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ORIGINAL



August 1, 2001

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee Florida 32399-0870

RECEIVED-FPSC
01 JUL 32 AM 10:02
COMMISSION
CLERK

Dear Ms. Bayo:

RE: Docket No. 010827-EI

Enclosed are an original and fifteen copies of the following to be filed in the above docket.

1. Prepared Supplemental Direct Testimony and Exhibits of Ronnie R. Labrato. *09344-01*
2. Prepared Supplemental Direct Testimony and Exhibit of M.W. Howell. *09345-01*

Sincerely,

Susan D. Ritenour

APP _____
 CAF _____
 CMP _____
 COM *570* _____ Susan D. Ritenour
 CTR _____ Assistant Secretary and Assistant Treasurer
 ECR _____
 LEG *1* _____
 OPC _____
 PAI _____ Enclosures
 RGO _____
 SEC *1* _____ CC: Service List
 SER _____
 OTH _____

RECEIVED & FILED
RLM
FPSC-BUREAU OF RECORDS

1 GULF POWER COMPANY

2 Before the Florida Public Service Commission
3 Prepared Supplemental Direct Testimony of
4 Ronnie R. Labrato
5 Docket No. 010827-EI
6 Date of Filing: August 1, 2001

7 Q. Please state your name, business address, and occupation.

8 A. My name is Ronnie R. Labrato. My business address is One Energy
9 Place, Pensacola, FL 32520. I am Vice President, Chief Financial Officer
10 and Comptroller of Gulf Power Company.

11 Q. Are you the same Ronnie R. Labrato who has previously filed direct
12 testimony dated June 18, 2001, in this docket?

13 A. Yes.

14
15 Q. What is the purpose of your supplemental testimony in this proceeding?

16 A. I will address issues raised by the Florida Public Service Commission
17 (FPSC) Staff, the Office of Public Counsel, and the Florida Industrial
18 Power Users Group following the submittal of my direct testimony.

19
20 Q. Do you have any exhibits that contain information to which you will refer in
21 your testimony?

22 A. Yes, I have two exhibits which I am co-sponsoring with Mr. Howell. The
23 first of these two exhibits (Exhibit RRL/MWH-1) is a comparison of the
24 estimated non-fuel costs of the proposed purchased power arrangement
25 with Southern Power Company and rate base treatment of Smith Unit 3.

DOCUMENT NUMBER-DATE

09344 AUG-16

FPSC-COMMISSION CLERK

1 This document was included as Exhibit A, "Comparison of Purchase
2 Power Arrangement and Rate Base Treatment of Smith CC Unit," in the
3 Company's Request for Confidential Classification filed with the FPSC on
4 June 29, 2001 and was designated as document no. 08090-01 by the
5 Office of the Commission Clerk. The second of these two exhibits (Exhibit
6 RRL/MWH-2) is a letter agreement between Gulf Power and Southern
7 Power outlining the significant agreements and other documents that will
8 be signed as part of the transfer of Smith Unit 3 to Southern Power if
9 Gulf's request for cost recovery of the proposed purchased power
10 arrangement is ultimately approved.

11 Counsel: We ask that Exhibits RRL/MWH-1 and RRL/MWH-2, co-
12 sponsored by Mr. Labrato and Mr. Howell, be marked as
13 Exhibit No. __ (RRL/MWH-1) and Exhibit No. __
14 (RRL/MWH-2).

15
16 Q. Please generally describe what is shown in the top portion of Exhibit
17 RRL/MWH-1 (lines 5 through 21).

18 A. The top portion of the exhibit shows the calculation of estimated revenue
19 requirements assuming Smith Unit 3 is included in rate base. The time
20 period represented is the first ten years of the unit's estimated depreciable
21 life of thirty years. Annual revenue requirements include the projected
22 carrying costs on the average net investment for Smith Unit 3, including
23 depreciation expense, and projected costs for operating and maintenance
24 (O&M) expense and taxes. Line 21 of the rate base calculation shows a
25

1 net present value of approximately \$300 million for the estimated annual
2 revenue requirements for years 1 through 10 under traditional rate base
3 treatment of Smith Unit 3.

4
5 Q. Please generally describe what is shown in the bottom portion of Exhibit
6 RRL/MWH-1 (lines 22 through 32).

7 A. The bottom portion of the exhibit represents the calculation of Gulf's
8 estimated payment obligations under the proposed purchased power
9 arrangement with Southern Power. The time period represented is the
10 10-year term under the proposed purchased power arrangement for the
11 sale of all of the capacity of Smith Unit 3 to Gulf Power. The estimated
12 annual capacity payments are calculated by multiplying the annual
13 capacity price designated in the purchased power agreement (PPA) by
14 the expected annual megawatts of capacity available from Smith Unit 3.
15 The estimated territorial variable O&M cost is calculated by multiplying the
16 estimate for megawatt hours of territorial use by the variable O&M rate
17 identified in the PPA. Line 32 of the PPA calculation shows the net
18 present value for the estimated annual payments to Southern Power for
19 years 1 through 10 under the proposed purchased power arrangement.

20
21 Q. What conclusion can be made after comparing the net present value
22 calculations shown in Exhibit RRL/MWH-1?

23 A. The comparison of the net present values of the estimated annual
24 revenue requirements of rate base treatment of Smith Unit 3 and the
25 estimated annual payments to Southern Power of the proposed

1 purchased power arrangement shows that the projected costs to Gulf's
2 customers in either scenario is approximately the same.

3 The benefits to Gulf's customers of the proposed purchased power
4 arrangement relate to the 10-year term of the PPA compared to the
5 estimated depreciable life of Smith Unit 3 of thirty years, and the transfer
6 of risks associated with ownership, such as unexpected cost increases, to
7 Southern Power. At the end of the 10-year term of the PPA, Gulf's
8 customers will not have any further obligation to pay for Smith Unit 3 and
9 will therefore be in a position to take advantage of any benefits that may
10 result from changes in the wholesale electric generation market that are
11 anticipated during the next ten years. Gulf's ownership of Smith Unit 3 and
12 inclusion of associated costs in Gulf's rate base would result in a 30-year
13 commitment by Gulf and its customers. The proposed purchased power
14 arrangement allows for proper cost recovery the first ten years of the
15 asset's life without committing Gulf and its customers to capacity costs
16 from this investment for the next twenty or more years of the asset's life.
17 In other words, the PPA with Southern Power, if approved, provides Gulf
18 and its customers with a high degree of flexibility that is not otherwise
19 possible with traditional rate base treatment of new capacity.

20
21 Q. Should Gulf Power be required to obtain the FPSC's consent before any
22 modifications to the purchased power agreement are submitted to the
23 FERC by Gulf or Southern Power?

24 A. Yes. That is one of the reasons Gulf chose to seek the FPSC's approval
25 of the proposed purchased power arrangement first, before taking it to the

1 FERC. I should point out that Gulf Power does not intend to initiate or
2 agree to any modifications to the purchased power agreement with
3 Southern Power. But if modifications become appropriate, Gulf agrees
4 that the FPSC should have an opportunity to review such modifications for
5 prudence before the changes are put into effect.

6

7 Q. Should the FPSC also have an opportunity to review any changes in price
8 under the PPA that result from operation of any provisions of the
9 contract?

10 A. Yes. Although the capacity price is essentially fixed for the 10-year life of
11 the capacity purchase portion of the contract, there are some limited
12 circumstances outlined in the PPA that would result in a price adjustment
13 for the remaining term. Gulf would expect that such changes to the
14 amounts paid under the PPA, as provided for in the contract, would be
15 subject to review by the Commission to ensure that the terms of the
16 contract have been properly and prudently applied. Unlike modifications
17 to the contract previously discussed, these changes are provided for
18 under the terms of the contract itself.

19

20 Q. Have Gulf Power's retail customers been charged to date with any
21 construction costs associated with Smith Unit 3?

22 A. No. Smith Unit 3 is under construction and is expected to begin
23 commercial operation by June 1, 2002. Costs incurred to date associated
24 with Smith Unit 3 are included in the balance of construction work in
25 progress (CWIP). Since the Smith combined cycle project is eligible for

1 Allowance for Funds Used During Construction, it has been included in
2 interest bearing CWIP and is excluded from Gulf's rate base during the
3 construction period. However, there is \$119,000 of existing land at Plant
4 Smith being used for Smith Unit 3 that has been included in rate base in
5 the monthly surveillance reports and, if the PPA is approved, will be
6 transferred to Southern Power.

7

8 Q. If this Commission grants Gulf's request and approves the proposed
9 purchased power arrangement for cost recovery, what happens next?

10 A. As indicated in our petition, the immediate next step is to obtain approval
11 of the PPA from the FERC. After we have received approval from both
12 this Commission and the FERC, then we will take the steps necessary to
13 actually transfer ownership of the construction work in progress that will
14 become Smith Unit 3. To accomplish this transfer, Gulf Power and
15 Southern Power will each sign the documents that are attached to the
16 letter agreement contained in Exhibit RRL/MWH-2. Included in these
17 documents are the Asset Purchase and Sale Agreement and associated
18 agreements, the Interconnection Agreement, and the Operating
19 Agreement. It is the stated intention of the two contracting parties to sign
20 these and any other necessary agreements once all regulatory approvals
21 are obtained.

22

23 Q. Does this conclude your testimony?

24 A. Yes.

25

Florida Public Service Commission
Docket No. 010827-EI
Gulf Power Company
Witness: Ronnie R. Labrato/M. W. Howell
Exhibit No. _____(RRL/MWH-1)

EXHIBIT RRL/MWH-1

Comparison of Purchase Power Arrangement and Rate Base Treatment of Smith CC Unit

On file with the Commission as document number 08090-01, subject to a pending request for confidential classification filed June 29, 2001.

Florida Public Service Commission
Docket No. 010827-EI
Gulf Power Company
Witness: Ronnie R. Labrato/M. W. Howell
Exhibit No. _____(RRL/MWH-2)

EXHIBIT RRL/MWH-2

Letter Agreement between Gulf Power Company and Southern Power Company

LETTER AGREEMENT

Gulf Power Company and Southern Power Company have negotiated the following agreements to carry out the intent of the parties to transfer and provide for the operation of Smith Unit 3. The execution of these agreements by Gulf Power Company and Southern Power Company is contingent on the satisfaction of the condition precedent set forth in Article 2 of the PPA dated June 8, 2001. The undersigned agree that upon the condition precedent set forth in Article 2 of the PPA being satisfied, the attached agreements shall be executed by both of the undersigned parties.

A list of the agreements is as follows:

- Exhibit A: Asset Purchase and Sale Agreement
- Exhibit B: Assignment and Assumption Agreement
- Exhibit C: Bill of Sale
- Exhibit D: Interconnection Agreement
- Exhibit E: Operating Agreement

Unexecuted copies of these agreements are attached hereto as exhibits identified as shown in the preceding list.

SOUTHERN POWER COMPANY

By: 

Title: Vice President - Southern Power

Date: July 30, 2001

GULF POWER COMPANY

By: 

Title: VICE PRESIDENT, CFO & COMPTROLLER

Date: July 31, 2001

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of _____, and to be effective as of the close of business on _____, 2001, is by and between **Gulf Power Company**, a Maine corporation (the "Seller"), and **Southern Power Company**, a Delaware corporation (the "Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, each of Buyer and Seller is a wholly-owned subsidiary of The Southern Company ("Southern Company"); and

WHEREAS, Seller is currently in the process of constructing an approximately 575 MW combined-cycle electric generating unit located in Bay County, Florida and currently known by the Parties as Smith 3 (as hereinafter defined); and

WHEREAS, Buyer desires to purchase, and Seller desires to sell, all of the Seller's interest in Smith 3;

NOW, THEREFORE in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I.
DEFINITIONS

1.1. **Definitions.** The capitalized terms used in this Agreement and not otherwise defined in the body hereof shall have the meanings set forth on Exhibit A hereto.

ARTICLE II
PURCHASE AND SALE

2.1. **The Sale.** Upon the terms contained in this Agreement, at the Closing, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances) all of Seller's rights, title and interest in, to and under the real and personal property, tangible or intangible, constituting Smith 3 or used principally in connection with Smith 3 (collectively, the "Assets"), including, without limitation, the following assets owned or leased by Seller:

(a) all real property relating to the Assets, including, without limitation, all buildings, structures, facilities, fixtures and other improvements thereon, and all mineral rights and reserves located thereon or thereunder, together with all waterlines, rights of way, uses, licenses, easements, hereditaments and tenements and all appurtenances thereto (the "Real Property");

(b) all inventories of fuels, supplies, materials and spare parts located on or in transit to the Assets or otherwise included in the net book value of the Assets on the Closing Date;

(c) all machinery, equipment, furniture and other personal property owned by Seller related to the Assets, and located on the Real Property on the Closing Date, together with all the personal property of Seller to be used principally in the operation of the Assets whether or not located on the Real Property;

(d) the Seller's Agreements;

(e) all Operating Permits and Environmental Permits, to the extent the same are not retained by Seller as operator of the Assets pursuant to the Operating Agreement;

(f) all books, operating records, engineering or design plans, blueprints, specifications, procedures and similar items relating to the Assets;

(g) all unexpired, transferable warranties received by Seller from third parties with respect to any of the Assets as of the Closing Date;

(h) all intellectual property owned by Seller and relating exclusively to the Assets, including, without limitation, the rights of Seller in and to the name of Smith 3;

(i) all rights of Seller in and to any causes of action against third parties relating to any Asset or Assumed Liability;

(j) all guarantees and indemnification rights relating to the Assets and the Assumed Liabilities;

(k) all work-in-progress on the Assets and the Interconnection Facilities; and

(l) any refund or credit related to real or personal property Taxes paid prior to the Closing Date in respect of the Assets, whether such refund is received as a payment or as a credit against future real or personal property Taxes.

