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RECORDS AND
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June 22, 2001

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Docket No. 010827-EI

Enclosed are an original and fifteen copies of Gulf Power Company's Request for Confidential Classification in the above docket.

Sincerely,

Susan D. Ritenour (lw)

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

lw

Enclosures

cc: Beggs and Lane
Jeffrey A. Stone, Esquire

(x-ref. 07169-01)
DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Gulf Power Company's petition for)	
approval of purchased power arrangement)	Docket No.: 010827-EI
regarding Smith Unit 3 for cost recovery)	Date Filed: June 22, 2001
through recovery clauses dealing with)	
purchased capacity and purchased energy.)	
_____)	

REQUEST FOR CONFIDENTIAL CLASSIFICATION

GULF POWER COMPANY ["Gulf Power", "Gulf", or the "Company"], by and through its undersigned attorney and pursuant to Rule 25-22.006, Florida Administrative Code, hereby files a request that the Florida Public Service Commission enter an order protecting from public disclosure certain portions of the proposed purchased power arrangement between Gulf Power Company ("Gulf") and Southern Power Company ("Southern Power") (collectively the "Companies") regarding Smith Unit 3, hereafter the PPA. As grounds for this request, Gulf Power Company states:

Notices and communications with respect to this Request should be addressed to:

Jeffrey A. Stone, Esquire
 Russell A. Badders, Esquire
 Beggs & Lane
 P. O. Box 12950
 Pensacola, FL 32576-2950

Susan D. Ritenour
 Assistant Secretary and Assistant Treasurer
 Gulf Power Company
 One Energy Place
 Pensacola, FL 32520-0780

1. On June 8, 2001, the Companies filed a Notice of Intent to Request Confidential Classification with regard to certain portions of the submitted PPA. The Companies assert that certain information contained in the PPA is entitled to designation as confidential pursuant to Sections 366.093(3)(a), (d) and (e), Florida Statutes.

2. The PPA contains proprietary and commercially sensitive information regarding Southern Power which if disclosed to the general public would cause irreparable harm to the Companies. The Companies assert that this information is entitled to designation as confidential pursuant to Section 366.093(3)(a) and (e), Florida Statutes. During the past 5 years, the wholesale electricity markets in the United States have become increasingly competitive. The nature of the competitive wholesale market in which Southern Power operates requires that the confidentiality of the specific terms and conditions of the PPA be assured in order to safeguard Southern Power from the competitive disadvantages that could result from its public disclosure. Long-term power contracts typically contain combinations of a great number of significant price and non-price terms which render each contract unique. Knowing the details of one's competitors' prices and terms and conditions of service confers a distinct advantage on competing suppliers and a corresponding disadvantage to purchasers. Once competitors learn the pricing details and terms and conditions of service offered by their successful counterpart, a market target price and terms are established for wholesale power service in that market. Revelation of such information removes the incentive for competitors to aggressively cut costs, reduce margins and offer better terms and conditions. This competitive intelligence allows future offers to include prices only slightly lower than the public target price and similar non-price terms. Just as important is the fact that public disclosure of this information would give competitors insight into Southern Power's strategy for managing risk, setting prices and meeting obligations of the agreement. In this instance, public disclosure of the specific terms and conditions of the PPA would give competitors access to details about Southern Power's costs and operations that are not otherwise available in the competitive market. This would result in

Southern Power being severely disadvantaged in any bid process in which they participate since other potential bidders would have vital information about Southern Power that they could use to undercut any bid submitted by Southern Power. Southern Power does not have access to any similar information about its competitors. This virtually eliminates Southern Power from being truly competitive in the very market in which it operates its business. On a broader view, the harm to competition in the wholesale electricity market in general is substantial. The competitive process is built on many principles, one of which is the control and flow of vital information. Competition requires bidders to bid what they perceive is their best offer under the prevailing market constraints based on the best information available to them at that time. Public disclosure of the information filed pursuant to this Request would cause the competitive market to become distorted by an asymmetrical flow of information among the pool of potential bidders. Southern Power's competition would be given far greater information than they are otherwise entitled in the market. Over time, Southern Power could become ineffective as a competitor and competition is then lessened by their inability to participate in the wholesale electricity market in a meaningful manner. In addition, other wholesale electricity suppliers may become hesitant or even decide to forgo participation in the Florida wholesale electricity market for fear that their proprietary and confidential business information and other trade secrets will be made public. Thus, the Companies assert that this information is entitled to designation as confidential pursuant to Section 366.093(3)(a) and (e), Florida Statutes.

3. The information provide in the PPA is further entitled to confidential classification as information concerning contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms. Section

366.093(3)(d), Florida Statutes, provides that such information is proprietary confidential business information to be afforded protection from public disclosure. For the reasons stated in paragraph 2 above, the public disclosure of the specific contractual terms and conditions of the PPA would result in irreparable harm to Southern Power. Gulf would suffer similar harm, but from the perspective of a purchaser in the wholesale energy market. Southern Power will not enter into the PPA with Gulf if the terms and conditions of said PPA are publically disclosed. Other entities with whom Gulf may desire to enter into a purchased power agreement in the future may have the same concerns and take the same position. Gulf would then be in a very difficult market position and may be unable to acquire purchased power at a competitive price.

4. Gulf is committed to providing the Commission the information necessary for it to rule on Gulf Power Company's petition for approval of purchased power arrangement regarding Smith Unit 3 for cost recovery through recovery clauses dealing with purchased capacity and purchased energy. In addition, Gulf is working with other parties in this docket to provide them access to the information through non-disclosure agreements. However, Southern Power is not willing to move forward with the PPA if the Commission intends to deny confidential treatment to the specific terms and conditions of the proposed purchased power arrangement. In the event that this formal request for confidential classification is not granted by the Commission, Gulf requests that the document(s) be returned to it.

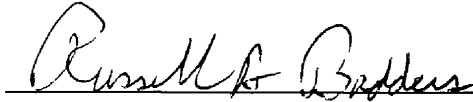
5. The information filed pursuant to Request is intended to be, and is treated as, confidential by the Companies and has not been otherwise publicly disclosed.

6. Submitted as Exhibit "A" is a copy of the PPA, on which is highlighted the information for which confidential classification is requested. Exhibit "A" should be treated as

confidential pending a ruling on this request. Attached as Exhibit "B" are two (2) edited copies of the PPA, which may be made available for public review and inspection. Attached as Exhibit "C" to this request is a line-by-line/field-by-field justification for the request for confidential classification.

WHEREFORE, Gulf Power Company respectfully requests that the Commission enter an order protecting the information highlighted on Exhibit "A" from public disclosure as proprietary confidential business information.

Respectfully submitted this 22nd day of June 2001,



JEFFREY A. STONE

Florida Bar No. 325953

RUSSELL A. BADDERS

Florida Bar No. 007455

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POWER PURCHASE AGREEMENT

BETWEEN

GULF POWER COMPANY

AND

SOUTHERN POWER COMPANY

AT

PLANT SMITH

June 8, 2001

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**POWER PURCHASE AGREEMENT
BETWEEN
GULF POWER COMPANY
AND
SOUTHERN POWER COMPANY**

THIS POWER PURCHASE AGREEMENT (“Agreement”), dated as of June 8, 2001, is made by and between Gulf Power Company (“Buyer”), a corporation organized and existing under the laws of the State of Maine with its principal address at 500 Bayfront Parkway, Pensacola, Florida 32520 and Southern Power Company (“Seller”), a corporation organized and existing under the laws of the State of Delaware with its principal address at 270 Peachtree Street, N.E., Atlanta, Georgia 30303 (individually a “Party” or collectively the “Parties”).

W I T N E S S E T H:

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

WHEREAS, Seller is authorized to, among other things, own and operate electric generating facilities and sell electric capacity and associated energy from such facilities; and

WHEREAS, Buyer has agreed to purchase from Seller and Seller has agreed to sell to Buyer electric capacity and associated energy all in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

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

1.1.1 "Affiliate" - of a specified entity means any other entity directly or indirectly controlling or controlled by or under direct or indirect common control of or with such specified entity. For purposes of this definition, "control" of an entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" have meanings correlative to the foregoing.

1.1.2 "Annual Period" - means any one of a succession of twelve (12) month periods, the first of which shall begin on June 1, 2002, and end on May 31, 2003.

1.1.3 "Business Day" - means any calendar day excluding Saturdays, Sundays and NERC-defined holidays.

1.1.4 "CC Block" - means the natural gas-fired combined cycle generating unit having an initial nominal capability of producing approximately 575 MW to be constructed at the Facility. The CC Block will be comprised of two combustion turbines with two heat recovery

steam generators, a common steam turbine generator, and associated equipment, systems, and structures as necessary for operation.

1.1.5 “Capacity Availability Performance Adjustment” or “CAPA” - means the adjustment to the capacity pursuant to Section 5.2 and the calculation set forth in Section D of **Appendix A**.

1.1.6 “Change of Law” - shall have the meaning as set forth in Section 14.2.

1.1.7 “Commercial Operation Date” - means the date on which the CC Block achieves commercial operation, which shall be deemed to have occurred when (i) start-up and testing of the CC Block has been completed; (ii) the CC Block is capable of producing energy and delivering energy to the Transmission System through the Interconnection Point on a reliable basis and (iii) ownership of the Facility has been transferred from Buyer to Seller.

1.1.8 “Confidential Information” - means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure and use, and which information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Confidential Information consists of information designated as confidential and furnished or disclosed to the other Party in connection with this Agreement.

1.1.9 “Consents” - means any permit, approval, consent, authorization or other requirement that is required from any Governmental Authority in connection with Seller’s

performance of its obligations under this Agreement, including, without limitation all applicable environmental certificates, licenses, permits and approvals.

1.1.10 “Consumer Price Index” or “CPI” - means the measure of the average change in prices paid by urban consumers for a fixed market basket of goods and services approved by the Bureau of Labor Statistics or any Governmental Authority succeeding to the powers and functions thereof.

1.1.11 “Delivered Energy” - means, either individually or in combination, the energy in megawatt hours (“MWh”): (i) generated by the CC Block net of Station Service and net of energy being delivered to third parties in accordance with Section 5.1, measured by the Metering System and corrected for any gains or losses between the metering point and the Interconnection Point; or (ii) supplied by resources other than the CC Block and delivered to the Delivery Point.

1.1.12 “Delivery Point” - means the point on the Transmission System at which Seller shall deliver the energy and shall be as follows: (i) if from the CC Block, the Delivery Point shall be the Interconnection Point, and (ii) if from an alternate resource, the Delivery Point shall be the point on the Transmission System designated at the time of delivery.

1.1.13 “Demonstrated Capability” - means the demonstrated capacity of the CC Block at full pressure mode with power augmentation mode, as adjusted to Rated Conditions, resulting from a test under Article 10.

