian spot coal bid from "Evaluation Of Spot Coal Bids," (4th quarter 1991)	160,000 Tons (1) <u>\$ 0.845</u> /million Btu
7.	Adjusted Effective F.O.B. mine price of domestic Appalachian spot coal	
	$[\frac{(0.898) 17,199 + (0.845) 13,605}{(17,199 + 13,605)}] =$	<u>\$ 0.875</u> /million Btu

Notes: (1) If the quantity of such coal available from the next spot bid, which would have been accepted by FPL if such purchase were actually made and which met the sulfur and Btu criteria set forth herein, is not enough to satisfy the 20% requirement, additional bid(s) for such coal, in the order in which they appear on the "Evaluation Of Spot Coal Bids," would also be factored into the evaluation until the 20% requirement is satisfied.

Exhibit A

(A) Section 3.5.2 of the Agreement shall read as follows:

3.5.2 On or before the Commercial Operation Date, ICL fails to execute a long-term fuel contract (or contracts) between ICL and its fuel supplier(s), which (i) has a term of at least fifteen years, (ii) provides for at least 50% of its requirements and (iii) includes market price reopener provisions (however, if the indexing provisions for the F.O.B. mine coal component in Appendix I of this Agreement are incorporated into the fuel contract(s) without modification, this item (iii) will be deemed to be satisfied);

Section 3.5.8 of the Agreement shall read as follows:

3.5.8 ICL fails, commencing no later than fifteen years after the Commercial Operation Date, to execute a fuel contract (or contracts) between ICL and fuel supplier(s) which provides for at least 50% of ICL's requirements for the remainder of the initial term of this Agreement and includes market price reopener provisions (however, if the indexing provisions for the F.O.B. mine coal component in Appendix I of this fuel Agreement are incorporated into the fuel contract(s) without modification, this item will be deemed to be satisfied); or

(B) The second sentence of Section 10.1 of the Agreement shall read as follows:

For the purpose of evaluating or verifying such actual or claimed costs incurred or units expended, FPL and its authorized representatives shall, from the effective date of the Agreement with respect to each Agreement Year, have access to said Records until seven years after the close of such Agreement Year.



(C) A new sentence to be added to Section 21.2 of the Agreement shall read as follows:

In lieu of cash deposits, ICL may obtain unconditional and irrevocable direct pay letter(s) of credit issued by banks acceptable to FPL, in form and substance acceptable to FPL, in amounts equal to the cash contributions set forth above.