2.2. Assumed Liabilities. On the Closing Date, Buyer shall deliver to Seller the Assignment and Assumption Agreement, pursuant to which Buyer shall assume and agree to discharge all of the following liabilities and obligations of Seller that relate to the Assets in accordance with the terms and subject to the conditions thereof:

(a) all liabilities and obligations of Seller arising after the Closing Date under (i) the Seller's Agreements, (ii) the Operating Permits, and (iii) the Environmental Permits; except in each case, to the extent such liabilities and obligations, but for a breach or default by Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arise out of any such breach or default;

(b) all liabilities and obligations associated with the Assets in respect of Taxes for which Buyer is liable;

(c) any Environmental Liability arising after the Closing Date, except for Environmental Liabilities for which Seller shall be responsible under any Related Agreement or Section 7.1(a) hereof;

(d) capital expenditures incurred pursuant to Operating Agreement for which Buyer shall be responsible under the terms and conditions thereof;

(e) (i) any Tax relating to any period after the Closing Date that may be imposed on the ownership, sale, operation or use of the Assets relating to any period after the Closing Date; (ii) real or personal property Taxes relating to any period after the Closing Date; and (iii) any recording fees on Taxes that may be imposed as a result of the transaction contemplated hereby; and

(f) Permitted Encumbrances.

It is understood and agreed that nothing in this Section 2.2 shall constitute or be deemed to be a waiver or release of any claims arising, or that may arise out of any agreement between Buyer and Seller.

ARTICLE III PURCHASE PRICE

3.1. Purchase Price. The purchase price for the Assets shall be an amount equal to the net book value of the Assets, as of the Closing Date (the "Purchase Price").

3.2. Allocation of Purchase Price. The Parties shall allocate the Purchase Price among the items constituting the Assets within ninety (90) days after the Closing Date. Each Party shall file all federal, state and local tax returns, in accordance with any allocation agreed to pursuant to this Section 3.2, reporting the transactions contemplated by the Agreement for federal income tax and all other tax purposes in a manner consistent with any such agreed-upon allocation.

3.3. Proration. The Parties agree that, except as otherwise provided in any Related Agreement, all of the items normally prorated relating to the business and operation of the Assets shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period through the Closing Date, and Buyer liable to the extent such items relate to periods subsequent to the Closing Date.

ARTICLE IV THE CLOSING

4.1. Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the sale of the Assets contemplated by this

Agreement (the “Closing”) will take place at such place and time as the Parties may agree. The date and time at which the Closing actually occurs is referred to herein as the “Closing Date.”

4.2. Deliveries by Seller. At the Closing, Seller shall deliver the following to Buyer:

- (a) The Bill of Sale, duly executed by Seller;
- (b) All consents, waivers or approvals obtained or required by Seller as of the Closing with respect to the transfer of the Assets or the consummation of the transactions contemplated by this Agreement;
- (c) Each Related Agreement, duly executed by Seller or each Affiliate of Seller party thereto;
- (d) The Deed duly executed and acknowledged by Seller and in recordable form;
- (e) The Assignment and Assumption Agreement, duly executed by Seller; and
- (f) Such other agreements, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required by Buyer in connection herewith.

4.3. Deliveries by Buyer. At the Closing, Buyer shall deliver the following to Seller:

- (a) The Purchase Price, by wire transfer of immediately available funds or such other means as are agreed upon by Seller and Buyer;
- (b) The Assignment and Assumption Agreement, duly executed by Buyer;
- (c) Each Related Agreement, duly executed by Buyer; and
- (d) Such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required by Seller in connection herewith.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

5.1. Consents and Approvals; No Violation. (a) Neither the execution and delivery nor the performance of this Agreement by Seller will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws of Seller; (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except where the failure to obtain such consent, approval, authorization or

permit, or to make such filing or notification, would not, individually or in the aggregate, have a Material Adverse Effect; (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Seller or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a Material Adverse Effect; provided, however, that Buyer acknowledges and agrees that it is purchasing the Assets subject to the terms and conditions of the Indenture (subject to Section 8.15 hereof); or (iv) violate any Law applicable to Seller, or any of its assets, which violation would, individually or in the aggregate, have a Material Adverse Effect.

(b) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the execution, delivery or performance of this Agreement by Seller, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, will not, individually or in the aggregate, have a Material Adverse Effect.

5.2 Entire Assets. The Assets include all of the assets that, individually or in the aggregate, are used in, or are necessary for, the business or operation of Smith 3.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE V, THE ASSETS ARE BEING SOLD AND TRANSFERRED “AS IS, WHERE IS,” AND SELLER IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SUCH ASSETS, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

6.1. Consents and Approvals: No Violation.

(a) Neither the execution and delivery, nor the performance of this Agreement by Buyer will (i) conflict with or result in any breach of any provision of the Articles of Incorporation and Bylaws of Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not, individually or in the aggregate, have a Material Adverse Effect, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or

provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party, or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained, or which would not, individually or in the aggregate, have a Material Adverse Effect, or (iv) violate any Law applicable to Buyer, or any of its Assets, which violation would, individually or in the aggregate, have a Material Adverse Effect.

(b) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the execution, delivery or performance of this Agreement by Buyer, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, in the aggregate, would not have a material adverse effect on any of Buyer's material obligations hereunder.

ARTICLE VII INDEMNIFICATION

7.1. Indemnification.

(a) Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, demands or suits (by any Person), losses, liabilities, damages (excluding consequential and special damages), obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) (each, an "Indemnifiable Loss"), asserted against or suffered by Buyer relating to, resulting from or arising out of (i) any breach by Seller of any covenant or agreement of Seller contained in this Agreement, (ii) any liability relating to the Assets (including any Environmental Liability) arising from Seller's activities on or from Seller's use of any or all of the Assets on or before the Closing Date, or (iii) any breach by Seller of any representation or warranty set forth in Article V.

(b) Buyer shall indemnify, defend and hold harmless Seller from and against any and all Indemnifiable Losses asserted against or suffered by Seller relating to, resulting from or arising out of (i) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement, (ii) after the Closing, the Assumed Liabilities or (iii) any breach by Buyer of any representation or warranty set forth in Article VI.

(c) The expiration, termination or extinguishment of any covenant, representation, warranty or agreement shall not affect the Parties' obligations under this Section 7.1 if the Person entitled to receive indemnification hereunder provided the Person required to provide indemnification hereunder (the "Indemnifying Party") with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(d) The rights and remedies of Seller and Buyer under this Article VII are exclusive and in lieu of any and all other rights and remedies which Seller and Buyer may have under this

Agreement or otherwise for monetary relief with respect to (i) any breach or failure to perform any covenant or agreement set forth in this Agreement, (ii) the Assumed Liabilities, and (iii) the representations and warranties of Seller contained in Article V and the representations and warranties of Buyer contained in Article VI. The indemnification obligations of the Parties set forth in this Article VII apply only to matters arising out of this Agreement and do not extend to matters arising out of any of other agreement, including, without limitation, the Related Agreements. Any indemnifiable loss arising under or pursuant to any other agreement shall be governed by the indemnification obligations, if any, contained in such other agreement.

ARTICLE VIII.
MISCELLANEOUS PROVISIONS

8.1. Amendment and Modification. Subject to applicable Law, this Agreement may be amended, modified or supplemented only by written agreement of Seller and Buyer.

8.2. Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefit thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

8.3. No Survival. Each and every representation, warranty and covenant contained in this Agreement (other than the covenants and obligations contained in Sections 3.2 and 3.3 and in Article VII, which covenants shall expire in accordance with their terms) shall expire with, and be terminated and extinguished by the consummation of the sale of the Assets and the transfer of the Assumed Liabilities pursuant to this Agreement, and such representations, warranties and covenants shall not survive the Closing Date; and none of Seller, Buyer or any officer, director, trustee or Affiliate of any of them shall be under any liability whatsoever with respect to any such representation, warranty or covenant.

8.4. No Consequential Damages. Neither Party shall be entitled to recover from the other Party (including any Indemnifying Party) any amount in excess of the actual compensatory damages, court costs and reasonable attorney's and other advisor fees suffered by such Party in connection with or with respect to this Agreement. Each Party waives any right to recover punitive, incidental, special, exemplary and consequential damages arising in connection with or with respect to this Agreement.

8.5. Notices. All notices, consents, approvals, requests, invoices or statements ("Notices") provided for or permitted to be given under this Agreement must be in writing and delivered at the address or fax number for the recipient Party as set forth below or at such other address or facsimile number as the recipient Party may designate by notice to the other Party in accordance with this Section 8.5. Notices shall be (i) mailed by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) faxed (with successful transmission of such Notice confirmed by the fax

machine of the sending Party). Such Notices shall be deemed to be duly given and received (i) upon receipt if mailed by registered or certified U.S. Mail with return receipt requested, (ii) when delivered if personally delivered (including delivery by private courier services), unless delivered after 5:00 p.m. local time for the recipient Party, in which case such delivery shall be deemed to be received on the next business day, or (iii) when faxed if the sending Party's fax machine confirms successful transmission of such Notice, unless faxed after 5:00 p.m. local time for the recipient Party, in which case such delivery shall be deemed to be received on the next business day.

(a) If to Seller, to:

Gulf Power Company
One Energy Place
Pensacola, FL 32520
Attention: President

(b) If to Buyer, to:

Southern Power Company
270 Peachtree Street, N.E.
Atlanta, GA 30303
Attention: President

8.6. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto, without the prior written consent of the other Party. Notwithstanding the foregoing, Buyer may assign, transfer, pledge or otherwise dispose of its rights and interests hereunder to any trustee or lender providing financing or refinancing in respect of the Buyer's acquisition of the Assets, including upon and pursuant to the exercise of remedies with respect to such financing or refinancing, or by way of assignments, transfers, pledges, or other dispositions in lieu thereof, and in either case upon receipt of notice by Seller from Buyer of any such assignment, such assignee shall be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Buyer" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the Parties hereto or such assignee; provided, however, that no such assignment shall relieve or discharge the Buyer from any of its obligations hereunder. Seller shall, at Buyer's expense, reasonably cooperate with Buyer, such Affiliates of Buyer and their respective trustees and lenders from time to time in connection with any such assignment, transfer, pledge or other disposition of rights and interests hereunder.

8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida (regardless of the Laws that might otherwise govern under applicable Florida principles of conflicts of law) as to all matters of validity, construction, interpretation, effect, performance and remedies.

8.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of any such counterpart, or any facsimile transmission thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

8.9 Interpretation. The Article, Section, Schedule and Exhibit headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

8.10 Schedules and Exhibits. All Exhibits and Schedules referred to herein are intended to be and hereby are specifically incorporated herein by reference and made a part of this Agreement.

8.11 Entire Agreement. This Agreement and the Related Agreements embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement and supersede any and all prior oral or written expressions, understandings or agreements between the Parties with respect thereto.

8.12 No Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Person to any Party, nor give any third Person any right of subrogation or action against any Party.

8.13 No Relationship. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or any other entity or similar legal relationship between the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to either Party. Neither Party is or shall act as or be the agent or representative of the other Party.

8.14 Severability. If any provision hereof is held invalid or unenforceable by any governmental authority of competent jurisdiction, or as a result of future legislative action, this holding or action shall be strictly construed and shall not affect the validity or effect of any other provision hereof, and the Parties shall endeavor in good faith to replace such invalid or unenforceable provision with a valid and enforceable provision which achieves the purposes intended by the Parties to the greatest extent permitted by Law.

8.15 Indenture. Seller hereby covenants and agrees that it will obtain a release of the Indenture with respect to the Assets within ninety (90) days of the Closing Date.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

GULF POWER COMPANY

By: _____

Name: _____

Title: _____

SOUTHERN POWER COMPANY

By: _____

C.B. Harreld
Vice President, Comptroller and Chief Financial Officer

Exhibit A

Definitions

(a) As used in the Agreement to which this Exhibit A is attached, the following terms have the meanings specified in this Section (a).

“Affiliate” has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities and Exchange Act of 1934, as amended.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement pursuant to which Seller assigns all of its rights and Buyer assumes and agrees to pay and perform certain obligations and liabilities of Seller associated with the Assets, each substantially in the form of Exhibit B hereto.

“Smith 3” means the combined-cycle electric generation unit, consisting of two 7241 General Electric gas turbines, two Vogt Nem triple pressure HRSGs, and a General Electric D11 steam turbine, currently under construction located in Bay County, Florida and known to the Parties as Smith 3, with an expected capacity of approximately 574 MW and related interconnection, balance of plant equipment, communications and other facilities necessary to interconnect the electric generation facilities to Seller’s transmission system.

“Bill of Sale” means the Bill of Sale to be delivered at the Closing with respect to the Assets which constitute personal property and which are to be transferred at the Closing, substantially in the form of Exhibit C hereto.

“CERCLA” means the Federal Comprehensive Environmental Response, Compensation and Liability Act.

“Deed” means the Deed to be delivered at the Closing with respect to the Assets which constitute Real Property and which are to be transferred at the Closing substantially in the form of Exhibit D hereto.

“Encumbrances” means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, conservation easements, deed restrictions, encumbrances and charges of any kind.

“Environmental Condition” means the presence or release of a Hazardous Substance (other than a naturally-occurring substance) on or in environmental media, or structures on any Real Property (including the presence in surface water, groundwater, sediment, land, surface and subsurface strata, or ambient or indoor air), including the subsequent movement or migration of any such Hazardous Substance, regardless of when such presence or release occurred or is discovered.

“Environmental Laws” mean all federal, state or local civil and criminal Laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative

orders or common law relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, Laws relating to releases or threatened releases of Hazardous Substances (including, without limitation, releases to ambient or indoor air, surface water, groundwater, sediment, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport, disposal or handling of Hazardous Substances. “Environmental Laws” include, without limitation, CERCLA (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Surface Mine Conservation and Reclamation Act (30 U.S.C. §§ 1251-1279), and regulations adopted pursuant thereto, and analogous state and local Laws adopted pursuant thereto.