1.1.14 “Dispatch Center” - means the entity that has the responsibility of dispatching the Buyer’s power supply resources to meet its load requirements.

1.1.15 "Designated Capacity" - means the amount of capacity (in MW) for the CC Block as nominated by Seller at Rated Conditions. Designated Capacity shall be nominated for each Annual Period by May 1 prior to the beginning of each such Annual Period and may not exceed the Demonstrated Capability.

1.1.16 "Facility" - means the land, rights-of-way, CC Block and related equipment and facilities of the electric generating plant to be or being constructed on the Site in connection with the CC Block. The Facility shall include (without limitation) the CC Block and all associated auxiliary equipment and facilities installed at the Site necessary or used for the production, control, delivery or monitoring of electricity produced on the Site by the CC Block. All equipment and facilities installed on the Facility side of the Interconnection Point in connection with the CC Block are considered to be part of the Facility except those that constitute Interconnection Facilities.

1.1.17 "Failure of Performance" - shall have the meaning as set forth in Sections 13.2 and 13.3.

1.1.18 "FERC" - means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

1.1.19 "FERC Approval" - means the consent and permission of FERC necessary to satisfy all applicable federal regulations and rules that are administered by and under the jurisdiction of FERC as such relate to this Agreement, including acceptance of this Agreement as a rate schedule pursuant to the Federal Power Act.

1.1.20 "Firm Fuel Capacity" - shall mean the amount of firm gas transportation required in connection with the operation of the CC Block.

1.1.21 "Fixed Charge Rate" - means Buyer's retail weighted average cost of capital reflecting the current return on equity approved by the FPSC.

1.1.22 "Force Majeure Event" - shall have the meaning as set forth in Section 14.1.

1.1.23 "FPSC" - means the Florida Public Service Commission or any Governmental Authority succeeding to the powers and functions thereof.

1.1.24 "FPSC Approval" - means the issuing by the FPSC of an order approving this Agreement as a long term power purchase capacity resource for Buyer and authorizing the Buyer to recover from its customers through the Purchased Power Capacity Cost Recovery Clause and the Fuel and Purchased Power Energy Cost Recovery Clause all payments made to Seller pursuant to this Agreement for capacity and energy purchases respectively.

1.1.25 "Fuel" - means natural gas.

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

1.1.27 "Guaranteed Heat Rate" - shall be as specified in **Appendices D and E**.

1.1.28 “Interconnection Agreement” - means an agreement between Buyer and Seller allowing Seller to interconnect the Facility to the Transmission System and operate the Facility in parallel with the Transmission System.

1.1.29 “Interconnection Facilities” - means those facilities that Buyer, in its reasonable judgment, determines must be installed or modified in order to electrically connect the CC Block to the Transmission System at 230 kV pursuant to the Interconnection Agreement.

1.1.30 “Interconnection Point” - means the point of electrical connection between the CC Block’s collector bus and the 230 kV Interconnection Facilities as defined in the Interconnection Agreement.

1.1.31 “Interest Rate” - means the prime rate as published in the *Wall Street Journal*, or comparable publication, under “Money Rates,” as applied on a daily basis and compounded monthly.

1.1.32 “kW” - means kilowatt(s).

1.1.33 “Legal Requirement” - means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order or other requirement of a Governmental Authority having jurisdiction over the matter in question, which is valid and applicable to the matter in question at the time of the execution of the Agreement or anytime thereafter during the Term.

1.1.34 “Metering System” - means all meters, metering devices and related instruments used to measure and record electric capacity and energy and used to determine the

amount of such electric capacity and energy that is being made available or delivered at the Interconnection Point.

1.1.35 “MMBtu” - means million British thermal units.

1.1.36 “Monthly Capacity Payment” - means the monthly amount to be paid by Buyer to Seller for the supply of Designated Capacity, as calculated in accordance with

Appendix A.

1.1.37 “Monthly Energy Payment” - means the monthly amount to be paid by Buyer to Seller for the purchase of energy delivered during such month, as calculated in accordance with **Appendix B.**

1.1.38 “MW” - means megawatt(s), or one thousand (1,000) kilowatts.

1.1.39 “MWh” - means megawatt hour(s).

1.1.40 “NERC” - means the North American Electric Reliability Council and any successor thereto and subdivisions thereof.

1.1.41 “Plant Smith Unit 3 Operating Agreement” - means the agreement between Buyer and Seller specifying plant operation services to be provided by Buyer to Seller.

1.1.42 “Plant Smith Unit 3 Sales and Transfer Agreement” - means the agreement establishing the terms for the sale and transfer of the Facility assets from Buyer to Seller.

1.1.43 “Project” - means the design, engineering, financing, construction, testing and commissioning of the Facility and the ownership, operation, management and maintenance

of the Facility, all of which being reasonably expected to enable Seller to fulfill its obligations under this Agreement.

1.1.44 “Prudent Utility Practices” - means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the United States electric utility industry prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers' warranties and the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

1.1.45 “Rated Conditions” - means the conditions as set forth in **Appendix D**.

1.1.46 “Schedule” - when used as a noun, means an energy schedule, including: (i) economic dispatch of the CC Block using automatic generation control; or (ii) submission of a manual or electronic schedule of energy to Seller for delivery of energy from the CC Block or alternate resources, as submitted in accordance with the provisions of Section 11.1 and **Appendix C** of this Agreement. When used as a verb, “Schedule” means the act of submitting a Schedule in accordance with the provisions of Section 10.1 and **Appendix C** of this Agreement.

1.1.47 "Seasonal Availability Factor" or "SAF" - shall have the meaning as set forth in **Appendix A**.

1.1.48 "Seasonal Performance Period" - means one of the following periods during the Annual Period: Summer (June through September); or Non-Summer (October through May).

1.1.49 "SERC" - means the Southeastern Electric Reliability Council, including any successor thereto and subdivisions thereof.

1.1.50 "Service Term" - shall have the meaning set forth in Section 3.1.

1.1.51 "Site" - means the land in Bay County, Florida, on which the Facility is to be located.

1.1.52 "Station Service" - means energy produced by the CC Block that is used to serve the electrical load requirements of the CC Block.

1.1.53 "Taxes" - means all taxes, fees, levies, licenses, or similar charges imposed by any Governmental Authority, together with any interest and penalties thereon.

1.1.54 "Term" - shall have the meaning set forth in Section 3.1.

1.1.55 "Transmission System" - means the high voltage electric transmission system of Buyer, either singularly or as a part of the integrated transmission systems of the electric utility operating companies of Southern Company (currently Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah

Electric and Power Company), as modified or expanded from time-to-time or any successor in function.

1.1.56 "Voltage Support Term" - shall have the meaning set forth in Section 3.2.

ARTICLE 2

CONDITIONS PRECEDENT

2.1 Regulatory Approvals and Transfer of Assets.

2.1.1 The obligations of the Parties under this Agreement are conditioned on the following: (i) FPSC Approval of this Agreement without modification; (ii) FERC Approval of this Agreement, without modification; and (iii) Buyer and Seller entering into the Plant Smith Unit 3 Sales and Transfer Agreement, the Plant Smith Unit 3 Operating Agreement and the Interconnection Agreement for the Facility; and (iv) the closing of the sale of the Facility assets to Seller and of Seller's financing of such Facility.

2.1.2 The Parties shall use reasonable best efforts to obtain the FPSC Approval and FERC Approval in a timely manner without material modification to the terms and conditions of this Agreement.

ARTICLE 3

TERM OF THE AGREEMENTS

3.1 Purchase Power Agreement Term. Subject to the termination and survival provisions herein, this Agreement shall become effective and remain in full force and effect from the date it is executed and delivered by both Buyer and Seller through the end of the Voltage Support Term (the "Term"). Seller's obligation to deliver and Buyer's obligation to accept

1 capacity and associated energy from the CC Block shall become effective from the Commercial
2 Operation Date, through May 31, 2012 (the "Service Term").

3 3.2 Voltage Support Reservation Term. At the end of the Service Term, Seller shall
4 be obligated to provide and Buyer shall be obligated to purchase voltage support from the CC
5 Block beginning on June 1, 2012 (or earlier if the Service Term is terminated early in accordance
6 with this Agreement) and remaining in effect through May 31, 2022 (the "Voltage Support
7 Term") [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

ARTICLE 4

REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Mutual Representations, Warranties and Covenants. Each Party represents, warrants, and covenants to the other Party that:

4.1.1 it is a corporation duly organized, validly existing and in good standing under the respective laws of the state of its formation;

4.1.2 it has all requisite corporate power to own, operate and lease its properties, carry on its business as now conducted, enter into this Agreement, carry out the transactions contemplated hereby, and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement;

4.1.3 the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action, do not and will not require any further consents or

approvals of its Board of Directors or shareholders other than that which has been obtained, and do not and will not violate any of the terms or conditions of any contract or other agreement to which it is a party or any Legal Requirements applicable to it;

4.1.4 this Agreement constitutes each Party's legally valid and binding obligation enforceable against it in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and by general principles of equity;

4.1.5 there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it;

4.1.6 to its knowledge, there are no pending or threatened actions or proceedings affecting it before any Governmental Authority which purport to affect the legality, validity or enforceability of this Agreement or would be reasonably likely to materially adversely affect its ability to perform this Agreement; and

4.1.7 the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, or any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

1 calculated in accordance with **Appendix A**. In addition, following each Summer and Non-
2 Summer Seasonal Performance Period (as shown in Table A-1 of **Appendix A**), a Capacity
3 Availability Performance Adjustment ("CAPA") shall be calculated in accordance with Section
4 C of **Appendix A** and paid in accordance with Section A of **Appendix F**.

5 5.3 Calculation of Monthly Energy Payments. Except as otherwise provided herein,
6 Buyer shall pay to Seller, for each month of the Service Term, the Monthly Energy Payment
7 calculated in accordance with **Appendix B**.

8 **ARTICLE 6**
9 **VOLTAGE SUPPORT**

10 6.1 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 6.2 Calculation of Monthly Reservation Payments. Except as otherwise provided
21 herein, Buyer shall pay to Seller for each month of the Voltage Support Term, the Monthly

ARTICLE 9

INTERCONNECTION AND METERING

9.1 Interconnection. Buyer shall construct, or cause to be constructed, the Interconnection Facilities in order to electrically connect the CC Block to the Transmission System at the Interconnection Point.

9.2 Protective Devices. Seller shall provide, install and maintain internal breakers, relays, switches, synchronizing equipment and other associated protective control equipment necessary to maintain the reliability, quality and safety of the electric power production of the Facility in accordance with Prudent Utility Practices.

9.3 Meters.

9.3.1 Seller shall own, operate and maintain the Metering System in accordance with Prudent Utility Practices in order to measure and record the amount of energy and capacity delivered from the CC Block.