“Environmental Liability” means any liability (including, without limitation, investigatory costs, cleanup costs, removal costs, remedial costs, response costs, compliance costs, natural resource damages, property damage, personal injury, fines, penalties, attorney fees and related costs) arising under any Environmental Law or relating to any Environmental Condition or Hazardous Substance (including common law liabilities relating to Environmental Conditions and Hazardous Substances), whether such liability is known or unknown, contingent or accrued, including but not limited to: (i) any violation or alleged violation of any Environmental Law or Environmental Permit; (ii) property damage or natural resource damage arising from Environmental Conditions or releases of Hazardous Substances at, on, in, under, adjacent to, or migrating from the Assets; (iii) any remediation of Environmental Conditions or Hazardous Substances that are present or have been released at, on, in, adjacent to or migrating from the Assets; (iv) any bodily injury or loss of life arising from Environmental Conditions or releases of Hazardous Substances at, on, in, under, adjacent to or migrating from the Assets; (v) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or release at any off-site location, or arising from the arrangement for such activities, of Hazardous Substances generated in connection with the development or construction of the Assets; and (vi) any remediation of any Environmental Condition or any release of any Hazardous Substance arising from the storage, transportation, treatment, disposal, discharge, recycling or release, at any off-site location, or arising from the arrangement for such activities, of Hazardous Substances generated in connection with the development or construction of the Assets.

“Environmental Permits” mean any permits, registrations, certificates, certifications, licenses and authorizations, consents and approvals of Governmental Authorities required under Environmental Laws with respect to the Assets on the Real Property.

“Governmental Authority” means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority or arbitrator with authority to bind a party.

“Hazardous Substances” means (a) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definitions, in environmental laws of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants” or “pollutants” or words of similar meaning and regulatory effect; or (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

“Indenture” means that certain Indenture dated as of _____ between Seller and _____, as successor Trustee.

“Interconnection Agreement” means the Interconnection Agreement, substantially in the form of Exhibit E hereto.

“Interconnection Facilities” means transmission, distribution, substation and communication facilities and related support equipment that are generally located at or adjacent to Smith 3 and are necessary to connect Smith 3 to the Seller’s transmission system.

“Laws” means all court decisions, case law, statutes, rules, regulations, ordinances, orders and codes of a Governmental Authority.

“Material Adverse Effect” means any effect or effects on the Assets that, individually or in the aggregate, are materially adverse to the condition (financial or otherwise) of the Assets, or the Buyer’s ability to finance, own or operate the Assets, including, without limitation, (i) any effect resulting from any action of the Governmental Authority applicable generally to the owners and operators of electric generating facilities nationally or in the State of Florida, (ii) any effect resulting from changes in the national, regional or local wholesale or retail markets for electric power, (iii) any effect resulting from changes in the national, regional or local markets for any fuel used at the Assets, or (iv) any effect resulting from changes in the national, regional or local electric transmission or distribution systems; provided, however, that “Material Adverse Effect” shall not include (i) any effect, the adverse impact of which is cured or remedied by Seller before the Termination Date, (ii) any effect on the Assets affecting only Seller and not Buyer or the value of the Assets to Buyer, or (iii) any effect on the Assets resulting solely from the federal or state regulatory status of Buyer or any of its Affiliates.

“Operating Agreement” means the Operating Agreement to be entered into by Buyer (as owner) and Seller (as operator) at the Closing, substantially in the form of Exhibit F hereto.

“Operating Permits” means those permits, licenses and other governmental authorizations that are necessary to operate the Assets, other than the Environmental Permits.

“Permitted Encumbrances” means (i) Encumbrances created by reservations or conveyances of appropriate easements for power lines, substations and access; (ii) Encumbrances existing at the time of the purchase of the Real Property by Seller; (iii) Encumbrances incurred in connection with Seller’s purchase of properties or assets after the date hereof securing all or a

portion of the purchase price therefor; (iv) statutory liens for current taxes or assessments not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings; (v) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Seller or the validity of which are being contested in good faith by appropriate proceedings; (v) zoning, entitlement, conservation restriction and other land use and environmental regulations by governmental authorities; (vi) such other liens, imperfections in or failure of title, charges, easements, restrictions and encumbrances which do not materially detract from the value of the Assets or materially interfere with the intended use of the Assets and do not, individually or in the aggregate, have a Material Adverse Effect; and (viii) the Indenture.

“Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental entity (or any department or agency thereof), or other form of entity.

“Related Agreements” means the Interconnection Agreement and the Operating Agreement.

“Seller’s Agreements” means any and all contracts, agreements, commitments, understandings, purchase orders, award letters or similar undertakings which have been entered into by or issued by or to Seller in connection with Smith 3 or the ownership, construction, maintenance or operation thereof, including, without limitation, those agreements set forth on Exhibit G, and all other general intangibles associated with Smith 3.

“Taxes” means all taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state or local or foreign taxing authority, including, but not limited to, income, gross receipts, license, stamp, occupancy, water, excise, property, sales, transfer, use, franchise, payroll, unemployment, withholding, social security or any other taxes of any kind whatsoever, including any interest, penalties or additions attributable thereto.

(b) Each of the following terms has the meaning specified in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement	Recitals
Assets	2.1
Assumed Liabilities	2.2
Buyer	Recitals
Closing	4.1
Closing Date	4.1
Indemnifiable Loss	7.1(a)
Indemnifying Party	7.1(c)
Notices	8.5
Parties	Recitals
Party	Recitals
Purchase Price	3.1
Real Property	2.1(a)

Seller
Southern Company

Recitals
Recitals

Exhibit B

Assignment and Assumption Agreement

Exhibit C

Bill of Sale

Exhibit D

Deed

Exhibit E

Interconnection Agreement

Exhibit F

Operating Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (the "**Agreement**") is dated as of the _____ day of _____, 2001, to be effective as of the close of business on _____ day of _____, 2001, by and between **GULF POWER COMPANY**, a Maine corporation ("**Assignor**"), and **SOUTHERN POWER COMPANY**, a Delaware corporation ("**Assignee**").

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase and Sale Agreement dated _____ day of _____, 2001, (the "**Umbrella Agreement**"), providing for, among other things the sale of Assignor's interest in Smith 3 (as defined in the Umbrella Agreement) from Assignor to Assignee, the assignment by Assignor to Assignee of certain contracts, permits, licenses, liabilities, assets and similar items and undertakings related to Smith 3 and the assumption of same by Assignee; and

WHEREAS, Assignor and Assignee now desire to carry out the intent and purposes of the Umbrella Agreement by the execution and delivery of this instrument evidencing the assignment by Assignor to Assignee of those certain of such contracts, permits, licenses, liabilities, assets and similar items and undertakings that are described herein and the assumption of same (and their associated liabilities) by Assignee.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor does hereby sell, transfer, convey, assign and deliver to Assignee all of the right, title and interest of Assignor in, to and under the Seller's Agreements (as defined in the Umbrella Agreement) listed on Schedule 1 including, without limitation, all claims, warranties and guarantees in, and all claims for damages arising under, such Seller's Agreements and the right to compel performance of the terms of such Seller's Agreements, as well as all other general intangibles associated with Smith 3;

2. Assignee does hereby accept all of the right, title and interest of Assignor in, to and under the Seller's Agreements assigned by Assignor in paragraph 1, and does hereby assume and agree to pay, perform and discharge promptly and fully when and as required all of the liabilities of Assignee under, in relation to and derived from such Seller's Agreements.

3. The parties hereto agree to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, instruments, assignments, transfers, and assurance as may be required in order to carry out the intent of this Agreement.

4. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Agreement as of the day and year first above written.

“Assignor”

GULF POWER COMPANY

By: _____

Name: _____

Title: _____

“Assignee”

SOUTHERN POWER COMPANY

By: _____

C.B. Harreld

Vice President, Comptroller and Chief Financial Officer

BILL OF SALE

FOR VALUE RECEIVED, and in further consideration of the mutual covenants and conditions set forth in, and pursuant to the terms of that certain Asset Purchase and Sale Agreement to which this Bill of Sale is attached as Exhibit C (the “**Purchase Agreement**”), GULF POWER COMPANY, a Maine corporation (“**Seller**”), hereby grants, conveys, sells, transfers, assigns and sets over unto SOUTHERN POWER COMPANY, a Delaware corporation (“**Purchaser**”), all of Seller’s rights, title and interest in the Assets (as defined in the Purchase Agreement), including, without limitation, the following assets owned or leased by Seller (unless otherwise defined herein, all capitalized terms shall have the respective meanings assigned to such terms in the Purchase Agreement):

- (a) all inventories of fuels, supplies, materials and spare parts located on or in transit to the Assets or otherwise included in the net book value of the Assets on the Closing Date;
- (b) all machinery, equipment, furniture and other personal property owned by Seller related to the Assets, and located on the Real Property on the Closing Date, together with all the personal property of Seller to be used principally in the operation of the Assets whether or not located on the Real Property;
- (c) the Seller’s Agreements;
- (d) all Operating Permits and Environmental Permits, to the extent the same are not retained by Seller as operator of the Assets pursuant to the Operating Agreement;
- (e) all books, operating records, engineering or design plans, blueprints, specifications, procedures and similar items relating to the Assets;
- (f) all unexpired, transferable warranties received by Seller from third parties with respect to any of the Assets as of the Closing Date;
- (g) all intellectual property owned by Seller and relating exclusively to the Assets, including, without limitation, the rights of Seller in and to the name of Smith Unit 3;
- (h) all rights of Seller in and to any causes of action against third parties relating to any Asset or Assumed Liability;
- (i) all guarantees and indemnification rights relating to the Assets and the Assumed Liabilities; and
- (j) any refund or credit related to real or personal property Taxes paid prior to the Closing Date in respect of the Assets, whether such refund is received as a payment or as a credit against future real or personal property Taxes.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V OF THE PURCHASE AGREEMENT, THE ASSETS ARE BEING SOLD AND TRANSFERRED "AS IS, WHERE IS," AND SELLER IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SUCH ASSETS, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

TO HAVE AND TO HOLD FOREVER the above described property unto Purchaser, for the use and benefit of Purchaser and its successors and assigns on the following terms and conditions:

1. This Bill of Sale is made pursuant to the terms of the Purchase Agreement and is entitled to all benefits thereof.
2. Each of the parties hereto hereby agrees to promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party may reasonably require from time to time for the purpose of giving effect to the Purchase Agreement and this Bill of Sale.
3. As to any of the Assets the title to which may not have been conveyed to Purchaser by virtue of this Bill of Sale or any documents executed and delivered pursuant to the previous paragraph, Seller shall hold the same in trust for Purchaser, its successors and assigns, to convey, assign and transfer the same as Purchaser may from time to time direct.
4. This Bill of Sale shall be binding upon, inure to the benefit of and be enforceable by Seller and Purchaser and their respective successors and assigns.

(signatures on the following page)

IN WITNESS WHEREOF, Seller has caused its duly authorized representative to execute and deliver this Bill of Sale to be effective as of the close of business on

_____.

GULF POWER COMPANY

By: _____

Name: _____

Title: _____

Accepted and agreed to as of
the ___ day of _____, _____:

SOUTHERN POWER COMPANY

By: _____

C.B. Harreld
Vice President, Comptroller and Chief Financial Officer

INTERCONNECTION AGREEMENT

By and Between

SOUTHERN POWER COMPANY

and

GULF POWER COMPANY

for

PLANT LANSING SMITH COMBINED CYCLE UNIT 3

Dated as of _____, 2001

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APPENDIX A INTERCONNECTION PROCEDURES

APPENDIX B SPECIFICATIONS TO INTERCONNECTION AGREEMENT

APPENDIX C ESTIMATED CONSTRUCTION COSTS

INTERCONNECTION AGREEMENT

This Interconnection Agreement (“Agreement”) is made and entered into on July __, 2001 by and between Southern Power Company, organized and existing under the laws of the State of Delaware and having its principal place of business at 600 North 18th Street, Birmingham, Alabama 35203 (hereinafter referred to as the “Generator”), and Gulf Power Company, a corporation organized and existing under the laws of the State of Maine and having its principal place of business at 500 Bayfront Parkway, Pensacola, Florida 32501 (hereinafter referred to as “Gulf Power”). Generator and Gulf Power may be hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Generator desires to engage in the interconnected operation of Generator's generating facility with the transmission facilities of the Gulf Power Electric System; and

WHEREAS, Generator desires to engage in sales of electric energy to be generated by Generator's generating facility.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

SECTION 1: DEFINITIONS

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

1.1.1 “**Affiliate**” – shall mean, with respect to any Party, another Person (i) which, directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Party, (ii) which, directly or indirectly, of record or beneficially, owns or holds 10% or more of the shares of any class of capital stock or other ownership interest of such Party having voting power or (iii) of which 10% or more of the shares of any of the capital stock or other ownership interest of the Affiliate having voting power is owned or held, directly or indirectly, of record or beneficially, by or for such Party. For purposes of this definition, “control” when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

1.1.2 “**Appendix**” or “**Appendices**” - means any of the schedules, exhibits and attachments, including the Interconnection Procedures, which are appended hereto and are incorporated by reference herein and made a part of this Agreement.

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

1.1.4 **“Day”** or **“Calendar Day”** - means a calendar day unless otherwise specified.

1.1.5 **“Effective Date”** - shall mean the date first written above, or such other date as the FERC shall order.

1.1.6 **“Emergency”** - means a condition or situation associated with the transmission and distribution of electricity, including voltage abnormalities, that, in the sole reasonable judgment of Gulf Power, exercised on a non-discriminatory basis as the transmission asset owner, adversely affects or is imminently likely to adversely affect: (i) public health, life or property; (ii) Gulf Power’s employees, agents or property; or (iii) Gulf Power’s ability to maintain safe, adequate, and continuous electric service to its customers and/or the customers of any member of NERC consistent with Good Utility Practices; provided, however, that if there is no adverse condition associated with distribution or transmission facilities, then the inability of Gulf Power to meet its load requirements solely because of insufficient generation resources shall not constitute an Emergency.

1.1.7 **“Facility”** - means all of Generator’s equipment (including the Generator’s Interconnection Equipment), as described in Appendix B of this Agreement, used to produce electric energy and required for parallel operation with Gulf Power, which equipment is located in Bay County, Florida and is connected to the Interconnection Point.

1.1.8 **“FERC”** - means the Federal Energy Regulatory Commission and any successor.

1.1.9 **“Force Majeure Event”** – shall have the meaning ascribed to it in Section 14.1.

1.1.10 **“Generator”** – shall have the meaning ascribed to it in the first paragraph of this Agreement, and its agents or permitted successors and assigns.

1.1.11 **“Generator’s Interconnection Equipment”** – means all equipment which is owned, operated, or maintained by or for Generator as such is described in Appendix B (including without limitation, equipment for connection, switching, protective relaying and safety) that is required to be installed for the delivery of electric energy onto the Gulf Power Electric System on behalf of Generator. Generator’s Interconnection Equipment does not include the Interconnection Facilities.

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

prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result(s) at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers' warranties, Legal Requirements, NERC and SERC guides, and applicable safety and maintenance codes.

1.1.13 "**Governmental Authority**" - means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department, taxing authority, or other authority thereof having jurisdiction over either Party, the Facility, the Interconnection Facilities, the Generator's Interconnection Equipment, or the Gulf Power Electric System, whether acting under actual or assumed authority.

1.1.14 "**Gulf Power**" – shall have the meaning ascribed to it in the first paragraph of this Agreement, including any of its agents or permitted successors and assigns.

1.1.15 "**Gulf Power Electric System**" - means collectively, the entire network of electric generation, transmission and distribution facilities, equipment and other devices owned (in whole or in part) or controlled by Gulf Power, for the purposes of generating, transmitting, receiving, and distributing electric energy and capacity.

1.1.16 "**Indenture Trustee**" – means a trust company chartered or other Person incorporated under the laws of the United States or a state of the United States and based in the United States which is the indenture trustee, mortgagee or secured party under any Indenture.

1.1.17 "**Initial Synchronization Date**" - means the date that includes the first instant in time when energy generated by the Facility is delivered to the Gulf Power Electric System at the Interconnection Point. Such Initial Synchronization Date is projected in Appendix B.

1.1.18 "**Interconnection Facilities**" - means all equipment which is constructed, owned, operated, or maintained by or for Gulf Power, as such are generally identified and described in Appendix B, (including without limitation, equipment for connection, switching, transmission, distribution, protective relaying and safety) that, in Gulf Power's reasonable judgment, is required to be installed for the delivery of electric energy onto the Gulf Power Electric System on behalf of Generator and for the receipt by Generator of electric service in accordance with Section 2.6 hereof.

1.1.19 "**Interconnection Point**" - means the point of interconnection of Generator's Facility to the Gulf Power Electric System as defined in the Specifications to this Agreement set forth in Appendix B.

1.1.20 “**Interconnection Procedures**” – means the procedures for interconnection and operations set forth in Appendix A.

1.1.21 “**Interconnection Service**” – means the services provided by Gulf Power to Generator to safely and reliably interconnect Generator’s Facility to the Gulf Power Electric System and receive electric energy and capacity from the Facility at the Interconnection Point pursuant to the terms of this Agreement and, if applicable, the Tariff.

1.1.22 “**Interest Rate**” - means the prime rate of interest as published from time to time in the Wall Street Journal or comparable successor publication.

1.1.23 “**kW**” - means kilowatts. In addition, “**MW**” may be used to mean megawatts, which are 1000 kilowatts.

1.1.24 “**kWh**” - means kilowatt-hours. In addition, “**MWh**” may be used to mean megawatt-hours, which are 1000 kilowatt-hours.

1.1.25 “**Legal Requirement**” - means any law, code, statute, regulation, rule, ordinance, treaty, judgment, injunction, order or other legally binding announcement, directive, published practice or requirement enacted, issued or promulgated by 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 Effective Date or anytime thereafter during the Term of this Agreement.

1.1.26 “**Lien**” – means any and all liens, mortgages, encumbrances, pledges, claims, leases, charges and security interests of any kind.

1.1.27 “**Month**” - means a calendar Month, or such other period as may be mutually agreed by the Parties. “**Monthly**” has a meaning correlative to that of Month.

1.1.28 “**Monthly Administration Charge**” – for a particular Month of the Term, means the Monthly amount to be paid by Generator to Gulf Power as set forth in Section 9.

1.1.29 “**NERC**” - means the North American Electric Reliability Council, including any successor thereto and subdivisions thereof.

1.1.30 “**Party**” or “**Parties**” - means either Gulf Power or Generator or both.

1.1.31 “**Permitted Financing Assignee**” – shall have the meaning ascribed to it in Section 16.1 hereof.

1.1.32 “**Permitted Liens**” – means:

(a) any Lien on this Agreement and/or Gulf Power’s rights, obligations, title or interest in, to and under this Agreement pursuant to that

certain Mortgage Bond Indenture from Gulf Power to The Chase Manhattan Bank, Trustee, dated as of March 1, 1941 or pursuant to any other mortgage or security agreement as heretofore and hereafter amended (the "Indenture");

(b) any Lien for taxes, assessments or other governmental charges which are not delinquent or the validity of which is being contested in good faith by appropriate proceedings diligently prosecuted so long as appropriate reserves are maintained in respect of such taxes, assessments or charges; and

(c) attachments, judgments and other similar Liens arising in connection with court proceedings, provided that within sixty (60) Days of the attachment thereof (but not less than five (5) Days prior to any execution or sale pursuant thereto), the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being contested in good faith and by appropriate proceedings so long as any material risk of liability is covered by a bond, or appropriate reserves are maintained in respect of such proceedings.

1.1.33 "**Person**" – means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, trustee(s) of a trust, unincorporated organization, or any federal, state, county, municipal or regional governmental authority, agency, board, body, instrumentality or court.

1.1.34 "**Persons Indemnified**" – means, when used with respect to a Party, collectively or individually (as the context might indicate), the Party, the Party's Affiliates and permitted successors and assigns, and the directors, officers, representatives, agents and employees of each of them.

1.1.35 "**Qualified Person**" – shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, trustee(s) of a trust, unincorporated organization, or any federal, state, county, municipal or regional governmental authority, agency, board, body, instrumentality or court who is an owner or operator of transmission facilities, or belongs to a regional transmission organization.

1.1.36 "**Quarter**" – means for each year of the Term four distinct time periods for planning and budgeting purposes comprised of January through March, April through June, July through September, and October through December. "Quarterly" has a meaning correlative to that of Quarter. In the event that this Agreement becomes effective during any Quarter, the obligations herein that arise on a Quarterly basis shall begin in the Quarter immediately following the initial Effective Date of this Agreement.

1.1.37 "**SERC**" – means the Southeastern Electric Reliability Council, including any successor thereto and subdivisions thereof.

1.1.38 "**Southern Companies**" – means, collectively, the electric utility operating company subsidiaries of Southern Company engaged in common dispatch and control

of generating resources within the Southern Company Control Area, currently including Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company.

1.1.39 “**Southern Company Control Area**” – means that electric system of the Southern Companies that has been recognized by NERC and SERC as a control area.

1.1.40 “**Specifications**” – mean the interconnection specifications provided in Appendix B to this Agreement, which are attached hereto and incorporated herein by reference.

1.1.41 “**Tariff**” – means Southern Companies Open Access Transmission Tariff or a successor arrangement that governs transmission and interconnection services on the transmission facilities of Gulf Power.

1.1.42 “**Term**” - means the duration of this Agreement as specified in Section 3.1.

SECTION 2: INTERCONNECTION SERVICE

2.1 Service. Gulf Power shall supply Generator with Interconnection Service at the Interconnection Point for the Facility in accordance with and for the Term of this Agreement. Interconnection Service does not include transmission delivery service beyond the Interconnection Point. Neither Gulf Power nor any of its Affiliates shall have any obligation under this Agreement to purchase any power from the Facility, it being the intent and understanding of the Parties that Generator shall be responsible for its power sales to third parties.

2.2 Facility. The Facility is located in Bay County, Florida.

2.3 Permits. Generator shall obtain and maintain, at its sole expense, any and all governmental permits, certificates or authorizations that Generator is required to obtain and maintain for the performance of its obligations under this Agreement. Gulf Power shall obtain and maintain any and all permits, certificates or authorizations that are required for the construction, operation, maintenance, and testing of the Interconnection Facilities, the expense of which shall be paid by Generator in accordance with Section 5.

2.4 Easements and Access Rights.

2.4.1 To the extent that Generator has any such rights, Generator shall convey to Gulf Power at no cost to Gulf Power any and all rights of way and easements, including adequate and continued access rights to property of Generator necessary to provide Interconnection Service to Generator. Generator agrees that such parcel, rights of way, and easements shall survive termination or expiration of this Agreement, if and to the extent necessary for the continued use or the removal of the Interconnection Facilities. Such easements and access rights

are specifically intended to permit Gulf Power to install, operate, maintain, replace and/or remove the Interconnection Facilities.

2.4.2 Upon reasonable advance notice given to Generator, representatives of Gulf Power (as the transmission asset owner) shall at all reasonable times have access to the Generator's Interconnection Equipment and to property owned or controlled by Generator to the extent necessary in order to: (i) inspect, maintain, and test meters and other Gulf Power equipment; (ii) interconnect, disconnect (in accordance with Section 3), monitor, or measure energy generated by the Facility; (iii) inspect the operation, maintenance or testing of the Generator's Interconnection Equipment; or (iv) take such other action as may be reasonably necessary to exercise Gulf Power's rights under this Agreement. Gulf Power shall take reasonable steps to ensure such access does not materially interfere with the operations, maintenance or testing of the Facility, and that Gulf Power's use of such property complies with Legal Requirements with respect to the Facility as well as with Generator's reasonable policies and procedures applicable to the Facility, including those regarding safety. Generator shall cooperate in such physical inspections of the Generator's Interconnection Equipment as may be reasonably required by Gulf Power. Gulf Power's technical review and inspection of the Generator's Interconnection Equipment shall not be construed as endorsing the design thereof nor as any warranty of the safety, durability or reliability of the Facility.

2.4.3 To the extent that Gulf Power has any such rights, Gulf Power agrees to furnish at no cost to Generator any necessary licenses or other access rights to permit Generator to construct, connect, operate and maintain its facilities located in Gulf Power's substation or to otherwise fulfill its obligations under this Agreement. After the Interconnection Facilities are energized, such access rights for Generator's facilities located inside the substation shall be exercised by Generator only with supervision by Gulf Power. Generator shall provide to Gulf Power reasonable notice under the circumstances of a request for such supervised access to the substation, and Gulf Power and Generator shall mutually agree upon the date and time of such supervised access, such agreement not to be unreasonably withheld. In addition to the aforementioned requirement, in exercising such access rights, Generator shall not unreasonably disrupt or interfere with normal operations of Gulf Power's business and shall act consistent with Good Utility Practice.

2.5 Interconnection Point. Gulf Power shall establish and maintain the Interconnection Point, as described in Appendix B to this Agreement.

2.6 Station Service Arrangements. Generator is responsible for making all appropriate arrangements for station service requirements. Generator must demonstrate, to Gulf Power's reasonable satisfaction, that it has adequate arrangements in place to supply its station service requirements. If Generator supplies its running station service on Generator's side of the Interconnection Point, then energy consumed and demand requirements are deemed to be netted from Generator's capability. In this same arrangement, starting station service energy is also assumed to be netted out of energy delivered to the Interconnection Point.

2.7 Generator Balancing Service Arrangements. Generator is responsible for ensuring that its actual generation matches its scheduled delivery, on an integrated clock hour basis (in whole MW), to the Gulf Power Electric System at the Interconnection Point. Generator shall make arrangements for the supply of energy and/or capacity when there is a difference between the actual generation and the scheduled delivery. Generator may satisfy its obligation for making such generator balancing service arrangements by: (a) obtaining such service from another entity that (i) has generating resources within the Southern Company Control Area, (ii) agrees to assume responsibility for providing generator balancing service to the Generator and (iii) has a control area coordination services agreement with the Southern Companies that addresses generator balancing service for all generating resources for which the entity is responsible; (b) committing sufficient additional unscheduled generating resources to the control of and dispatch by the Southern Company Control Area that are capable of supplying any capacity and energy not supplied by the scheduled resource and entering into a control area coordination services agreement with the Southern Company Control Area operator that addresses generator balancing service obligations; (c) entering into an arrangement with another NERC-approved control area to dynamically schedule the Generator's Facility out of the Southern Company Control Area and into such other control area; (d) entering into a generator balancing service agreement with Southern Companies pursuant to their *Generator Balancing Service Tariff on file with FERC*; or (e) in the event the load/generation balancing function of the control area in which Gulf Power is a participant is provided by an entity other than Southern Companies, by entering into an alternate arrangement with such control area service provider.

2.8 Interconnection Procedures. When the Facility is operated as part of the Southern Company Control Area, Generator shall comply with the Interconnection Procedures (Appendix A) for the Facility at all times. When the Facility is not operated as part of the Southern Company Control Area, the Operating Committee shall determine which (if any) of the Interconnection Procedures are not applicable.

2.9 Interconnected Operation Services. Generator retains any right it may have to pursue compensation for the provision of interconnected operation services by making a filing with FERC. Gulf Power retains any right it may have to support or oppose such filing.

2.10 Control Area Operations. Nothing in this Agreement shall obligate Generator to operate the Facility as a part of the Southern Company Control Area.

2.11 Inadvertent Flow. Generator is not a transmission provider; and Gulf Power shall have no obligation under this Agreement to pay Generator any charge for flows of electric power and/or energy through Generator's Interconnection Equipment.