9.3.2 Seller shall inspect and test all meters at such times as will conform to Prudent Utility Practices, but not less often than once every two (2) years.

9.3.3 If the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one half percent (0.5%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (a) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined; or (b) if such actual period cannot be determined, the latter half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made. The

amount of the adjustment may be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (ii) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test.

ARTICLE 10

COMMERCIAL OPERATION, TESTING AND DESIGNATION OF CAPACITY

10.1 Commercial Operation Test.

10.1.1 The initial Demonstrated Capability shall be established in accordance with applicable industry standards. Seller shall nominate the initial Designated Capacity following such performance testing, but such nomination shall occur at least one day before the Commercial Operation Date. Such nomination shall not exceed the Demonstrated Capability.

10.1.2 Seller may, at its option, perform additional capacity tests prior to ninety (90) days after the Commercial Operation Date. If such additional tests result in a Demonstrated Capability greater than the Designated Capacity, Seller may re-nominate the Designated Capacity at such Demonstrated Capability.

10.2 Annual Nomination. Seller shall nominate the Designated Capacity for each Annual Period by the May 1st immediately preceding such Annual Period. Any reduction in the Demonstrated Capability through a capacity examination, as set forth in **Appendix D**, will result in a reduction of the Designated Capacity to the demonstrated level and a corresponding reduction in capacity payments in accordance with the Capacity Payment calculation set forth in **Appendix A**.

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ARTICLE 11

OPERATION, MAINTENANCE AND DISPATCH

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11.1 Operation, Maintenance and Dispatch. Seller shall manage, control, operate and maintain all parts of the Facility in a manner consistent with Prudent Utility Practices. Seller shall also operate the Facility in accordance with applicable reliability criteria and guides of the SERC and NERC. The Parties intend for Buyer to operate the CC Block in economic dispatch. However, upon mutual agreement of the Parties, Seller and Buyer may Schedule the CC Block in accordance with the procedures set forth in Appendix C. In the event that Seller supplies energy from alternate resources, Buyer shall follow the procedures set forth in Appendix C to Schedule delivery of such energy.

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11.2 Maintenance Scheduling.

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11.2.1 The Parties shall consult at least annually to jointly coordinate the timing of planned maintenance of the CC Block. Seller shall conduct such maintenance consistent with Prudent Utility Practices. [REDACTED]

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11.2.2 The Parties recognize that the manufacturer of the CC Block's gas turbines

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recommends periodic water washes of the gas turbines and that such water washes will require the CC Block to be removed from service during the performance of the water washes. Buyer and Seller shall jointly coordinate the timing of the water washes consistent with Prudent Utility Practices. [REDACTED]

21

[REDACTED]

1 11.2.3 From time to time, Seller may request permission from Buyer to perform
2 unscheduled maintenance activities during periods of expected low electrical demand. Buyer
3 shall not unreasonably withhold such permission. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 ARTICLE 12

7 FUEL SUPPLY

8 12.1 Fuel Supply Overview.

9 12.1.1 At all times during the Service Term, the CC Block shall be capable of
10 utilizing Fuel in order to produce the energy committed to Buyer under this Agreement. Seller
11 shall have the responsibility for procuring and making available the quantities of Fuel at the rates
12 of delivery required to accommodate Buyer's Scheduling instructions. In conducting its fuel
13 procurement activities under this Agreement, Seller shall utilize Prudent Utility Practices. No
14 adverse distinction shall be made between Seller's purchasing activity on behalf of Buyer and
15 Seller's purchasing activity for itself or on behalf of any other entity.

16 12.1.2 Buyer shall pay, in accordance with Appendix B, for all Fuel used to
17 generate energy that is delivered to Buyer pursuant to Buyer's Scheduling instructions, including
18 energy received during periods of ramp up and ramp down.

19 12.2 Transportation Capacity.

20 12.2.1 The Parties acknowledge that Buyer, through its agent, Southern Company
21 Services, Inc., has subscribed to [REDACTED] day of firm transportation on FGT's pipeline

1 system (such firm capacity is hereinafter referred to as the "Firm Capacity"). [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] To the extent

8 Buyer desires to have or use storage capacity in order to better manage the Fuel requirements of

9 the CC Block, Buyer may instruct Seller to obtain such capacity and Buyer shall pay for such

10 capacity in accordance with Appendix B.

11 12.2.2 The Parties shall exercise commercially reasonable efforts to minimize any

12 imbalances or other penalties or charges from Fuel transporters associated with Fuel delivered to

13 the Facility ("Imbalance Charges"). [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 **ARTICLE 13**

18 **FORCE MAJEURE**

19 13.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force

20 Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that is

21 beyond the reasonable control of such Party and is not caused by such Party's negligence or lack

22 of due diligence, which prevents the Party from being able to perform its obligations hereunder,

1 including, without limitation, strike or stoppage of labor; flood, ice, earthquake, windstorm or
2 eruption; fire; explosion; invasion, riot or civil war, commotion or insurrection; sabotage,
3 terrorism or vandalism; military or usurped power; or act of God or of a public enemy. The term
4 Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the
5 change in a Legal Requirement; (ii) a Site-specific strike, walkout, lockout or other labor dispute;
6 (iii) equipment failure, unless such equipment failure results directly from the Force Majeure
7 Event; (iv) a change or circumstance in market conditions that affects the economic value of this
8 Agreement for either Party; or (v) the inability to secure, or the curtailment of transmission
9 service.

10 13.2 No Breach or Liability. Both Parties shall be excused from performance and shall
11 not be construed to be in default in respect of any obligation hereunder for so long as failure to
12 perform such obligation shall be due to a Force Majeure Event.

13 13.3 [REDACTED]
14 [REDACTED]
15 [REDACTED]

13.4 Mitigation. Following the occurrence of a Force Majeure Event, the directly
affected Party shall use diligent efforts to remedy its inability to perform as soon as practicable;
however, the directly affected Party is not required to settle any non Site-specific strike, walkout,
lockout or other general labor dispute on terms which, in the sole judgment of the Party involved
in the dispute, are contrary to its interest.

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

ARTICLE 14

FAILURE OF PERFORMANCE AND REMEDIES

14.1 Notice of Failure of Performance. If a Party becomes aware of a Failure of Performance by the breaching Party, it may give the breaching Party written notice of the Failure of Performance.

14.2 Failure of Performance by Seller. The occurrence of any of the following events shall constitute a "Failure of Performance" by Seller, except to the extent caused by a Force Majeure Event:

14.2.1 Seller fails to make any payment due to Buyer hereunder for any undisputed amount or fails to comply with **Appendix F** with respect to any disputed amount within ten (10) Business Days of receiving a written demand from Buyer, which demand shall be received no earlier than the Business Day following the Payment Due Date.

14.2.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or (ii) a decree or order adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization,

arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

14.2.3 Seller: (i) commences or files a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent; (ii) consents to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) files any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law; (iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller of any substantial part of its property; (v) makes an assignment for the benefit of creditors; (vi) is unable, or admits in writing its inability, to generally pay its debts as they become due; or (vii) takes any action in furtherance of any of the foregoing.

14.2.4 Seller assigns this Agreement or any of its rights or obligations under this Agreement in violation of Article 16.

14.2.5 Any representation or warranty made by Seller herein shall prove to be incorrect in any material respect when made, unless Seller promptly commences and diligently pursues action to cause such representation or warranty to become true and removes any material adverse effect on Buyer of such representation or warranty having been incorrect.

14.2.6 Seller fails both: (i) to perform or observe any of its material obligations under this Agreement due to its failure to comply with a Legal Requirement; and (ii) to promptly commence and diligently pursue action to cure and cures such failure to perform within ninety (90) days unless such cure is not capable of being effected within such ninety (90) day period, in which case Seller shall have an additional ninety (90) day period in which to perform such cure.

14.3 Failure of Performance by Buyer. The occurrence of any of the following events shall constitute a "Failure of Performance" by Buyer:

14.3.1 Buyer fails to make any payment due to Seller hereunder for any undisputed amount or fails to comply with **Appendix F** with respect to any disputed amount within ten (10) Business Days of receiving a written demand from Seller, which demand shall be received no earlier than the Business Day following the Payment Due Date.

14.3.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Buyer in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or (ii) a decree or order adjudicating Buyer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Buyer or of any substantial part of its affairs.

14.3.3 Buyer: (i) commences or files a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consents to the entry of a

decree or order for relief in respect of Buyer in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) files any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law; (iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Buyer or of any substantial part of its property; (v) makes an assignment for the benefit of creditors; (vi) is unable; or admits in writing its inability, to generally pay its debts as they become due; or (vii) takes any action in furtherance of any of the foregoing.

14.3.4 Any representation or warranty made by Buyer herein shall prove to be incorrect in any material respect when made, unless Buyer promptly commences and diligently pursues action to cause such representation or warranty to become true and removes any material adverse effect on Seller of such representation or warranty having been incorrect.

14.3.5 Buyer fails both: (i) to perform or observe any of its material obligations under this Agreement due to its failure to comply with a Legal Requirement; and (ii) to promptly commence and diligently pursue action to cure and cures such failure to perform within ninety (90) days unless such cure is not capable of being effected within such ninety (90) day period, in which case it shall have an additional ninety (90) day period in which to perform such cure.

14.4 Remedies. If a Failure of Performance by either Party has occurred, then the non-breaching Party may terminate this Agreement by giving ninety (90) days prior written notice thereof to the breaching Party, which termination shall be effective upon the 90th day following the date of such notice. In such event Seller will not be entitled to recover Monthly Capacity

Payments and Monthly Energy Payments prospectively from the effective date of such termination.

14.5 Discharge of Obligations Upon Termination. In the event of termination of this Agreement, the Parties shall be released and discharged from any further obligation arising or accruing hereunder from and after the date of termination; provided, however, that termination shall not discharge or relieve either Party from any obligations or liabilities for any act or failure to act which may have accrued prior to such termination.

14.6 No Consequential Damages. In no event shall either Party or their affiliates, contractors or consultants, or the officers, directors, shareholders, employees or consultants of any of them be liable for punitive, special, indirect, incidental or consequential damages under, arising out of, due to or in connection with the performance or non-performance of this Agreement or any of the obligations herein, whether based on contract, tort (including without limitation negligence), strict liability, warranty, indemnity or otherwise.

14.7 No Warranties. There are no warranties given by either Party to the other Party under this Agreement except to the extent specifically set forth in Article 4. The Parties hereby specifically disclaim and exclude all implied warranties, including the implied warranties of merchantability and of fitness for a particular purpose.

ARTICLE 15

COMPLIANCE WITH LAWS, RULES AND REGULATION

15.1 Compliance. Seller shall be in compliance with all Legal Requirements with respect to the construction, ownership, operation and maintenance of the Facility.

1 15.2 Change of Law.