SECTION 3: TERM, TERMINATION AND DISCONNECTION

3.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect for a period of forty (40) years from the initial Effective Date unless terminated earlier by mutual written agreement of the Parties or otherwise pursuant to the provisions of this

Agreement subject to any applicable Legal Requirement, and shall continue thereafter until terminated by either Party on at least one (1) year's notice.

3.2 Default.

3.2.1 A Party shall be in "Default" under this Agreement, if: (i) the Party fails to comply with any material term or condition of this Agreement; (ii) any material representation or warranty of the Party made pursuant to this Agreement shall prove to be false or misleading in any material respect when made or deemed made; or (iii) in the case of Generator, Generator makes an assignment for the benefit of Generator's creditors, or voluntary or involuntary proceedings in bankruptcy are instituted seeking to adjudge Generator a bankrupt, or if Generator be adjudged a bankrupt, or if Generator's affairs are placed in the hands of any court for administration.

3.2.2 This Agreement may be terminated by either Party, upon written notice, if the other Party is in Default hereunder and such Party (or its Permitted Financing Assignee) has not cured such breach within thirty (30) Days following written notice of such breach to the other Party. Provided, however, that in the event the Default is not capable of being cured within thirty (30) Days, the Agreement shall not be terminated if the Party in Default (or its Permitted Financing Assignee) has begun in good faith taking actions to cure within thirty (30) Days following such written notice and diligently proceeds to completion.

3.2.3 In the event of a Default by either Party and subject to that Party's right to cure, the non-defaulting Party may pursue any and all judicial and administrative remedies and relief available to it.

3.3 Permanent Disconnection. Upon termination of this Agreement (whether due to the expiration of the Term or due to a Default as described in Section 3.2), Gulf Power may permanently disconnect the Facility from the Gulf Power Electric System in accordance with Good Utility Practices.

3.4 Temporary Disconnection.

3.4.1. Gulf Power (as transmission asset owner) may, consistent with Good Utility Practice and on a non-discriminatory basis, direct that the Facility be temporarily disconnected from the Gulf Power Electric System: (i) during an Emergency; (ii) if the operation and output of the Facility do not meet the requirements of this Agreement (even if Generator has commenced actions to cure such Default) and such condition could materially adversely affect the safe and reliable operation of the Gulf Power Electric System; (iii) if an inspection of the Facility reveals a hazardous condition, lack of scheduled maintenance or testing, or an operating characteristic of the Facility that could materially adversely affect the safe and reliable operation of the Gulf Power Electric System; (iv) if Generator has modified the Facility or interconnection protective devices in a manner that could reasonably be expected to materially adversely affect the safe and reliable operation of the Gulf Power Electric System without the knowledge and approval of Gulf Power; (v) in the event of tampering with, or unauthorized use of, Gulf Power's

equipment; (vi) if the operation of Generator's equipment materially adversely affects Gulf Power's equipment or the safe and reliable operation of the Gulf Power Electric System; or (vii) if necessary to construct, install, maintain, repair, replace, remove, investigate, inspect or test any part of the Interconnection Facilities or the transmission facilities of Gulf Power, in accordance with Section 15.2.4.

3.4.2 In the event of the occurrence of any of the conditions described in Section 3.4.1, Gulf Power shall give as much advance notice as practicable under the circumstances of the need for disconnection of the Facility to employees of Generator designated from time to time by Generator to receive such notice. Upon receipt of notice directing disconnection, Generator shall carry out the required action. Where circumstances do not permit such advance notice to Generator or Generator's employees, Gulf Power may disconnect the Facility from the Gulf Power Electric System without such notice in accordance with Good Utility Practices. Gulf Power shall reconnect the Facility as soon as reasonably practicable following the cessation or remedy of the event that led to the temporary disconnection. The Parties agree to cooperate and coordinate with each other to the extent necessary in order to restore the Facility, Interconnection Facilities, and the Gulf Power Electric System to their normal operating state.

3.4.3 Generator shall bear any direct cost incurred by Gulf Power as a result of any disconnection or reconnection caused by Generator's negligence, intentional wrongdoing, or breach of this Agreement, whether by affirmative act or omission of Generator. Gulf Power shall bear any direct cost incurred by Generator as a result of any disconnection or reconnection caused by Gulf Power's negligence, intentional wrongdoing, or breach of this Agreement, whether by affirmative act or omission of Gulf Power.

3.4.4 Generator reserves the right, in its sole discretion, to isolate or disconnect its Facility from the Gulf Power Electric System.

3.5 Survival of Rights. Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the following obligations which shall survive termination or expiration: (i) the obligation to pay each other all amounts then owed and not paid under this Agreement; (ii) obligations arising from action or inaction during the period the Agreement was in effect under the indemnities provided for in this Agreement; and (iii) any other obligations which the Agreement specifically indicates shall survive termination or expiration.

SECTION 4: OPERATION AND MAINTENANCE OF GENERATOR'S FACILITY

4.1 General Standards. During the Term, Generator shall have the sole responsibility to, and at its sole expense shall manage, control, operate and maintain the Facility in accordance with Good Utility Practices and the requirements set forth in this Agreement. Generator shall operate its generating equipment in parallel with the Gulf Power Electric System in accordance with the operating procedures in Appendix A to this Agreement and those established by the Operating Committee in accordance with Section 15 and in accordance with the requirements of the NERC-recognized control area in which the Facility operates. All wiring, apparatus and

other equipment necessary to receive or deliver electric energy on Generator's side of the Interconnection Point shall be supplied, maintained and operated by and at the expense of Generator.

4.2 Maintenance and Operation. Generator shall maintain and operate the Facility in accordance with Good Utility Practices. Generator shall not, without Gulf Power's prior written approval (which shall not be unreasonably withheld or delayed), make any change to its Facility which might adversely affect the operation of the Gulf Power Electric System.

SECTION 5: INTERCONNECTION FACILITIES

5.1 Interconnection Facilities.

5.1.1 Gulf Power shall design, procure, install, and own the Interconnection Facilities needed for Gulf Power to provide Interconnection Service to Generator. Gulf Power shall be responsible for acquiring all necessary real property rights, easements, licenses, and rights of way and for determining the need for, and the design, construction, installation, operation, maintenance and testing of any equipment that may be required for Interconnection Service in a manner consistent with Good Utility Practices, the Interconnection Procedures and the requirements set forth in this Agreement. All Interconnection Facilities shall be and remain the property of Gulf Power. Gulf Power's obligations hereunder are dependent upon its securing and retaining the necessary rights, easements, privileges, franchises, permits and equipment for meeting such obligations; provided, however, that Gulf Power shall exercise reasonable efforts to secure and retain for the Term of this Agreement those rights, easements, privileges, franchises, permits and equipment.

5.1.2 Following commencement of commercial operation of the Facility and throughout the Term, Gulf Power shall be responsible for determining the need for, and the design, construction, installation, operation, maintenance and testing of any equipment that may be required for Interconnection Service in a manner consistent with Good Utility Practices, the Interconnection Procedures and the requirements set forth in this Agreement.

5.2 Costs of Interconnection Facilities. To the extent consistent with FERC policy, Generator shall be responsible for, and shall reimburse Gulf Power for, all costs and expenses reasonably incurred by or on behalf of Gulf Power in connection with the planning, design, construction, installation, testing, inspection, ownership, operation and maintenance of all or any part of the Interconnection Facilities during the Term of this Agreement.

5.3 Additional Interconnectors. In the instance where an entity other than Generator seeks to be the first additional Person to interconnect to the Gulf Power Electric System through the Interconnection Facilities that have been paid for by Generator (such other Person is referred to as the "Additional Interconnector") and where the Additional Interconnector seeks to interconnect for any purpose other than for Gulf Power to make a network upgrade, then Gulf Power agrees that the Additional Interconnector shall be charged a pro rata share of the cost of its interconnection, as defined hereafter. For purposes of this subparagraph, the Additional

Interconnector's pro rata share of its cost of interconnection shall be the sum of the incremental cost of physically interconnecting the Additional Interconnector to the Interconnection Facilities and the original cost of the Interconnection Facilities paid by Generator, including the price of the land provided by Generator (the sum of the incremental cost and the original cost hereafter referred to as "Combined Cost of Interconnection") and then dividing the Combined Cost of Interconnection by two (2) in order to determine both Generator's and the Additional Interconnector's "Pro Rata Share of the Combined Cost of Interconnection." Gulf Power shall then pay to Generator, or have the Additional Interconnector pay to Generator, the difference between the original cost of the Interconnection Facilities paid by Generator and Generator's Pro Rata Share of the Combined Cost of Interconnection; provided, however, that no such payment shall be required if it would result in the Generator bearing less than its Pro Rata Share of the Combined Cost of Interconnection. In the event that Persons additional and subsequent to the Additional Interconnector seek to interconnect to the Gulf Power Electric System through the Interconnection Facilities that have been paid for by Generator (such additional interconnectors referred to as "Subsequent Additional Interconnectors") and where the Subsequent Additional Interconnectors seek to interconnect for any purpose other than for Gulf Power to make a network upgrade, then Gulf Power agrees that the Subsequent Additional Interconnectors shall be charged a pro rata share of the cost of their respective interconnection, such cost to be determined in accordance with the methodology described above, and Gulf Power agrees further that in such event it shall pay, or have such Subsequent Additional Interconnectors pay to Generator and Additional Interconnector, reimbursement calculated based on the method described above, taking into account Generator's Pro Rata Share of the Combined Cost of Interconnection. Except in accordance with the cost sharing methodology set forth herein, Generator shall not be responsible for the costs of any modifications of the Interconnection Facilities that are not caused by the Generator. In no event shall Generator be obligated to pay any increased amount as a result of any Additional Interconnector or Subsequent Additional Interconnector. To the extent that all interconnectors do not have comparable interconnection points, the Combined Cost of Interconnection shall be adjusted appropriately.

5.4 Payment of Cost of On-Going Maintenance and Operation of the Interconnection Facilities

5.4.1 Gulf Power shall operate and maintain the Interconnection Facilities in accordance with Good Utility Practices and in a non-discriminatory manner.

5.4.2 Gulf Power shall develop an estimate of all costs and expenses to be paid by Generator for the operation and maintenance of the Interconnection Facilities on an annual basis and provide the annual estimate to Generator at least eight (8) weeks before December 31 of each year. In the case of Additional Interconnectors or Subsequent Additional Interconnectors, Generator shall be responsible for up to its pro rata share, calculated in accordance with Section 5.3, of the costs of operation and maintenance of the Interconnection Facilities. Generator shall pay one-twelfth (1/12) of such estimated costs each Month in accordance with Section 10. In addition, Generator shall pay its pro rata share of all costs reasonably incurred by Gulf Power (excluding any such costs reimbursed to Gulf Power through insurance proceeds) to repair and

restore the Interconnection Facilities caused by any Force Majeure Event upon receipt of an invoice in accordance with Section 10.

5.4.3 Gulf Power shall true-up this estimate to Gulf Power's actual costs and expenses within a reasonable period of time after such actual costs and expenses are known but not less often than annually. In the event that the actual costs and expenses to be paid by Generator under this Section 5.4 are more or less than Gulf Power's initial estimate, the difference (either a credit or an additional charge) shall be reflected on a subsequent invoice.

5.5 Care of Equipment. Generator shall exercise care in accordance with Good Utility Practices to protect the Interconnection Facilities located on Generator's premises, and agrees to pay the cost of repairs or replacement in the event of loss or damage to the Interconnection Facilities arising from the failure of Generator to properly protect those Interconnection Facilities in accordance with Good Utility Practices.

5.6 Payment of the Cost of the Interconnection Facilities

5.6.1 Generator shall pay Gulf Power in advance for the costs incurred related to the installation and construction of the Interconnection Facilities. Gulf Power shall develop an estimate of the costs to be incurred by Gulf Power in the installation and construction of the Interconnection Facilities. A current estimate of such costs is attached as Appendix C. Gulf Power may revise the estimate from time to time to more accurately reflect more current estimates of costs and/or to incorporate any needed true-up of estimated costs to actual costs. Gulf Power shall obtain authorization to proceed prior to proceeding with planning, construction, installation or testing of the Interconnection Facilities. Generator shall pay such estimated costs as specified in Appendix C in accordance with Section 10. Generator shall have the right to approve any deviation in the scope of the work if such deviation would result in an estimated increase of ten percent (10%) or more over the estimated costs. In no event shall Gulf Power collect from Generator any estimated payment for any costs unless Gulf Power reasonably expects to actually incur such costs.

5.6.2 During the construction of the Interconnection Facilities, Gulf Power shall true-up the estimated payments to Gulf Power's actual costs and expenses within a reasonable period of time after such actual costs and expenses are known but not less often than annually. In the event that the actual costs and expenses to be paid by Generator are more or less than Gulf Power's estimate, the difference (either a credit or additional charge) shall be reflected on a subsequent invoice. Gulf Power shall issue a final cost report within one hundred twenty (120) Days of the Facility's commercial operation date. The final report shall set forth in reasonable detail the actual costs of the Interconnection Facilities and shall true-up the estimated payments to actual costs. To the extent that the final, actual costs that are Generator's cost responsibility under this Agreement exceed the estimated costs already paid by Generator, Gulf Power shall invoice Generator in accordance with Section 10.1. To the extent that the estimated costs already paid by Generator exceed the final, actual costs that are Generator's cost responsibility under this Agreement, Gulf Power shall refund to Generator an amount equal to the difference within twenty (20) Days of the issuance of the final cost report.

5.6.3 Gulf Power shall inform Generator on a monthly basis, and at such other times as Generator reasonably requests, of the status of the construction and installation of the Interconnection Facilities, including, but not limited to, the following information: progress to date; a description of scheduled activities for the next period; the delivery status of all equipment ordered; and the identification of any event which Gulf Power reasonably expects may delay construction of, or increase the cost of, the Interconnection Facilities.

5.6.4 Generator reserves the right, upon written notice to Gulf Power, to suspend at any time all work by Gulf Power associated with the construction and installation of the Interconnection Facilities. In such event, Generator shall be responsible for the costs which Gulf Power (i) has incurred prior to the suspension to the extent such costs previously were authorized by Generator and (ii) reasonably incurs in suspending such work, including without limitation, the costs incurred to ensure the safety of persons and property and the integrity of the Gulf Power Electric System and the costs incurred in connection with the cancellation of material and labor contracts, provided such cancellation has been authorized by Generator. Gulf Power will invoice Generator pursuant to Section 10.1 and agrees to use reasonable efforts to minimize its costs. If, after such suspension, Generator does not provide Gulf Power with written notice to proceed within three hundred sixty-five (365) Days after the notice of suspension, this Agreement shall be deemed terminated. If this Agreement is deemed terminated, Generator shall be responsible for costs reasonably incurred in winding up such work and the costs incurred in connection with the cancellation of material and labor contracts, to the extent to which Generator has not already reimbursed Gulf Power for such costs. Any non-returnable equipment that has not already been installed by Gulf Power shall become the property of Generator "as is" upon payment of Gulf Power's costs.

SECTION 6: LIABILITY AND INDEMNIFICATION

6.1 Remedies for Breach. Subject to Section 6.2, either Party shall be liable to the other for any loss resulting directly from any breach of this Agreement and which at the time of the breach was a reasonable foreseeable consequence of such breach.

6.2 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY NOR ITS PERSONS INDEMNIFIED SHALL BE LIABLE TO THE OTHER PARTY OR ITS PERSONS INDEMNIFIED FOR ANY CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES IN THE CHARACTER OF LOSS OF PROFITS OR REVENUES, DAMAGES SUFFERED BY GENERATOR'S OR GULF POWER'S CUSTOMERS DUE TO SERVICE INTERRUPTIONS, OR COST OF CAPITAL) CONNECTED WITH, RELATING TO, OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE. THE PROVISIONS OF THIS SECTION 6.2 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE

TERMINATION, CANCELLATION, SUSPENSION, COMPLETION, OR EXPIRATION OF THIS AGREEMENT.

6.3 No Liability for Other Party's Responsibilities. Neither Party nor its Persons Indemnified assumes any obligation or responsibility of any kind with respect to the other Party's equipment, including, without limitation, obligation or responsibility with respect to the condition or operation of said equipment, except for Generator's obligations and responsibilities hereunder for the Interconnection Facilities. Neither Party nor its Persons Indemnified shall be responsible for the transmission, distribution or control of electrical energy on the other Party's side of the Interconnection Point.

6.4 Responsibility for Property. Each Party shall be responsible for all physical damage to or destruction of, or any personal injury or death associated with, the property, equipment and/or facilities owned by it and located on its premises, regardless of who brings the claim and regardless of who caused the damage, and shall not seek recovery or reimbursement from the other Party or its Persons Indemnified for such damage, except in cases of breach of this Agreement or the sole negligence or intentional wrongdoing by the other Party or its Persons Indemnified. Without limiting the generality of the foregoing, neither Party nor its Persons Indemnified shall be liable for damages or injury arising out of or resulting from the simple failure (i.e., failure of a device not caused by breach of contract, negligence or intentional wrongful act) of protective devices (e.g., circuit breakers). For purposes of this Section, a breach of this Agreement by Gulf Power shall be limited to a failure by it to comply with its obligations under this Agreement regarding the installation, operation and maintenance of the Interconnection Facilities.

6.5 Indemnification.

6.5.1 Generator shall at all times indemnify, defend, and hold harmless Gulf Power and its Persons Indemnified from and against any and all damages, losses, claims, including claims and actions involving injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court cost, attorney fees, and all other obligations, arising out of or resulting from (i) the Generator's breach of its obligations under this Agreement or intentional wrongful act, or (ii) misuse, damage to or destruction of Gulf Power's property properly located, pursuant to this Agreement, on premises owned, leased or controlled by Generator, or (iii) activities on Generator's property, except, in each case, in the case of sole negligence or intentional wrongdoing by Gulf Power or its Persons Indemnified.

6.5.2 Gulf Power shall at all times indemnify, defend, and hold harmless Generator and its Persons Indemnified from and against any and all damages, losses, claims, including claims and actions involving injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court cost, attorney fees, and all other obligations, arising out of or resulting from (i) Gulf Power's breach of its obligations under this Agreement or intentional wrongful act, or (ii) misuse, damage to or destruction of Generator's property properly located, pursuant to this Agreement, on premises owned, leased, or controlled by Gulf Power, or (iii) activities on Gulf Power's property relating to the installation, operation and

maintenance of the Interconnection Facilities, except, in each case, in the case of sole negligence or intentional wrongdoing by Generator or its Persons Indemnified.

SECTION 7: METERING, DATA ACQUISITION, AND RELATED PROTECTION EQUIPMENT

7.1 Metering.

7.1.1 Generator shall be responsible for the purchase, installation, operation, maintenance, repair and replacement of all metering equipment necessary to provide information regarding power flow and voltage conditions at the Interconnection Point; provided, however, that Gulf Power shall operate, maintain, repair and replace any meters located on the Interconnection Facilities, the costs of such activities to be paid by Generator consistent with its payment of expenses under Section 5.4. All metering equipment of Generator shall conform to Good Utility Practices. Prior to its installation, Gulf Power and Generator shall review the metering equipment to ensure conformance with Good Utility Practices and Generator shall maintain the metering equipment in conformance with Good Utility Practices throughout the Term. The metering equipment described herein does not include station service metering equipment.

7.1.2 Electric capacity and energy received by the Gulf Power Electric System from Generator shall be measured by meters installed at the Interconnection Point. If and to the extent Generator's meters are not physically located at the Interconnection Point, the metered amount of energy shall be adjusted for losses as mutually agreed from the point of metering to the Interconnection Point in accordance with Good Utility Practices. Any Party performing such a study to determine the loss adjustment shall provide a copy to the other Party.

7.1.3 Generator shall provide, as required by Good Utility Practices and requested by Gulf Power, real-time telemetered load signals of its energy delivered to the Interconnection Point. Generator shall also read the meters owned by it and shall furnish to Gulf Power all meter readings and other information reasonably required for operations and for billing purposes under this Agreement. Such information shall remain available to Gulf Power for one (1) year or such longer period as may be required by any Legal Requirement.

7.1.4 The Parties agree that the meter readings provided by the Generator to Gulf Power, under normal circumstances, shall be used as the official measurement between the Parties of the amount of capacity and energy delivered from the Facility to the Interconnection Point.

7.1.5 Any time during the Term and after initial acceptance of the accuracy of Generator's telemetered information, if telemetered information is unavailable to Gulf Power, for any reason, the Generator shall provide integrated hourly meter readings to Gulf Power each hour until telemetry is returned to service in conformance with Good Utility Practices and Section 7.1.2.

7.2 Data Acquisition and Protection Equipment.

7.2.1 Generator shall be responsible for the purchase, installation, operation, maintenance, repair and replacement of all data acquisition equipment, protection equipment, and any other associated equipment and software, which may be reasonably required at any time during the Term by either Party for Generator to operate its facilities in parallel with Gulf Power. Such equipment shall conform to Good Utility Practices. Prior to its installation, Gulf Power and Generator shall review the equipment and software required by this Section 7 to ensure conformance with Good Utility Practices.

7.2.2 The selection of real time telemetry and data to be received by Gulf Power and Generator shall be at the reasonable discretion of Gulf Power, as deemed by Gulf Power necessary for reliability, security, revenue metering, and/or monitoring of the Facility's operations in conformance with Good Utility Practices. This telemetry includes, but is not limited to, voltages, generator output (MW, MVAR, and MWh) at the Interconnection Point and breaker status. Gulf Power shall provide to Generator real time telemetry of Gulf Power's breaker status. To the extent telemetry is required, Generator shall, at its own expense, install any telemetering equipment, data acquisition equipment, or other equipment and software necessary at the Facility for the telemetry of information to Gulf Power.

7.2.3 Generator shall be responsible for the reasonable cost that Gulf Power incurs in making any computer modifications or changes to Gulf Power's facilities or equipment necessary to implement this Section 7.

7.3 Payment of Cost of Metering, Data Acquisition, and Related Protection Equipment.

7.3.1 Prior to the commencement of Interconnection Service under this Agreement, Gulf Power shall develop and provide Generator an estimate of all costs and expenses that may be incurred by Gulf Power in connection with the installation of equipment and software under Sections 7.1 and 7.2. Gulf Power shall obtain Generator's consent thereto prior to proceeding with activities in connection with Sections 7.1 and 7.2. Generator shall pay such estimated costs in accordance with Section 10.

7.3.2 Gulf Power shall true-up this estimate to Gulf Power's actual costs and expenses within a reasonable period of time after such actual costs and expenses are known but not less often than annually. In the event that the actual costs and expenses to be paid by Generator to Gulf Power under Section 7.1 and 7.2 are more or less than Gulf Power's initial estimate, the difference (either a credit or an additional charge) shall be reflected on a subsequent invoice.

7.4 Care of Equipment. Generator shall exercise care in accordance with Good Utility Practices to protect all equipment of Gulf Power located on Generator's premises, and agrees to pay the cost of repairs or replacement in the event of loss or damage to such equipment arising

from the failure of Generator to properly protect such equipment in accordance with Good Utility Practices.

7.5 Inspection and Testing.

7.5.1 Meters, data acquisition, and related protection equipment at Generator's Interconnection Point shall be tested at least biennially by Generator in accordance with the provisions for meter testing as established in American National Standard Institute Code for Electricity Metering (ANSI) Standard C12.16 for Solid State Electricity Meters, as the same may be updated from time to time. Representatives of each Party shall be afforded an opportunity to witness such tests.

7.5.2 Generator shall, upon the reasonable request of Gulf Power, test its meters and data acquisition equipment at the Interconnection Point used for determining the receipt or delivery of capacity and energy by Gulf Power. In the event a test shows such equipment to be inaccurate, Generator shall make any necessary adjustments, repairs or replacements thereon.

7.6 Inaccuracies. If the metering fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) 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 during (i) the actual period when inaccurate measurements were made by the metering, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if the actual period cannot be determined to the mutual satisfaction of the Parties, one-half of the period from the date of the last test of the metering to the date such failure is discovered or such test is made (such period herein the "Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined (a) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (b) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test. In the event Generator's metering equipment is found to be insufficiently reliable and/or inaccurate during any consecutive three (3) Month period, Gulf Power shall have the right to install suitable metering equipment at the Interconnection Point for the purpose of checking the meters installed by Generator, and Generator shall pay all costs related to such metering equipment.

SECTION 8: INITIAL SYNCHRONIZATION AND FACILITY TESTING

8.1 Facility Evaluation Based on Actual Equipment Data. Generator agrees to provide updated application data ("actual equipment data") to Gulf Power that reflects information provided by equipment manufacturers for the actual equipment purchased by Generator for this Facility, as soon as it is available, but not later than ninety (90) Days prior to Initial Synchronization Date. Gulf Power agrees to review the actual equipment data to identify any adverse impacts to Gulf Power's Electric System caused by any material change in the Facility's operation and performance specifications that were not reasonably identifiable in studies performed using Generator's application data as initially provided. In the event any such adverse impacts are identified, Generator is responsible for modifying its equipment to eliminate such identified adverse impacts.

8.2 Implementation of Control and Operating Procedures. At least forty-five (45) Days prior to the Initial Synchronization Date, Generator and Gulf Power will: (a) jointly review the Control and Operating Procedures as developed by the Operating Committee, under Section 15 of this Agreement; (b) develop a training schedule for Facility and Gulf Power personnel under the Control and Operating Procedures; and (c) install and verify that communication links are complete for: (i) data telemetry, (ii) voice communications between Generator's Facility and Gulf Power's Transmission System control centers, and (iii) the transmittal of Facility and transmission system information on the Southern Company Generator Information Network.

8.3 Facility Inspection. Consistent with Good Utility Practices and unless otherwise agreed to by the Parties, all Interconnection Facilities shall be complete prior to the initial synchronization of the Facility with the Gulf Power Electric System. Within fifteen (15) Days after written notice is given to Gulf Power by Generator, an inspection shall be performed by Gulf Power to insure the proper installation and operation of the interconnection protective devices. The inspection shall include, without limitation, verification: (a) that the installation of Generator's equipment at the Facility is in accordance with the interconnection study; and (b) of proper voltage and phase rotation.

8.4 Initial Synchronization. Upon completion of the actions and reviews required under Sections 8.1, 8.2, and 8.3, Generator may request approval for initial synchronization of the Facility with the Gulf Power Electric System. Such request for approval shall be made no less than seven (7) Calendar Days in advance of the date which the Generator proposes for the Initial Synchronization Date. Initial synchronization shall not occur without the prior documented approval of Gulf Power, and such approval shall not be unreasonably withheld. Representatives of Gulf Power shall have the right to be present during the initial synchronization and facility testing. The activities under this Section 8, including without limitation, facility inspection, evaluation of actual equipment data, personnel training, use of Southern Company Generator Information Network, or the granting of approval to Generator for operation of the Facility in parallel with the Gulf Power Electric System shall not serve to relieve Generator of liability for injury, death or damage attributable to the negligence of Generator, and Gulf Power shall not be responsible as a result of such activities.

8.5 Review of Synchronization Tests. No less than forty-five (45) Days prior to the commercial operation date of the Facility, Generator shall provide Gulf Power copies of all applicable excitation system field test results (including chart recordings and actual data points in electronic form) and field settings, including (if applicable) Power System Stabilizer test results and settings in a format that conforms to the models previously submitted with the original application data. These tests include but are not limited to excitation system open circuit step in voltage tests, and (if applicable) Power System Stabilizer gain margin and phase compensation tests. Excitation system open circuit step in voltage test response chart recordings shall be provided showing generator terminal voltage, field voltage, and field current (exciter field voltage and current for brushless excitation systems) with sufficient resolution such that the change in voltages and currents are clearly distinguishable. The excitation system open circuit step in voltage test data points corresponding to the chart recordings should also be submitted in electronic form. Gulf Power may require that Generator perform more detailed tests if there are significant differences between the excitation system open circuit step in voltage test response and the step response predicted through dynamic simulation of model data. Any problems identified as a result of changes from application data to actual field settings of the excitation system including (if applicable) Power System Stabilizers must be addressed and resolved as soon as practicable by the Generator in order for the Generator to continue to deliver power to the Interconnection Point.