2 15.2.1 A "Change of Law" means a change in Legal Requirements constituting a
3 new law or regulation or a new interpretation of a law or regulation, which change is enacted or
4 promulgated after May 15, 2001, and which generally affects the cost of electrical generation.

5 15.2.2 [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 15.3 Taxes. Seller shall at all times during the Term pay or cause to be paid all
17 charges, taxes, assessments and fees which may be assessed by a Governmental Authority: (i)
18 upon or against the CC Block; and/or (ii) upon or against Seller by reason of the production, sale
19 or purchase of electricity hereunder.

15.4 Wetlands Mitigation Plan. Pursuant to the Plant Smith Unit 3 Sales and Transfer Agreement, Seller shall assume Buyer's obligations with respect to the wetlands mitigation plan

1 that is part of the Facility's Site Certification. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

ARTICLE 16

ASSIGNMENT AND TRANSFERS OF INTERESTS

16.1 Assignment and Assumption of Obligations. Seller may not assign its obligations under this Agreement or any portion thereof to any entity other than a creditworthy affiliate without the written permission of Buyer; provided, however, (i) any assignee shall expressly assume assignor's obligations hereunder, and (ii) unless otherwise expressly approved by the Buyer and the FPSC, no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event its assignee fails to perform.

16.2 Assignment to Lenders. Notwithstanding Section 16.1, Seller may, without the consent of the Buyer or the FPSC, assign this Agreement to a Lender for collateral security purposes in connection with any financing or the refinancing of the Facility.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnity. Subject to Section 13.7, each Party (the “Indemnifying Party”) expressly agrees to indemnify, hold harmless and defend the other Party and its affiliates, trustees, agents, officers, directors, employees and permitted assigns (the “Indemnified Party”) against all claims, liabilities, costs or expenses for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of, the generation, transmission or distribution of energy on its respective side of the Delivery Point, whether or not said loss, damage or injury to persons or property is caused by the joint or concurrent negligence of the other Party, except that no indemnification obligation exists where such loss, damage or injury is the result of the gross negligence or willful misconduct of the Party seeking indemnification.

17.2 Notice of Proceedings. An Indemnified Party which becomes entitled to indemnification under the Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel. The Indemnified Party

shall be responsible for the expenses associated with such separate counsel, unless a liability insurer will pay the expenses of such separate counsel. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 Amendments. This Agreement may be amended only by a written instrument duly executed by both Buyer and Seller which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

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

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

18.4 Notices. Where written notice is required by this Agreement, such notice shall be in writing and shall be deemed given (i) when delivered by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by recognized courier addressed as follows:

To Seller: Douglas E. Jones
Vice President,
Southern Power Company
BIN 935
270 Peachtree Street, N.E.
Atlanta, Georgia 30303

with a copy to: Thomas L. Penland, Jr., Esq.
Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308-2216

To Buyer: Robert G. Moore
Vice President
Gulf Power Company
One Energy Place
Pensacola, Florida 32501

with a copy to: Jeffrey A. Stone, Esq.
Beggs & Lane LLP
Post Office Box 12950
Pensacola, Florida 23576-2950

or to such other address as may be designated by the Parties; or (ii) when sent by facsimile transmission or electronic mail, provided receipt of such facsimile transmission or electronic mail is confirmed by facsimile transmission, electronic mail, or otherwise in writing at the time of transmission.

18.5 Entire Agreement. This Agreement constitutes the entire understanding between the Parties. The Parties have entered into this Agreement in reliance upon the representations

and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

18.6 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida, without giving effect to conflict of laws principles, which may direct the application of the laws of another jurisdiction.

18.7 Non-Waiver. No provision of this Agreement shall be deemed waived and no breach shall be deemed excused unless such waiver or consent is in writing and signed by a duly authorized representative of the Party waiving such provision or excusing such breach. No such consent to, or waiver of a breach hereof, whether express or implied shall constitute a consent to, waiver of, or excuse for any subsequent or different breach.

18.8 Headings Not Affecting Meaning. The descriptive headings of the various Sections and Articles of the Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

18.9 Third Parties. This Agreement is intended solely for the benefit of the Parties hereto. Except as otherwise expressly provided herein, nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

18.10 Severability. All provisions of this Agreement are severable. In the event any provision of this Agreement, or a portion thereof, is ruled void, invalid, unenforceable or contrary to public policy by a court of competent jurisdiction, then any remaining portion of such

provision and all other provisions of this Agreement shall survive and be applied and any invalid and unenforceable portion shall be construed or performed to preserve as much of the original words, terms, purpose and intent to the fullest extent permitted by law.

18.11 Cooperation. Upon the execution of this Agreement and thereafter, each Party to this Agreement agrees to do such things as may be reasonably requested by the other Party in order more effectively to consummate or document the transactions contemplated by this Agreement.

18.12 Relationship. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.

18.13 Confidentiality.

18.13.1 Each Party agrees that for a period of five (5) years from the date of termination of the Agreement it will not, without the written consent of the other Party or as otherwise provided herein, disclose Confidential Information to any third party (other than, when permitted by all applicable Legal Requirements, to affiliates or to consultants, advisors and lenders who need to know such information in connection with the performance of their duties or services for the disclosing Party or its affiliates), except to the extent that disclosure is required by law, or by a court or by an administrative agency having jurisdiction over the disclosing Party.

18.13.2 Seller intends to seek confidential treatment of the Confidential Information in this Agreement from FERC, and Buyer will provide reasonable cooperation in connection with such request. Notwithstanding the foregoing, the Parties acknowledge that certain Confidential Information may need to be disclosed in Seller's filings with FERC which may become publicly available.

18.14 Replacement Index. Whenever any published index or tariff is referenced herein, the Parties intend to track those costs as faithfully as commercially practicable. Should any such index or tariff be discontinued or no longer published, the Parties will cooperate in establishing substitute benchmarks through reference to equivalent indices or tariffs.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

"BUYER"

GULF POWER COMPANY

By: Robert G. Moore

Name: Robert G. Moore

Title: Vice President

"SELLER"

SOUTHERN POWER COMPANY

By: _____

Name: Douglas E. Jones

Title: Vice President

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

“BUYER”

GULF POWER COMPANY

By: _____

Name: Robert G. Moore

Title: Vice President

“SELLER”

SOUTHERN POWER COMPANY

By:  _____

Name: Douglas E. Jones

Title: Vice President

EXHIBIT "B"

POWER PURCHASE AGREEMENT

BETWEEN

GULF POWER COMPANY

AND

SOUTHERN POWER COMPANY

AT

PLANT SMITH

June 8, 2001

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APPENDIX F

BILLING PROCEDURES

1 A. Capacity and Energy Billing Payment.

2 By the tenth (10th) day of each month during the Term of this Agreement, Seller shall
3 send Buyer an invoice ("Invoice") stating, if applicable, the Monthly Capacity Payment,
4 the Monthly Energy Payment, the Monthly Reservation Payment, and the Monthly Start-
5 Up Charges for the immediately previous month. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Agreement.

All Invoices shall be due and payable by the receiving Party on or before the tenth (10th) day after such Party's receipt of such Invoice (the "Payment Due Date"). If any such Payment Due Date is not a Business Day, then the Payment Due Date shall be the next succeeding Business Day. Seller may render Invoices by means of facsimile or electronic mail, and receipt shall be deemed to have occurred upon transmission if confirmed in writing (by manual or machine-generated confirmation notice). Subject to the following provisions, the Party receiving an Invoice shall make payment to the other Party in accordance with such Invoices on or before the Payment Due Date in immediately available funds, through wire transfer of funds to an account designated by the other Party, or other means acceptable to the other Party. Each Invoice shall contain a statement explaining in reasonable detail how the Invoice payment amounts were calculated.

B. Billing Dispute and Final Accounting.

If a Party questions or contests the amount or propriety of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall make payment to the other Party of amounts not in dispute, but may withhold amounts disputed, in good faith, until after the settlement of such questions or contests in accordance with this section. A Party withholding any claimed amount shall give by the Payment Due Date written notice to the other Party of the grounds for withholding.

In the event that the correctness of any such amount is questioned or contested in writing by either Party, the other Party shall promptly review the questioned amount and shall, within fourteen (14) days of the notice, given written notice of any error in its

determination of amounts owed.

Each Party shall have until the end of one (1) year after the delivery of an Invoice to question or contest in writing the Invoice. After the one (1) year period has expired, neither Party may dispute the Invoice amount or payment thereunder.

C. Interest.

If either Party does not make a payment required by this Agreement on or before the Payment Due Date, the amount owed and not paid shall bear interest (compounded monthly) at the Interest Rate from the Payment Due Date until such payment, together with interest, is paid. If either Party makes a payment that is not required by this Agreement, the over payment amount shall bear interest (compounded monthly) at the Interest Rate from the date the over payment was received until such over payment, together with interest, is refunded. If payment by mail is acceptable to the invoicing Party, payment will be accepted without interest if such payment is postmarked on or before the Payment Due Date. If the Payment Due Date falls on a day other than a Business Day, the next succeeding Business Day shall be the last day on which payment can be made or postmarked without interest charged being incurred pursuant to this section.

D. Billing and Payment Records.

Until the end of one (1) year after its receipt of any Invoice, each Party shall make available to the other Party, and each Party may audit, such books and records of the other Party as are reasonably necessary for such Party to calculate the Monthly Capacity Payments, the Monthly Energy Payments or other amounts shown on such Invoice and thereby to verify the accuracy of the amounts billed. The Parties shall maintain such respective books and records in accordance with Generally Accepted Accounting Principles applicable from time-to-time.

EXHIBIT "C"

Line-by-Line/Field-by-Field Justification

Line(s)/Field(s) _____

Justification

Page 12, Lines 7 - 10, Unique Non-Price Term
Page 19, Lines 14 - 15, and 20-21, Price Term
Page 20, Lines 3 -5, 21, Price Term
Page 21, Lines 1 - 7, 13 - 16, Price/Risk Term
Page 22, Lines 13 - 15, Risk Allocation Term
Page 28, Lines 5 - 15, Risk/Price/Non-Price
Terms
Page 29, Lines 1 - 6, Price/ Non-Price Term
Appendix A Pages 1 - 4, All Lines, Price Term
Appendix B Pages 1 - 5, All Lines, Price Term
Appendix C Pages 1 - 4, All Lines, Non-Price
Term
Appendix D Pages 1 - 2, All Lines, Non-Price
Term
Appendix E Pages 1 - 2, All Lines, Non-Price
Term
Appendix F Page1, Lines 5 - 11, Price Term

This price or non-price term of the contract is entitled to designation as confidential pursuant to Sections 366.093(3)(a), (d) and (e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraphs 2 and 3 of this Request.

Page 15, Lines 10 - 19

This price or non-price term of the contract is entitled to designation as confidential pursuant to Sections 366.093(3)(a), (d) and (e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraphs 2 and 3 of this Request. While the general nature of the term contained in this section is public, the actual details have not been made public for the reasons stated in paragraphs 2 and 3 of this Request.

APPENDIX F

BILLING PROCEDURES

1 A. Capacity and Energy Billing Payment.

2 By the tenth (10th) day of each month during the Term of this Agreement. Seller shall
3 send Buyer an invoice ("Invoice") stating, if applicable, the Monthly Capacity Payment,
4 the Monthly Energy Payment, the Monthly Reservation Payment, and the Monthly Start-
5 Up Charges for the immediately previous month. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Agreement.

All Invoices shall be due and payable by the receiving Party on or before the tenth (10th) day after such Party's receipt of such Invoice (the "Payment Due Date"). If any such Payment Due Date is not a Business Day, then the Payment Due Date shall be the next succeeding Business Day. Seller may render Invoices by means of facsimile or electronic mail, and receipt shall be deemed to have occurred upon transmission if confirmed in writing (by manual or machine-generated confirmation notice). Subject to the following provisions, the Party receiving an Invoice shall make payment to the other Party in accordance with such Invoices on or before the Payment Due Date in immediately available funds, through wire transfer of funds to an account designated by the other Party, or other means acceptable to the other Party. Each Invoice shall contain a statement explaining in reasonable detail how the Invoice payment amounts were calculated.

B. Billing Dispute and Final Accounting.

If a Party questions or contests the amount or propriety of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall make payment to the other Party of amounts not in dispute, but may withhold amounts disputed, in good faith, until after the settlement of such questions or contests in accordance with this section. A Party withholding any claimed amount shall give by the Payment Due Date written notice to the other Party of the grounds for withholding.

In the event that the correctness of any such amount is questioned or contested in writing by either Party, the other Party shall promptly review the questioned amount and shall, within fourteen (14) days of the notice, given written notice of any error in its

determination of amounts owed.

Each Party shall have until the end of one (1) year after the delivery of an Invoice to question or contest in writing the Invoice. After the one (1) year period has expired, neither Party may dispute the Invoice amount or payment thereunder.

C. Interest.

If either Party does not make a payment required by this Agreement on or before the Payment Due Date, the amount owed and not paid shall bear interest (compounded monthly) at the Interest Rate from the Payment Due Date until such payment, together with interest, is paid. If either Party makes a payment that is not required by this Agreement, the over payment amount shall bear interest (compounded monthly) at the Interest Rate from the date the over payment was received until such over payment, together with interest, is refunded. If payment by mail is acceptable to the invoicing Party, payment will be accepted without interest if such payment is postmarked on or before the Payment Due Date. If the Payment Due Date falls on a day other than a Business Day, the next succeeding Business Day shall be the last day on which payment can be made or postmarked without interest charged being incurred pursuant to this section.

D. Billing and Payment Records.

Until the end of one (1) year after its receipt of any Invoice, each Party shall make available to the other Party, and each Party may audit, such books and records of the other Party as are reasonably necessary for such Party to calculate the Monthly Capacity Payments, the Monthly Energy Payments or other amounts shown on such Invoice and thereby to verify the accuracy of the amounts billed. The Parties shall maintain such respective books and records in accordance with Generally Accepted Accounting Principles applicable from time-to-time.

**POWER PURCHASE AGREEMENT
BETWEEN
GULF POWER COMPANY
AND
SOUTHERN POWER COMPANY**

THIS POWER PURCHASE AGREEMENT (“Agreement”), dated as of June 8, 2001, is made by and between Gulf Power Company (“Buyer”), a corporation organized and existing under the laws of the State of Maine with its principal address at 500 Bayfront Parkway, Pensacola, Florida 32520 and Southern Power Company (“Seller”), a corporation organized and existing under the laws of the State of Delaware with its principal address at 270 Peachtree Street, N.E., Atlanta, Georgia 30303 (individually a “Party” or collectively the “Parties”).

WITNESSETH:

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

WHEREAS, Seller is authorized to, among other things, own and operate electric generating facilities and sell electric capacity and associated energy from such facilities; and

WHEREAS, Buyer has agreed to purchase from Seller and Seller has agreed to sell to Buyer electric capacity and associated energy all in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

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

1.1.1 "Affiliate" - of a specified entity means any other entity directly or indirectly controlling or controlled by or under direct or indirect common control of or with such specified entity. For purposes of this definition, "control" of an entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" have meanings correlative to the foregoing.

1.1.2 "Annual Period" - means any one of a succession of twelve (12) month periods, the first of which shall begin on June 1, 2002, and end on May 31, 2003.

1.1.3 "Business Day" - means any calendar day excluding Saturdays, Sundays and NERC-defined holidays.

1.1.4 "CC Block" - means the natural gas-fired combined cycle generating unit having an initial nominal capability of producing approximately 575 MW to be constructed at the Facility. The CC Block will be comprised of two combustion turbines with two heat recovery

steam generators, a common steam turbine generator, and associated equipment, systems, and structures as necessary for operation.

1.1.5 “Capacity Availability Performance Adjustment” or “CAPA” - means the adjustment to the capacity pursuant to Section 5.2 and the calculation set forth in Section D of **Appendix A**.

1.1.6 “Change of Law” - shall have the meaning as set forth in Section 14.2.

1.1.7 “Commercial Operation Date” - means the date on which the CC Block achieves commercial operation, which shall be deemed to have occurred when (i) start-up and testing of the CC Block has been completed; (ii) the CC Block is capable of producing energy and delivering energy to the Transmission System through the Interconnection Point on a reliable basis and (iii) ownership of the Facility has been transferred from Buyer to Seller.

1.1.8 “Confidential Information” - means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure and use, and which information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Confidential Information consists of information designated as confidential and furnished or disclosed to the other Party in connection with this Agreement.

1.1.9 “Consents” - means any permit, approval, consent, authorization or other requirement that is required from any Governmental Authority in connection with Seller’s

performance of its obligations under this Agreement, including, without limitation all applicable environmental certificates, licenses, permits and approvals.

1.1.10 "Consumer Price Index" or "CPI" - means the measure of the average change in prices paid by urban consumers for a fixed market basket of goods and services approved by the Bureau of Labor Statistics or any Governmental Authority succeeding to the powers and functions thereof.

1.1.11 "Delivered Energy" - means, either individually or in combination, the energy in megawatt hours ("MWh"): (i) generated by the CC Block net of Station Service and net of energy being delivered to third parties in accordance with Section 5.1, measured by the Metering System and corrected for any gains or losses between the metering point and the Interconnection Point; or (ii) supplied by resources other than the CC Block and delivered to the Delivery Point.

1.1.12 "Delivery Point" - means the point on the Transmission System at which Seller shall deliver the energy and shall be as follows: (i) if from the CC Block, the Delivery Point shall be the Interconnection Point, and (ii) if from an alternate resource, the Delivery Point shall be the point on the Transmission System designated at the time of delivery.

1.1.13 "Demonstrated Capability" - means the demonstrated capacity of the CC Block at full pressure mode with power augmentation mode, as adjusted to Rated Conditions, resulting from a test under Article 10.

1.1.14 "Dispatch Center" - means the entity that has the responsibility of dispatching the Buyer's power supply resources to meet its load requirements.

1.1.15 "Designated Capacity" - means the amount of capacity (in MW) for the CC Block as nominated by Seller at Rated Conditions. Designated Capacity shall be nominated for each Annual Period by May 1 prior to the beginning of each such Annual Period and may not exceed the Demonstrated Capability.

1.1.16 "Facility" - means the land, rights-of-way, CC Block and related equipment and facilities of the electric generating plant to be or being constructed on the Site in connection with the CC Block. The Facility shall include (without limitation) the CC Block and all associated auxiliary equipment and facilities installed at the Site necessary or used for the production, control, delivery or monitoring of electricity produced on the Site by the CC Block. All equipment and facilities installed on the Facility side of the Interconnection Point in connection with the CC Block are considered to be part of the Facility except those that constitute Interconnection Facilities.

1.1.17 "Failure of Performance" - shall have the meaning as set forth in Sections 13.2 and 13.3.

1.1.18 "FERC" - means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

1.1.19 "FERC Approval" - means the consent and permission of FERC necessary to satisfy all applicable federal regulations and rules that are administered by and under the jurisdiction of FERC as such relate to this Agreement, including acceptance of this Agreement as a rate schedule pursuant to the Federal Power Act.

1.1.20 "Firm Fuel Capacity" - shall mean the amount of firm gas transportation required in connection with the operation of the CC Block.

1.1.21 "Fixed Charge Rate" - means Buyer's retail weighted average cost of capital reflecting the current return on equity approved by the FPSC.

1.1.22 "Force Majeure Event" - shall have the meaning as set forth in Section 14.1.

1.1.23 "FPSC" - means the Florida Public Service Commission or any Governmental Authority succeeding to the powers and functions thereof.

1.1.24 "FPSC Approval" - means the issuing by the FPSC of an order approving this Agreement as a long term power purchase capacity resource for Buyer and authorizing the Buyer to recover from its customers through the Purchased Power Capacity Cost Recovery Clause and the Fuel and Purchased Power Energy Cost Recovery Clause all payments made to Seller pursuant to this Agreement for capacity and energy purchases respectively.

1.1.25 "Fuel" - means natural gas.

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

1.1.27 "Guaranteed Heat Rate" - shall be as specified in **Appendices D and E.**

1.1.28 “Interconnection Agreement” - means an agreement between Buyer and Seller allowing Seller to interconnect the Facility to the Transmission System and operate the Facility in parallel with the Transmission System.

1.1.29 “Interconnection Facilities” - means those facilities that Buyer, in its reasonable judgment, determines must be installed or modified in order to electrically connect the CC Block to the Transmission System at 230 kV pursuant to the Interconnection Agreement.

1.1.30 “Interconnection Point” - means the point of electrical connection between the CC Block’s collector bus and the 230 kV Interconnection Facilities as defined in the Interconnection Agreement.

1.1.31 “Interest Rate” - means the prime rate as published in the *Wall Street Journal*, or comparable publication, under “Money Rates,” as applied on a daily basis and compounded monthly.

1.1.32 “kW” - means kilowatt(s).

1.1.33 “Legal Requirement” - means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order or other requirement of a Governmental Authority having jurisdiction over the matter in question, which is valid and applicable to the matter in question at the time of the execution of the Agreement or anytime thereafter during the Term.

1.1.34 “Metering System” - means all meters, metering devices and related instruments used to measure and record electric capacity and energy and used to determine the

amount of such electric capacity and energy that is being made available or delivered at the Interconnection Point.

1.1.35 “MMBtu” - means million British thermal units.

1.1.36 “Monthly Capacity Payment” - means the monthly amount to be paid by Buyer to Seller for the supply of Designated Capacity, as calculated in accordance with **Appendix A**.