SECTION 9: ADMINISTRATION CHARGE

Generator shall pay Gulf Power a Monthly Administration Charge of \$5,000 per Month for all costs and expenses incurred by Gulf Power during such Month in connection with: (i) Gulf Power's administration of this Agreement; (ii) any taxes, assessments or other impositions for which Gulf Power may be liable as a result of any activity undertaken pursuant to this Agreement; (iii) reading meters; and (iv) accounting for capacity and energy flowing into or out of Generator's Facility. Gulf Power may revise the amount of the Monthly Administration Charge on an annual basis by making a filing in accordance with Section 12.3.

SECTION 10: PAYMENT PROCEDURE

10.1 Billing. Bills shall be issued to Generator in accordance with the following procedures:

10.1.1 Gulf Power shall issue an invoice to Generator for the estimated construction costs.

10.1.2 Gulf Power shall issue a Monthly invoice to Generator for the estimated operation and maintenance charge, administrative charge, and other charges/credits determined pursuant to this Agreement as soon as practicable following the close of each Month.

10.1.3 All amounts owing to Gulf Power from Generator shall be due and payable in immediately available funds through wire transfer of funds or other means acceptable to Gulf Power within twenty (20) Calendar Days after the date of Gulf Power's invoice.

10.2 Failure to Timely Pay. If Generator fails to pay the amount billed by Gulf Power within twenty (20) Calendar Days after the date of Gulf Power's invoice (and such amount is not disputed in accordance with Section 10.6), Gulf Power may, at any time thereafter upon five (5) Business Days written notice, draw upon the letter of credit (or other form of security) of Generator to obtain payment for such invoice, as well as reasonable costs incurred to exercise its rights under this Section. In addition, Gulf Power may, at its option, treat such non-payment as a Default of this Agreement under Section 3.2 hereof.

10.3 Interest. Any amount due and payable from Generator to Gulf Power pursuant to this Agreement that is not received by the due date shall accrue interest from the due date at the Interest Rate.

10.4 Creditworthiness. Generator shall provide and maintain in effect during the Term of this Agreement an unconditional and irrevocable letter of credit (or other form of security reasonably acceptable to Gulf Power, including an appropriate parent security) as security to meet its responsibilities and obligations under this Agreement. The unconditional and irrevocable letter of credit (or other form of security reasonably acceptable to Gulf Power) shall be in the amount of \$2,763,000 in immediately available funds through wire transfer of funds or other means acceptable to Gulf Power for activities arising prior to commercial operation of the Facility and in the amount of \$175,000 for activities arising from the date of commercial operation of the Facility. Gulf Power shall be entitled to draw upon such letter of credit for amounts due it under this Agreement if not paid when due in accordance with Section 10.1 and not disputed in accordance with Section 10.6.

10.5 Audit Rights. Either Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party to audit each other's accounts and records pertaining to either Party's performance and/or satisfaction of obligations arising under this Agreement within one (1) year from the date of such performance or satisfaction of such obligation, including specifically, but not limited to, delivery of the final cost report as provided in Section 5.6.2. Said audit shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that specifically relate to obligations under this Agreement. To the extent such accounts and records contain confidential information, the Parties agree to maintain the confidentiality of such information consistent with Section 17.19 hereof. In the event an audit reveals an improper assignment or allocation of costs or an error in billing, the Parties will make appropriate adjustments (either refunds or additional payments), with interest, within thirty (30) Days.

10.6 Disputed Bills. In the event of a billing dispute between Generator and Gulf Power, Gulf Power shall not terminate this Agreement, draw on the letter of credit for any disputed amounts, nor disconnect the Facility for failure to pay the disputed amount if Generator (i) continues to make all payments not in dispute and (ii), if requested by Gulf Power, pays into an independent escrow account the portion of the invoice in dispute.

10.7 No Waiver. Payment of any cost or invoice by Generator will not constitute a waiver of any rights or claims that Generator may have under or relating to this Agreement.

SECTION 11: REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Generator Representations, Warranties and Covenants. Generator makes the following representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

11.1.1 Generator is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, that it is qualified to do business in the State of Florida and that it has the power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and 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.

11.1.2 The execution, delivery and performance by Generator of this Agreement has been duly authorized by all necessary company action, and does not and shall not require any consent or approval of Generator's Board of Directors or members, other than those which have been obtained.

11.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirement, or any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Generator 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.

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

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

11.2 Gulf Power Representations, Warranties and Covenants. Gulf Power makes the following representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

11.2.1 Gulf Power is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine that it is qualified to do business in the State of Florida and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and 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.

11.2.2 The execution, delivery and performance by Gulf Power of this Agreement has been duly authorized by all necessary corporate action, and does not and shall not require any consent or approval of Gulf Power's Board of Directors or shareholders, other than those which have been obtained.

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

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

11.2.5 Gulf Power covenants to Generator that it will file this Agreement, and any amendments and/or modifications thereto, with FERC in accordance with all Legal Requirements.

11.3 Survival of Representations, Warranties and Covenants. The representations, warranties and covenants made by Generator and by Gulf Power (as the case may be) in Sections 11.1.1, 11.1.3, 11.1.4, 11.2.1, 11.2.3, and 11.2.5 shall survive the execution and delivery of this Agreement and any action taken pursuant hereto. The representations, warranties and covenants made by Generator and Gulf Power (as the case may be) in Sections 11.1.2, 11.1.5, 11.2.2 and 11.2.4 shall be true and accurate as of the date of execution of this Agreement.

SECTION 12: COMPLIANCE WITH LAWS

12.1 Compliance. Generator represents, warrants and covenants that as of the Initial Synchronization Date and for the Term, Generator shall (i) be in compliance with all Legal Requirements with respect to the ownership, operation and maintenance of Generator's Interconnection Equipment, including without limitation, all requirements to seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all applicable certificates, licenses, permits and government approvals and all applicable environmental certificates, licenses, permits and approvals, environmental impact analysis, and if applicable, the mitigation of environmental impacts, and (ii) pay all costs, expenses, charges and fees in connection with Section 12.1(i).

12.2 Change of Law. In the event that after the Effective Date there are changes to Legal Requirements, including, without limitation, changes to laws or regulations regulating or imposing a tax, fee or other charge, which cause Gulf Power to incur additional costs in providing Interconnection Service under this Agreement, Generator agrees to pay, to the extent consistent with FERC policy, such reasonable incremental costs incurred by Gulf Power in complying with such changes to Legal Requirements; provided, however, Generator shall be entitled to take reasonable action to mitigate, reduce or otherwise avoid the imposition of any such charges or costs.

12.3 Regulatory Filings. This Agreement is subject to approval by any Governmental Authority having jurisdiction over the matters provided herein. Nothing contained in this Agreement shall be construed as affecting in any way (i) the right of Gulf Power to unilaterally make application to any and all Governmental Authorities (including FERC) that may have jurisdiction over this Agreement for a change in terms and conditions, charges, classification of service, or for termination of this Agreement pursuant to applicable statutes (including Sections 205 and 206 of the Federal Power Act) and those Governmental Authorities' rules and regulations or (ii) the ability of Gulf Power to exercise its rights under the rules and regulations of any Governmental Authority having jurisdiction over this Agreement. Nothing contained in this Agreement shall be construed as affecting in any way (i) the right of Generator to unilaterally make application to any and all Governmental Authorities (including FERC) that may have jurisdiction over this Agreement for a change in terms and conditions, charges, classification of service or for termination of this Agreement pursuant to applicable statutes (including Sections 205 and 206 of the Federal Power Act) and those Governmental Authorities' rules and regulations or (ii) the ability of Generator to exercise its rights under the rules and regulations of any Governmental Authority having jurisdiction over this Agreement. At least thirty (30) Days prior to any such unilateral filing, the Party intending to make the filing shall notify the other of such intent. The Parties agree to reasonably cooperate with each other with respect to such filings and to provide any information reasonably required by the requesting Party to comply with applicable filing requirements. This Agreement shall be modified or amended as necessary to reflect binding determinations with respect to such filings.

12.4 Taxes.

12.4.1 Generator shall be required to make a Tax Payment (as defined in Section 12.4.3) in connection with any Taxable Transfer (as defined in Section 12.4.2). Any Tax Payment due under this Agreement shall be included by Gulf Power in the next Monthly invoice following Gulf Power's calculation of such Tax Payment in accordance with this Section 12.4. Generator shall pay such Tax payment to Gulf Power in accordance with Section 10.

12.4.2 A "Taxable Transfer" means Generator's reimbursement of Gulf Power's costs associated with the Interconnection Facilities, the transfer of the Interconnection Facilities or real property by Generator to Gulf Power, all in accordance with Section 5, or any other transactions contemplated by this Agreement which are determined by Gulf Power, in its sole reasonable discretion, to be taxable to Gulf Power.

12.4.3 The "Tax Payment" means, with respect to a Taxable Transfer, the amount Generator will be obligated to reimburse Gulf Power equal to the tax liability of Gulf Power arising from the sum of (i) the Taxable Transfer to which such Tax Payment relates, and (ii) the Tax Payment. Gulf Power shall compute the Tax Payment (using the highest applicable marginal tax rate) and include such computation with the Monthly invoice described in Section 12.4.1.

12.4.4 In the event Gulf Power receives a refund from a Governmental Authority for any taxes associated with a Taxable Transfer, Gulf Power shall reimburse Generator, to the extent of such refund, for any Tax Payment paid by Generator in connection with such Taxable Transfer. Such reimbursement shall be due to Generator within thirty (30) days after receipt of such refund by Gulf Power.

12.4.5 In the event Gulf Power has not applied for a refund for the taxes associated with a Taxable Transfer, and Generator desires that Gulf Power apply for such a refund, then Gulf Power shall apply for such a refund, provided that the following conditions are first satisfied:

12.4.5.1 Generator obtains and pays for a written tax opinion from a reputable law or accounting firm, addressed to Gulf Power, that it is more likely than not that Gulf Power would be successful if it applied for such a refund; and,

12.4.5.2 Generator agrees to reimburse Gulf Power for all reasonable expenses involved in applying for such refund and pays in advance the estimated amount of such expenses, as prepared by Gulf Power.

12.4.5.3 If such conditions are satisfied, Gulf Power shall apply for such a refund. If such refund is ultimately received, then the disposition of such refund shall be governed by Section 12.4.4, except that Gulf Power shall decrease the amount due to Generator by any unreimbursed expenses in obtaining such refund (or increase the amount if the actual expenses were less than the estimated amount paid in advance by Generator).

SECTION 13: INSURANCE

13.1 Generator's Insurance. If Generator is no longer an Affiliate of Gulf Power, Generator, at its expense, shall procure and maintain in effect during the Term, policies of insurance with insurance companies authorized to transact insurance in the State of Florida or adequate self-insurance, reasonably acceptable to Gulf Power, providing, at a minimum, the coverage and limits specified and complying with the requirements stated below:

13.1.1 Worker's Compensation in statutory amounts and Employer's Liability with a minimum limit of \$1,000,000 per person.

13.1.2 Commercial General Liability Insurance on an occurrence basis or AEGIS "claims made" form, with the following coverage and limits:

General Aggregate	\$1,000,000
Products-Completed Operations-Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$50,000
Medical Expense (any one person)	\$5,000

13.1.3 Business Automobile Liability covering autos of Generator, including owned, hired and non-owned autos, for Bodily Injury and Property Damage with a combined single limit of \$1,000,000 each occurrence.

13.1.4 Excess Liability in Umbrella Form with a limit of \$4,000,000 each occurrence, \$4,000,000 Aggregate.

13.1.5 By signing this Agreement, Generator thereby waives all rights of subrogation against Gulf Power and its Persons Indemnified with respect to any claim or loss payable or paid under each of the policies set forth in 13.1.1, 13.1.2, 13.1.3, and 13.1.4 above and under any property insurance policy for the Facility that Generator has or acquires.

13.1.6 Generator shall cause its insurer(s) to add Gulf Power and its Persons Indemnified as an Additional Insured on the policies set forth in 13.1.2, 13.1.3, and 13.1.4 above with respect to liability of Gulf Power and its Persons Indemnified (a) arising out of the performance of operations, maintenance, work or services under this Agreement, and (b) arising out of the conduct contemplated in the ownership, maintenance or use of Generator's autos, but only to the extent of Generator's indemnity obligations under this Agreement and the coverages and limits specified in Sections 13.1.2, 13.1.3, and 13.1.4.

13.1.7 Subject to the limitations in Section 13.1.6, Generator's insurance shall be primary insurance with respect to the installation, operations, maintenance, work, or services contemplated under this Agreement and insurance of Gulf Power and its Persons Indemnified shall be excess of the Generator's insurance and shall not contribute with it.

13.1.8 To the extent that Generator utilizes deductibles or self-insurance in connection with the insurance coverage required herein, all such deductible and self-insured amounts shall be for the account and expense of Generator and shall not be considered as costs or fees provided for in this Agreement.

13.1.9 If the Generator uses contractors and/or subcontractors to perform any of the work contemplated under this Agreement, Generator shall require such contractors and/or subcontractors to maintain in effect insurance meeting these minimum limits and incorporating the contractual requirements prescribed by this Section 13.

13.2 Notice and Certification. Each of the above required policies shall contain a provision whereby the insurance carrier shall notify Gulf Power at least thirty (30) Days prior to

the effective date of cancellation, non-renewal or material change in any of said policies. Generator shall submit to Gulf Power a Certificate, signed by an authorized representative of the insurance carrier, listing the policies, coverage and limits and certifying that the said policies shall be in effect for the time periods stated in the Certificate. The obligations for Generator to procure and maintain insurance shall not be construed to waive or restrict other obligations.