1.1.37 “Monthly Energy Payment” - means the monthly amount to be paid by Buyer to Seller for the purchase of energy delivered during such month, as calculated in accordance with **Appendix B**.

1.1.38 “MW” - means megawatt(s), or one thousand (1,000) kilowatts.

1.1.39 “MWh” - means megawatt hour(s).

1.1.40 “NERC” - means the North American Electric Reliability Council and any successor thereto and subdivisions thereof.

1.1.41 “Plant Smith Unit 3 Operating Agreement” - means the agreement between Buyer and Seller specifying plant operation services to be provided by Buyer to Seller.

1.1.42 “Plant Smith Unit 3 Sales and Transfer Agreement” - means the agreement establishing the terms for the sale and transfer of the Facility assets from Buyer to Seller.

1.1.43 “Project” - means the design, engineering, financing, construction, testing and commissioning of the Facility and the ownership, operation, management and maintenance

of the Facility, all of which being reasonably expected to enable Seller to fulfill its obligations under this Agreement.

1.1.44 “Prudent Utility Practices” - means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the United States electric utility industry prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers' warranties and the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

1.1.45 “Rated Conditions” - means the conditions as set forth in **Appendix D**.

1.1.46 “Schedule” - when used as a noun, means an energy schedule, including: (i) economic dispatch of the CC Block using automatic generation control; or (ii) submission of a manual or electronic schedule of energy to Seller for delivery of energy from the CC Block or alternate resources, as submitted in accordance with the provisions of Section 11.1 and **Appendix C** of this Agreement. When used as a verb, “Schedule” means the act of submitting a Schedule in accordance with the provisions of Section 10.1 and **Appendix C** of this Agreement.

1.1.47 “Seasonal Availability Factor” or “SAF” - shall have the meaning as set forth in **Appendix A**.

1.1.48 “Seasonal Performance Period” - means one of the following periods during the Annual Period: Summer (June through September); or Non-Summer (October through May).

1.1.49 “SERC” - means the Southeastern Electric Reliability Council, including any successor thereto and subdivisions thereof.

1.1.50 “Service Term” - shall have the meaning set forth in Section 3.1.

1.1.51 “Site” - means the land in Bay County, Florida, on which the Facility is to be located.

1.1.52 “Station Service” - means energy produced by the CC Block that is used to serve the electrical load requirements of the CC Block.

1.1.53 “Taxes” - means all taxes, fees, levies, licenses, or similar charges imposed by any Governmental Authority, together with any interest and penalties thereon.

1.1.54 “Term” - shall have the meaning set forth in Section 3.1.

1.1.55 “Transmission System” - means the high voltage electric transmission system of Buyer, either singularly or as a part of the integrated transmission systems of the electric utility operating companies of Southern Company (currently Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah

Electric and Power Company), as modified or expanded from time-to-time or any successor in function.

1.1.56 "Voltage Support Term" - shall have the meaning set forth in Section 3.2.

ARTICLE 2

CONDITIONS PRECEDENT

2.1 Regulatory Approvals and Transfer of Assets.

2.1.1 The obligations of the Parties under this Agreement are conditioned on the following: (i) FPSC Approval of this Agreement without modification; (ii) FERC Approval of this Agreement, without modification; and (iii) Buyer and Seller entering into the Plant Smith Unit 3 Sales and Transfer Agreement, the Plant Smith Unit 3 Operating Agreement and the Interconnection Agreement for the Facility; and (iv) the closing of the sale of the Facility assets to Seller and of Seller's financing of such Facility.

2.1.2 The Parties shall use reasonable best efforts to obtain the FPSC Approval and FERC Approval in a timely manner without material modification to the terms and conditions of this Agreement.

ARTICLE 3

TERM OF THE AGREEMENTS

3.1 Purchase Power Agreement Term. Subject to the termination and survival provisions herein, this Agreement shall become effective and remain in full force and effect from the date it is executed and delivered by both Buyer and Seller through the end of the Voltage Support Term (the "Term"). Seller's obligation to deliver and Buyer's obligation to accept

1 capacity and associated energy from the CC Block shall become effective from the Commercial
2 Operation Date, through May 31, 2012 (the "Service Term").

3 3.2 Voltage Support Reservation Term. At the end of the Service Term, Seller shall
4 be obligated to provide and Buyer shall be obligated to purchase voltage support from the CC
5 Block beginning on June 1, 2012 (or earlier if the Service Term is terminated early in accordance
6 with this Agreement) and remaining in effect through May 31, 2022 (the "Voltage Support
7 Term")

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

ARTICLE 4

REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Mutual Representations, Warranties and Covenants. Each Party represents, warrants, and covenants to the other Party that:

4.1.1 it is a corporation duly organized, validly existing and in good standing under the respective laws of the state of its formation;

4.1.2 it has all requisite corporate power to own, operate and lease its properties, carry on its business as now conducted, enter into this Agreement, carry out the transactions contemplated hereby, and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement;

4.1.3 the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action, do not and will not require any further consents or

approvals of its Board of Directors or shareholders other than that which has been obtained, and do not and will not violate any of the terms or conditions of any contract or other agreement to which it is a party or any Legal Requirements applicable to it;

4.1.4 this Agreement constitutes each Party's legally valid and binding obligation enforceable against it in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and by general principles of equity;

4.1.5 there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it;

4.1.6 to its knowledge, there are no pending or threatened actions or proceedings affecting it before any Governmental Authority which purport to affect the legality, validity or enforceability of this Agreement or would be reasonably likely to materially adversely affect its ability to perform this Agreement; and

4.1.7 the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, or any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

4.2 Covenants of Seller.

4.2.1 Seller shall: (i) construct or caused to be constructed; (ii) own, lease, or control the entire electrical output of; and (iii) operate and maintain the Facility, all in accordance with this Agreement.

4.2.2 Seller shall obtain and maintain at all times during the Term all Consents as and when required by applicable Legal Requirements for the operation and maintenance of the Facility as contemplated pursuant to this Agreement.

4.2.3 Seller shall at all times during the Term of this Agreement operate and maintain the Facility in accordance with Prudent Utility Practices.

ARTICLE 5

DELIVERY OF CAPACITY AND ENERGY

5.1 Agreement to Provide Capacity and Energy.

5.1.1 During the Service Term, Seller shall sell to Buyer and Buyer shall purchase from Seller up to the entire electrical output of the CC Block, net of Station Service, except during periods of planned maintenance and approved unscheduled maintenance and Force Majeure Events.

5.1.2 Seller shall deliver to Buyer, and Buyer shall accept from Seller, at the Delivery Point, the energy Scheduled by Buyer pursuant to this Agreement from: (i) the CC Block or (ii) an alternate resource other than the CC Block or (iii) any combination of (i) and (ii).

5.2 Calculation of Monthly Capacity Payments. Except as otherwise provided herein, Buyer shall pay to Seller for each month of the Service Term, the Monthly Capacity Payment

1 calculated in accordance with **Appendix A**. In addition, following each Summer and Non-
2 Summer Seasonal Performance Period (as shown in Table A-1 of **Appendix A**), a Capacity
3 Availability Performance Adjustment ("CAPA") shall be calculated in accordance with Section
4 C of **Appendix A** and paid in accordance with Section A of **Appendix F**.

5 5.3 Calculation of Monthly Energy Payments. Except as otherwise provided herein,
6 Buyer shall pay to Seller, for each month of the Service Term, the Monthly Energy Payment
7 calculated in accordance with **Appendix B**.

8 :: **ARTICLE 6**

9 **VOLTAGE SUPPORT**

10 6.1 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 6.2 Calculation of Monthly Reservation Payments. Except as otherwise provided
21 herein, Buyer shall pay to Seller for each month of the Voltage Support Term, the Monthly

Voltage Support Reservation Charge calculated in accordance with **Appendix A** and paid in accordance with Section A of **Appendix F**.

6.3 Calculation of Operation Payments. Except as otherwise provided herein, Buyer shall pay to Seller, for each month of the Voltage Support Term, the Monthly Energy Payment calculated in accordance with **Appendix B**.

ARTICLE 7

BILLING AND COLLECTION

7.1 Capacity, Energy, and Voltage Support Billing and Payment. Seller and Buyer shall agree to the billing and payment process as set forth in **Appendix F**. However, the Parties shall maintain the right to amend the billing and payment process as appropriate from time-to-time.

ARTICLE 8

FACILITY IMPLEMENTATION AND CONSTRUCTION

8.1 Project Implementation. Seller shall: (i) arrange for the acquisition or use of the Site for the Term; (ii) apply for, and use diligent efforts to obtain and maintain, all consents (including renewals thereof) and any other approvals of Government Authorities that are required in connection with the Project, including the transactions contemplated under this Agreement; (iii) act consistently with Prudent Utility Practices in all aspects of the Project; and (iv) use diligent efforts to carry out the transactions contemplated under this Agreement.

ARTICLE 9

INTERCONNECTION AND METERING

9.1 Interconnection. Buyer shall construct, or cause to be constructed, the Interconnection Facilities in order to electrically connect the CC Block to the Transmission System at the Interconnection Point.

9.2 Protective Devices. Seller shall provide, install and maintain internal breakers, relays, switches, synchronizing equipment and other associated protective control equipment necessary to maintain the reliability, quality and safety of the electric power production of the Facility in accordance with Prudent Utility Practices.

9.3 Meters.

9.3.1 Seller shall own, operate and maintain the Metering System in accordance with Prudent Utility Practices in order to measure and record the amount of energy and capacity delivered from the CC Block.

9.3.2 Seller shall inspect and test all meters at such times as will conform to Prudent Utility Practices, but not less often than once every two (2) years.

9.3.3 If the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one half percent (0.5%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (a) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined; or (b) if such actual period cannot be determined, the latter half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made. The

amount of the adjustment may be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (ii) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test.

ARTICLE 10

COMMERCIAL OPERATION, TESTING AND DESIGNATION OF CAPACITY

10.1 Commercial Operation Test.

10.1.1 The initial Demonstrated Capability shall be established in accordance with applicable industry standards. Seller shall nominate the initial Designated Capacity following such performance testing, but such nomination shall occur at least one day before the Commercial Operation Date. Such nomination shall not exceed the Demonstrated Capability.

10.1.2 Seller may, at its option, perform additional capacity tests prior to ninety (90) days after the Commercial Operation Date. If such additional tests result in a Demonstrated Capability greater than the Designated Capacity, Seller may re-nominate the Designated Capacity at such Demonstrated Capability.

10.2 Annual Nomination. Seller shall nominate the Designated Capacity for each Annual Period by the May 1st immediately preceding such Annual Period. Any reduction in the Demonstrated Capability through a capacity examination, as set forth in **Appendix D**, will result in a reduction of the Designated Capacity to the demonstrated level and a corresponding reduction in capacity payments in accordance with the Capacity Payment calculation set forth in **Appendix A**.

1
2

ARTICLE 11

OPERATION, MAINTENANCE AND DISPATCH

3 11.1 Operation, Maintenance and Dispatch. Seller shall manage, control, operate and
4 maintain all parts of the Facility in a manner consistent with Prudent Utility Practices. Seller
5 shall also operate the Facility in accordance with applicable reliability criteria and guides of the
6 SERC and NERC. The Parties intend for Buyer to operate the CC Block in economic dispatch.
7 However, upon mutual agreement of the Parties, Seller and Buyer may Schedule the CC Block in
8 accordance with the procedures set forth in Appendix C. In the event that Seller supplies energy
9 from alternate resources, Buyer shall follow the procedures set forth in Appendix C to Schedule
10 delivery of such energy.

11 11.2 Maintenance Scheduling.

12 11.2.1 The Parties shall consult at least annually to jointly coordinate the timing
13 of planned maintenance of the CC Block. Seller shall conduct such maintenance consistent with
14 Prudent Utility Practices. [REDACTED]
15 [REDACTED]

16 11.2.2 The Parties recognize that the manufacturer of the CC Block's gas turbines
17 recommends periodic water washes of the gas turbines and that such water washes will require
18 the CC Block to be removed from service during the performance of the water washes. Buyer
19 and Seller shall jointly coordinate the timing of the water washes consistent with Prudent Utility
20 Practices. [REDACTED]
21 [REDACTED]

1 11.2.3 From time to time, Seller may request permission from Buyer to perform
2 unscheduled maintenance activities during periods of expected low electrical demand. Buyer
3 shall not unreasonably withhold such permission. [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 ARTICLE 12
7 FUEL SUPPLY

8 12.1 Fuel Supply Overview.

9 12.1.1 At all times during the Service Term, the CC Block shall be capable of
10 utilizing Fuel in order to produce the energy committed to Buyer under this Agreement. Seller
11 shall have the responsibility for procuring and making available the quantities of Fuel at the rates
12 of delivery required to accommodate Buyer's Scheduling instructions. In conducting its fuel
13 procurement activities under this Agreement, Seller shall utilize Prudent Utility Practices. No
14 adverse distinction shall be made between Seller's purchasing activity on behalf of Buyer and
15 Seller's purchasing activity for itself or on behalf of any other entity.

16 12.1.2 Buyer shall pay, in accordance with Appendix B, for all Fuel used to
17 generate energy that is delivered to Buyer pursuant to Buyer's Scheduling instructions, including
18 energy received during periods of ramp up and ramp down.

19 12.2 Transportation Capacity.

20 12.2.1 The Parties acknowledge that Buyer, through its agent, Southern Company
21 Services, Inc., has subscribed to [REDACTED] day of firm transportation on FGT's pipeline

1 system (such firm capacity is hereinafter referred to as the "Firm Capacity"). [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] To the extent

8 Buyer desires to have or use storage capacity in order to better manage the Fuel requirements of

9 the CC Block, Buyer may instruct Seller to obtain such capacity and Buyer shall pay for such

10 capacity in accordance with Appendix B.

11 12.2.2 The Parties shall exercise commercially reasonable efforts to minimize any

12 imbalances or other penalties or charges from Fuel transporters associated with Fuel delivered to

13 the Facility ("Imbalance Charges"). [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17

ARTICLE 13

18

FORCE MAJEURE

19 13.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force

20 Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that is

21 beyond the reasonable control of such Party and is not caused by such Party's negligence or lack

22 of due diligence, which prevents the Party from being able to perform its obligations hereunder,

1 including, without limitation, strike or stoppage of labor; flood, ice, earthquake, windstorm or
2 eruption; fire; explosion; invasion, riot or civil war, commotion or insurrection; sabotage,
3 terrorism or vandalism; military or usurped power; or act of God or of a public enemy. The term
4 Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the
5 change in a Legal Requirement; (ii) a Site-specific strike, walkout, lockout or other labor dispute;
6 (iii) equipment failure, unless such equipment failure results directly from the Force Majeure
7 Event; (iv) a change or circumstance in market conditions that affects the economic value of this
8 Agreement for either Party; or (v) the inability to secure, or the curtailment of transmission
9 service.

10 13.2 No Breach or Liability. Both Parties shall be excused from performance and shall
11 not be construed to be in default in respect of any obligation hereunder for so long as failure to
12 perform such obligation shall be due to a Force Majeure Event.

13 13.3 [REDACTED]
14 [REDACTED]
15 [REDACTED]

13.4 Mitigation. Following the occurrence of a Force Majeure Event, the directly
affected Party shall use diligent efforts to remedy its inability to perform as soon as practicable;
however, the directly affected Party is not required to settle any non Site-specific strike, walkout,
lockout or other general labor dispute on terms which, in the sole judgment of the Party involved
in the dispute, are contrary to its interest.

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

ARTICLE 14

FAILURE OF PERFORMANCE AND REMEDIES

14.1 Notice of Failure of Performance. If a Party becomes aware of a Failure of Performance by the breaching Party, it may give the breaching Party written notice of the Failure of Performance.

14.2 Failure of Performance by Seller. The occurrence of any of the following events shall constitute a "Failure of Performance" by Seller, except to the extent caused by a Force Majeure Event:

14.2.1 Seller fails to make any payment due to Buyer hereunder for any undisputed amount or fails to comply with **Appendix F** with respect to any disputed amount within ten (10) Business Days of receiving a written demand from Buyer, which demand shall be received no earlier than the Business Day following the Payment Due Date.

14.2.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or (ii) a decree or order adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization,

arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

14.2.3 Seller: (i) commences or files a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent; (ii) consents to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) files any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law; (iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller of any substantial part of its property; (v) makes an assignment for the benefit of creditors; (vi) is unable, or admits in writing its inability, to generally pay its debts as they become due; or (vii) takes any action in furtherance of any of the foregoing.

14.2.4 Seller assigns this Agreement or any of its rights or obligations under this Agreement in violation of Article 16.

14.2.5 Any representation or warranty made by Seller herein shall prove to be incorrect in any material respect when made, unless Seller promptly commences and diligently pursues action to cause such representation or warranty to become true and removes any material adverse effect on Buyer of such representation or warranty having been incorrect.

14.2.6 Seller fails both: (i) to perform or observe any of its material obligations under this Agreement due to its failure to comply with a Legal Requirement; and (ii) to promptly commence and diligently pursue action to cure and cures such failure to perform within ninety (90) days unless such cure is not capable of being effected within such ninety (90) day period, in which case Seller shall have an additional ninety (90) day period in which to perform such cure.

14.3 Failure of Performance by Buyer. The occurrence of any of the following events shall constitute a "Failure of Performance" by Buyer:

14.3.1 Buyer fails to make any payment due to Seller hereunder for any undisputed amount or fails to comply with **Appendix F** with respect to any disputed amount within ten (10) Business Days of receiving a written demand from Seller, which demand shall be received no earlier than the Business Day following the Payment Due Date.

14.3.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Buyer in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or (ii) a decree or order adjudicating Buyer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Buyer or of any substantial part of its affairs.

14.3.3 Buyer: (i) commences or files a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consents to the entry of a

decree or order for relief in respect of Buyer in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) files any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law; (iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Buyer or of any substantial part of its property; (v) makes an assignment for the benefit of creditors; (vi) is unable; or admits in writing its inability, to generally pay its debts as they become due; or (vii) takes any action in furtherance of any of the foregoing.

14.3.4 Any representation or warranty made by Buyer herein shall prove to be incorrect in any material respect when made, unless Buyer promptly commences and diligently pursues action to cause such representation or warranty to become true and removes any material adverse effect on Seller of such representation or warranty having been incorrect.

14.3.5 Buyer fails both: (i) to perform or observe any of its material obligations under this Agreement due to its failure to comply with a Legal Requirement; and (ii) to promptly commence and diligently pursue action to cure and cures such failure to perform within ninety (90) days unless such cure is not capable of being effected within such ninety (90) day period, in which case it shall have an additional ninety (90) day period in which to perform such cure.

14.4 Remedies. If a Failure of Performance by either Party has occurred, then the non-breaching Party may terminate this Agreement by giving ninety (90) days prior written notice thereof to the breaching Party, which termination shall be effective upon the 90th day following the date of such notice. In such event Seller will not be entitled to recover Monthly Capacity

Payments and Monthly Energy Payments prospectively from the effective date of such termination.

14.5 Discharge of Obligations Upon Termination. In the event of termination of this Agreement, the Parties shall be released and discharged from any further obligation arising or accruing hereunder from and after the date of termination; provided, however, that termination shall not discharge or relieve either Party from any obligations or liabilities for any act or failure to act which may have accrued prior to such termination.

14.6 No Consequential Damages. In no event shall either Party or their affiliates, contractors or consultants, or the officers, directors, shareholders, employees or consultants of any of them be liable for punitive, special, indirect, incidental or consequential damages under, arising out of, due to or in connection with the performance or non-performance of this Agreement or any of the obligations herein, whether based on contract, tort (including without limitation negligence), strict liability, warranty, indemnity or otherwise.

14.7 No Warranties. There are no warranties given by either Party to the other Party under this Agreement except to the extent specifically set forth in Article 4. The Parties hereby specifically disclaim and exclude all implied warranties, including the implied warranties of merchantability and of fitness for a particular purpose.

ARTICLE 15

COMPLIANCE WITH LAWS, RULES AND REGULATION

15.1 Compliance. Seller shall be in compliance with all Legal Requirements with respect to the construction, ownership, operation and maintenance of the Facility.

1 15.2 Change of Law.

2 15.2.1 A "Change of Law" means a change in Legal Requirements constituting a
3 new law or regulation or a new interpretation of a law or regulation, which change is enacted or
4 promulgated after May 15, 2001, and which generally affects the cost of electrical generation.

5 15.2.2 [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 15.3 Taxes. Seller shall at all times during the Term pay or cause to be paid all
17 charges, taxes, assessments and fees which may be assessed by a Governmental Authority: (i)
18 upon or against the CC Block; and/or (ii) upon or against Seller by reason of the production, sale
19 or purchase of electricity hereunder.

 15.4 Wetlands Mitigation Plan. Pursuant to the Plant Smith Unit 3 Sales and Transfer
Agreement, Seller shall assume Buyer's obligations with respect to the wetlands mitigation plan

1 that is part of the Facility's Site Certification. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

ARTICLE 16

ASSIGNMENT AND TRANSFERS OF INTERESTS

16.1 Assignment and Assumption of Obligations. Seller may not assign its obligations under this Agreement or any portion thereof to any entity other than a creditworthy affiliate without the written permission of Buyer; provided, however, (i) any assignee shall expressly assume assignor's obligations hereunder, and (ii) unless otherwise expressly approved by the Buyer and the FPSC, no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event its assignee fails to perform.

16.2 Assignment to Lenders. Notwithstanding Section 16.1, Seller may, without the consent of the Buyer or the FPSC, assign this Agreement to a Lender for collateral security purposes in connection with any financing or the refinancing of the Facility.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnity. Subject to Section 13.7, each Party (the “Indemnifying Party”) expressly agrees to indemnify, hold harmless and defend the other Party and its affiliates, trustees, agents, officers, directors, employees and permitted assigns (the “Indemnified Party”) against all claims, liabilities, costs or expenses for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of, the generation, transmission or distribution of energy on its respective side of the Delivery Point, whether or not said loss, damage or injury to persons or property is caused by the joint or concurrent negligence of the other Party, except that no indemnification obligation exists where such loss, damage or injury is the result of the gross negligence or willful misconduct of the Party seeking indemnification.

17.2 Notice of Proceedings. An Indemnified Party which becomes entitled to indemnification under the Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel. The Indemnified Party

shall be responsible for the expenses associated with such separate counsel, unless a liability insurer will pay the expenses of such separate counsel. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 Amendments. This Agreement may be amended only by a written instrument duly executed by both Buyer and Seller which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

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

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

18.4 Notices. Where written notice is required by this Agreement, such notice shall be in writing and shall be deemed given (i) when delivered by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by recognized courier addressed as follows:

To Seller: Douglas E. Jones
Vice President,
Southern Power Company
BIN 935
270 Peachtree Street, N.E.
Atlanta, Georgia 30303

with a copy to: Thomas L. Penland, Jr., Esq.
Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308-2216

To Buyer: Robert G. Moore
Vice President
Gulf Power Company
One Energy Place
Pensacola, Florida 32501

with a copy to: Jeffrey A. Stone, Esq.
Beggs & Lane LLP
Post Office Box 12950
Pensacola, Florida 23576-2950

or to such other address as may be designated by the Parties; or (ii) when sent by facsimile transmission or electronic mail, provided receipt of such facsimile transmission or electronic mail is confirmed by facsimile transmission, electronic mail, or otherwise in writing at the time of transmission.

18.5 Entire Agreement. This Agreement constitutes the entire understanding between the Parties. The Parties have entered into this Agreement in reliance upon the representations

and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

18.6 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida, without giving effect to conflict of laws principles, which may direct the application of the laws of another jurisdiction.

18.7 Non-Waiver. No provision of this Agreement shall be deemed waived and no breach shall be deemed excused unless such waiver or consent is in writing and signed by a duly authorized representative of the Party waiving such provision or excusing such breach. No such consent to, or waiver of a breach hereof, whether express or implied shall constitute a consent to, waiver of, or excuse for any subsequent or different breach.

18.8 Headings Not Affecting Meaning. The descriptive headings of the various Sections and Articles of the Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

18.9 Third Parties. This Agreement is intended solely for the benefit of the Parties hereto. Except as otherwise expressly provided herein, nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

18.10 Severability. All provisions of this Agreement are severable. In the event any provision of this Agreement, or a portion thereof, is ruled void, invalid, unenforceable or contrary to public policy by a court of competent jurisdiction, then any remaining portion of such

provision and all other provisions of this Agreement shall survive and be applied and any invalid and unenforceable portion shall be construed or performed to preserve as much of the original words, terms, purpose and intent to the fullest extent permitted by law.

18.11 Cooperation. Upon the execution of this Agreement and thereafter, each Party to this Agreement agrees to do such things as may be reasonably requested by the other Party in order more effectively to consummate or document the transactions contemplated by this Agreement.

18.12 Relationship. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.

18.13 Confidentiality.

18.13.1 Each Party agrees that for a period of five (5) years from the date of termination of the Agreement it will not, without the written consent of the other Party or as otherwise provided herein, disclose Confidential Information to any third party (other than, when permitted by all applicable Legal Requirements, to affiliates or to consultants, advisors and lenders who need to know such information in connection with the performance of their duties or services for the disclosing Party or its affiliates), except to the extent that disclosure is required by law, or by a court or by an administrative agency having jurisdiction over the disclosing Party.

18.13.2 Seller intends to seek confidential treatment of the Confidential Information in this Agreement from FERC, and Buyer will provide reasonable cooperation in connection with such request. Notwithstanding the foregoing, the Parties acknowledge that certain Confidential Information may need to be disclosed in Seller's filings with FERC which may become publicly available.

18.14 Replacement Index. Whenever any published index or tariff is referenced herein, the Parties intend to track those costs as faithfully as commercially practicable. Should any such index or tariff be discontinued or no longer published, the Parties will cooperate in establishing substitute benchmarks through reference to equivalent indices or tariffs.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

“BUYER”

GULF POWER COMPANY

By: Robert G. Moore

Name: Robert G. Moore

Title: Vice President

“SELLER”

SOUTHERN POWER COMPANY

By: _____

Name: Douglas E. Jones

Title: Vice President

APPENDIX A APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX A APPENDIX A

..

APPENDIX B

APPENDIX C

APPENDIX D

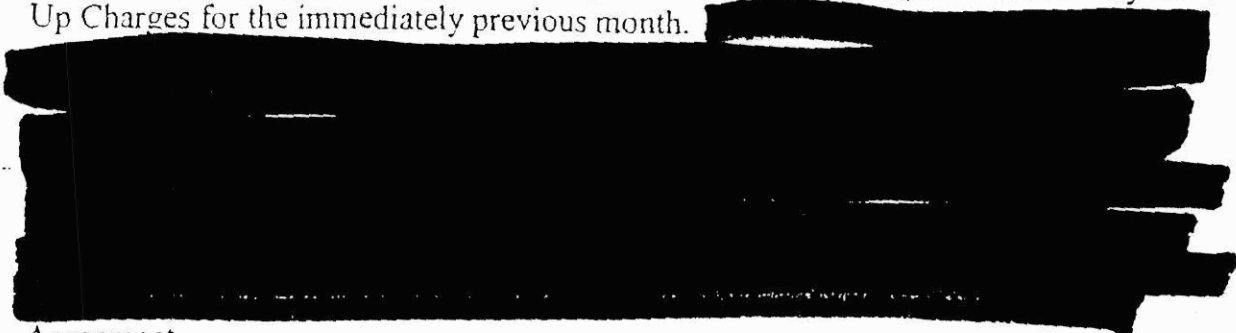
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APPENDIX F

BILLING PROCEDURES

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13 A. Capacity and Energy Billing Payment.

By the tenth (10th) day of each month during the Term of this Agreement, Seller shall send Buyer an invoice ("Invoice") stating, if applicable, the Monthly Capacity Payment, the Monthly Energy Payment, the Monthly Reservation Payment, and the Monthly Start-Up Charges for the immediately previous month.



Agreement.

All Invoices shall be due and payable by the receiving Party on or before the tenth (10th) day after such Party's receipt of such Invoice (the "Payment Due Date"). If any such Payment Due Date is not a Business Day, then the Payment Due Date shall be the next succeeding Business Day. Seller may render Invoices by means of facsimile or electronic mail, and receipt shall be deemed to have occurred upon transmission if confirmed in writing (by manual or machine-generated confirmation notice). Subject to the following provisions, the Party receiving an Invoice shall make payment to the other Party in accordance with such Invoices on or before the Payment Due Date in immediately available funds, through wire transfer of funds to an account designated by the other Party, or other means acceptable to the other Party. Each Invoice shall contain a statement explaining in reasonable detail how the Invoice payment amounts were calculated.

B. Billing Dispute and Final Accounting.

If a Party questions or contests the amount or propriety of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall make payment to the other Party of amounts not in dispute, but may withhold amounts disputed, in good faith, until after the settlement of such questions or contests in accordance with this section. A Party withholding any claimed amount shall give by the Payment Due Date written notice to the other Party of the grounds for withholding.

In the event that the correctness of any such amount is questioned or contested in writing by either Party, the other Party shall promptly review the questioned amount and shall, within fourteen (14) days of the notice, given written notice of any error in its

determination of amounts owed.

Each Party shall have until the end of one (1) year after the delivery of an Invoice to question or contest in writing the Invoice. After the one (1) year period has expired, neither Party may dispute the Invoice amount or payment thereunder.

C. Interest.

If either Party does not make a payment required by this Agreement on or before the Payment Due Date, the amount owed and not paid shall bear interest (compounded monthly) at the Interest Rate from the Payment Due Date until such payment, together with interest, is paid. If either Party makes a payment that is not required by this Agreement, the over payment amount shall bear interest (compounded monthly) at the Interest Rate from the date the over payment was received until such over payment, together with interest, is refunded. If payment by mail is acceptable to the invoicing Party, payment will be accepted without interest if such payment is postmarked on or before the Payment Due Date. If the Payment Due Date falls on a day other than a Business Day, the next succeeding Business Day shall be the last day on which payment can be made or postmarked without interest charged being incurred pursuant to this section.

D. Billing and Payment Records.

Until the end of one (1) year after its receipt of any Invoice, each Party shall make available to the other Party, and each Party may audit, such books and records of the other Party as are reasonably necessary for such Party to calculate the Monthly Capacity Payments, the Monthly Energy Payments or other amounts shown on such Invoice and thereby to verify the accuracy of the amounts billed. The Parties shall maintain such respective books and records in accordance with Generally Accepted Accounting Principles applicable from time-to-time.

EXHIBIT "C"

Line-by-Line/Field-by-Field Justification

Line(s)/Field(s)

Justification

Page 12, Lines 7 - 10, Unique Non-Price Term

Page 19, Lines 14 - 15, and 20-21, Price Term

Page 20, Lines 3 -5, 21, Price Term

Page 21, Lines 1 - 7, 13 - 16, Price/Risk Term

Page 22, Lines 13 - 15, Risk Allocation Term

Page 28, Lines 5 - 15, Risk/Price/Non-Price
Terms

Page 29, Lines 1 - 6, Price/ Non-Price Term

Appendix A Pages 1 - 4, All Lines, Price Term

Appendix B Pages 1 - 5, All Lines, Price Term

Appendix C Pages 1 - 4, All Lines, Non-Price
Term

Appendix D Pages 1 - 2, All Lines, Non-Price
Term

Appendix E Pages 1 - 2, All Lines, Non-Price
Term

Appendix F Page1, Lines 5 - 11, Price Term

Page 15, Lines 10 - 19

This price or non-price term of the contract is entitled to designation as confidential pursuant to Sections 366.093(3)(a), (d) and (e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraphs 2 and 3 of this Request.

This price or non-price term of the contract is entitled to designation as confidential pursuant to Sections 366.093(3)(a), (d) and (e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraphs 2 and 3 of this Request. While the general nature of the term contained in this section is public, the actual details have not been made public for the reasons stated in paragraphs 2 and 3 of this Request.