SECTION 14: FORCE MAJEURE

14.1 Definition of Force Majeure Event. For the purposes of this Agreement, a “Force Majeure Event” as to a Party means any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of such Party and is not caused by such Party's fault, negligence or lack of due diligence, including, without limitation, flood, ice, lightning, earthquake, windstorm or eruption; fire; explosion; invasion, war, civil disturbance, commotion or insurrection; sabotage or vandalism; military or usurped power; or act of God or of a public enemy; provided, however, in no event shall (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; or (ii) a site specific strike, walkout, lockout or other labor dispute constitute a Force Majeure Event.

14.2 No Breach or Liability. Each Party shall be excused from performing its respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that it is unable to so perform or is prevented from performing by a Force Majeure Event, provided that the non-performing Party shall:

14.2.1 Give the other Party notice thereof, followed by written notice if the first notice is not written, both notices to be given as promptly as possible after the non-performing Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event;

14.2.2 Use its reasonable best efforts to remedy its inability to perform as soon as practicable; provided, however, that this Section 14.2.2 shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; provided further, that the settlement of strikes, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty; and

14.2.3 Resume performance of its obligations under this Agreement and give the other Party written notice to that effect, as soon as reasonably practicable following cessation of the Force Majeure Event.

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

SECTION 15: OPERATING COMMITTEE

15.1 Establishment of Committee. At least six (6) months prior to the estimated Initial Synchronization Date, Generator and Gulf Power shall each appoint one representative and one alternate to the Gulf Power – Generator Operating Committee (“Committee”). Each Party shall notify the other party of its appointment in writing. Such appointments may be changed at any time by similar notice. The Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. Each representative and alternate shall be a responsible person working in the day-to-day operations of their respective electrical facilities. The Committee shall represent the Parties in all matters arising under this Agreement which may be delegated to it by mutual agreement of the Parties.

15.2 Duties. The duties of the Committee shall include, but are not limited to, the following:

15.2.1 Establish and maintain control and operating procedures, including those pertaining to information transfers between the Facility and Gulf Power consistent with the provisions of this Agreement.

15.2.2 Establish data requirements and operating record requirements in accordance with the terms and conditions of this Agreement.

15.2.3 Review the requirements, standards, and procedures data acquisition equipment, protective equipment, and any other equipment or software.

15.2.4 Annually review ten (10) year forecast of maintenance and availability schedules of Gulf Power’s and Generator’s facilities at the Interconnection Point and coordinate the scheduling of outages of and maintenance on the Interconnection Facilities, the Facility and any other facilities that impact the normal operation of the Interconnection Facilities.

15.2.5 Ensure that information is being provided by each Party regarding equipment availability.

15.2.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

15.2.7 Each Party shall cooperate in providing to the Committee all information required in the performance of the Committee’s duties. All decisions and agreements, if any, made by the Committee shall be evidenced in writing. The Committee shall have no power to amend or alter the provisions of this Agreement.

SECTION 16: ASSIGNMENT

16.1 Assignment by Generator.

16.1.1 EXCEPT AS EXPRESSLY PERMITTED BELOW OR OTHERWISE AGREED TO BY THE PARTIES, GENERATOR SHALL NOT ASSIGN, TRANSFER, DELEGATE OR ENCUMBER THIS AGREEMENT AND/OR ANY OR ALL OF ITS RIGHTS, INTERESTS OR OBLIGATIONS UNDER THIS AGREEMENT AND ANY ASSIGNMENT, TRANSFER, DELEGATION OR ENCUMBERING BY GENERATOR (EXCEPT AS PERMITTED BELOW) SHALL BE NULL AND VOID. Notwithstanding the foregoing, so long as Generator is not in default under or breach of this Agreement, upon prior written notice to Gulf Power, Generator may collaterally assign its rights, interests and obligations under this Agreement to its lender or an agent for the benefit of its lenders providing financing or refinancing for the design, construction or operation of Generator's Facility in Bay County, Florida (a "Permitted Financing Assignee"); provided, however, that GENERATOR'S RIGHTS AND OBLIGATIONS (FINANCIAL OR OTHERWISE) UNDER THIS AGREEMENT SHALL CONTINUE IN THEIR ENTIRETY IN FULL FORCE AND EFFECT AS THE RIGHTS AND OBLIGATIONS OF A PRINCIPAL AND NOT AS A SURETY. Generator may collaterally assign its rights, interests and obligations hereunder to multiple Permitted Financing Assignees, but only if those Permitted Financing Assignees designate one agent to act for them collectively under this Agreement.

16.1.2 Gulf Power shall, upon serving Generator any notice of Default or the termination of this Agreement, also serve a copy of such notice upon the Permitted Financing Assignee or, in the case of multiple Permitted Financing Assignees, the agent of those Permitted Financing Assignees. No notice of Default purporting to terminate this Agreement shall be deemed to have been given unless and until a copy thereof shall have been given to the Permitted Financing Assignee or the agent for multiple Permitted Financing Assignees. A Permitted Financing Assignee shall be entitled to cure any Default during any cure period provided herein.

16.1.3 The Permitted Financing Assignee shall not be entitled to assign or transfer this Agreement to any purchaser in foreclosure, purchaser in lieu of foreclosure or similar purchaser or transferee ("Purchaser in Foreclosure") unless and until such Purchaser in Foreclosure has (i) executed and delivered to Gulf Power and is in compliance with an agreement in form and substance acceptable to Gulf Power whereby such Purchaser in Foreclosure assumes and agrees to pay and perform all then outstanding and thereafter arising obligations of Generator under this Agreement and (ii) established to Gulf Power's reasonable satisfaction that such Purchaser in Foreclosure has all licenses, permits and approvals and financial and technical wherewithal as may be required to execute, deliver and perform such agreement. Notwithstanding the foregoing, all obligations of Generator to Gulf Power under this Agreement incurred prior to the time the Purchaser in Foreclosure fully assumes this Agreement shall also be and remain enforceable by Gulf Power against Generator. Any assignment to a Purchaser in Foreclosure shall be subject to Gulf Power's rights hereunder.

16.1.4 So long as Generator is not in Default under or breach of this Agreement, upon prior written notice to Gulf Power, Generator may absolutely assign all, but not less than all, of its rights, interests and obligations under this Agreement to another generator (“Outright Assignee”) provided however, that Generator’s obligations under this Agreement shall continue and Gulf Power shall have no obligations to such Outright Assignee unless and until such Outright Assignee has (i) executed and delivered to Gulf Power and is in compliance with an agreement in form and substance reasonably acceptable to Gulf Power whereby such Outright Assignee assumes and agrees to pay and perform all thereafter arising obligations of Generator under this Agreement and (ii) established to Gulf Power’s reasonable satisfaction that such Outright Assignee has all licenses, permits and approvals and financial and technical wherewithal as may be required to execute, deliver and perform such agreement. Any assignment to an Outright Assignee shall be subject to Gulf Power’s rights hereunder.

16.1.5 Generator shall indemnify, defend and hold harmless Gulf Power and its Persons Indemnified from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses, including, without limitation, reasonable attorneys’ fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with any collateral, outright or other assignment by Generator or any foreclosure or other exercise of remedies by the Permitted Financing Assignee of this Agreement or Generator’s or the Permitted Financing Assignee’s rights or interests under this Agreement. Notwithstanding any other provision of this Section 16.1, Generator shall not be obligated to indemnify and hold harmless Gulf Power from and against any loss, liability, obligation, claim, demand, damage, penalty, judgment, cost or expense to the extent caused by the sole negligence or willful misconduct Gulf Power or its Persons Indemnified.

16.1.6 No agreement between the Parties modifying, amending, canceling or surrendering this Agreement shall be effective without the prior written consent of the Permitted Financing Assignee or, in the case of multiple Permitted Financing Assignees, the agent of those Permitted Financing Assignees. Subject to any cure periods provided to the Permitted Financing Assignee in this Agreement or in any consents to assignment, no such prior written consent is required for Gulf Power to take unilateral action under this Agreement, including (without limitation) Sections 3.2, 3.3, 3.4, 10.2, 12.2 and 12.3.

16.1.7 Gulf Power agrees to reasonably cooperate with Generator and any Permitted Financing Assignee in connection with the collateral assignment of this Agreement; provided, however, that Gulf Power shall not be obligated to take any action that could, in its judgment, result in an expansion of its obligations, risks or liabilities or a violation of any law, regulation or order of a Governmental Authority.

16.2 Assignment by Gulf Power. So long as Gulf Power is not in breach of this Agreement, Gulf Power may, at any time, without notice to, or the consent of, Generator or any other Person, including, without limitation, any Permitted Financing Assignee, Purchaser in Foreclosure or Outright Assignee, sell, assign, delegate, encumber or transfer to any Indenture Trustee, Affiliate, any successor by merger or otherwise of Gulf Power or any Qualified Person, and/or create or permit to exist Permitted Liens against, all or any part of this Agreement and/or

Gulf Power's rights, obligations, title or interest in, to and under this Agreement. Provided, however, Generator reserves its right to oppose any such assignment before any Governmental Authority having jurisdiction.

SECTION 17: MISCELLANEOUS

17.1 Gulf Power's Agent. Wherever this Agreement requires Generator to provide information, schedules, notice or the like to, or to take direction from, Gulf Power, Generator shall provide information, schedules, notice or the like to, or receive from, Gulf Power or such agent of Gulf Power as Gulf Power may direct from time to time.

17.2 No Partnership. Generator and Gulf Power do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

17.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and assigns of Generator and Gulf Power.

17.4 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of a Party to any person or entity not a Party to this Agreement.

17.5 No Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of either Party (including without limitation any Affiliate acting as either Party's agent where said agent is given certain authorities pursuant hereto) shall have any liability whatsoever for either Party's performance, nonperformance or delay in performance under this Agreement.

17.6 Time of Essence. Time is of the essence of this Agreement.

17.7 No Waiver. Neither Gulf Power's nor Generator's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Gulf Power or Generator of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

17.8 Amendments. Except as provided in Section 12.3, this Agreement may be amended by and only by a written instrument duly executed by each of Generator and Gulf Power, which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

17.9 Notice. Any notice, request, consent or other communication permitted or required by this Agreement shall be in writing and shall be deemed given on the Day hand-delivered to the representative identified below, on the Day of facsimile transmission to the

facsimile number stated below, or the third (3rd) Day after the same is deposited in the United States Mail, first class postage prepaid, and if given to Gulf Power shall be addressed to:

Gulf Power Company
Attn: Vice President, Power Generation and Transmission
One Energy Place
Pensacola, Florida 32520
Facsimile: (850) 444-6744

with a copy to:
Southern Company Services, Inc.
Attn: Manager, Transmission Services
600 North 18th Street
Birmingham, Alabama 35203
Facsimile: (205) 257-6663

and if given to Generator, it shall be addressed to:

Southern Power Company
Attn: Vice President, Generation, Planning and Development
600 North 18th Street
Bin 15N-8181
Birmingham, Alabama 35203
Facsimile: (205) 257-5703

with a copy to:
Southern Company Services, Inc.
Attn: Manager, Generation Development
600 North 18th Street
Bin 15N-8186
Birmingham, Alabama 35203
Facsimile: (205) 257-6336

unless Gulf Power or Generator shall have designated a different representative or address for itself by written notice to the other. Generator shall comply with reasonable requirements of Gulf Power regarding communications with Gulf Power relative to the performance of this Agreement.

17.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17.11 Cross-References. All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.

17.12 Section Headings. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

17.13 Including. Wherever the term “including” is used in this Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase or term.

17.14 Governing Law. The validity, interpretation and performance of this Agreement, and each of its provisions, are subject to and shall be governed by applicable federal law, and where not preempted by federal law, by the laws of the State of Florida, without giving effect to conflict of laws principles.

17.15 Merger. This Agreement represents the entire agreement between the Parties and all previous communications, representations and agreements between the Parties regarding the subject matter of this Agreement, whether oral or written, are hereby superseded.

17.16 NERC. To the extent not inconsistent herewith, Generator shall comply with any operational specifications and requirements specified by Gulf Power and all planning standards and operating guidelines of the North American Electric Reliability Council or its successor.

17.17 Good Utility Practices. Each Party shall discharge its respective obligations under this Agreement in accordance with Good Utility Practices.

17.18 Safety. Each Party shall comply with the applicable provisions of the National Fire Protection Association Code, the American National Electrical Code, the National Electrical Safety Code and other applicable code requirements. Each Party shall furnish and maintain, at its own expense, proper and adequate facilities, equipment, machinery, tools and supplies necessary to maintain its facilities and premises as a safe workplace and have available at all times for use by its employees, agents, independent contractors, suppliers, vendors and borrowed employees and all safety equipment needed for the protection of that Party’s employees, agents, independent contractors, suppliers, vendors and borrowed employees against injuries. Each Party shall be solely responsible for providing for the safety of its facilities and premises and of its employees, agents, independent contractors, suppliers, vendors and borrowed employees.

17.19 Confidential Information. Confidential Information shall mean any confidential and/or proprietary information provided by Gulf Power or Generator (“Disclosing Party”) to the other party (“Receiving Party”) and which is clearly marked or otherwise designated as “CONFIDENTIAL.” For purposes of this Agreement, all design, operating specifications and metering data provided by Generator shall be deemed confidential regardless of whether it is clearly marked or otherwise designated as such. Except as otherwise provided herein, each Party shall hold in confidence and shall not disclose Confidential Information to any person (except employees, officers, representatives and agents that agree to be bound by this Section 17 or FERC’s Standards of Conduct). Confidential Information shall not include information that the Receiving Party can demonstrate: (a) is generally available to the public other than as a result of a disclosure by the Receiving Party; (b) was in the lawful possession of the Receiving Party on a

non-confidential basis before receiving it from the Disclosing Party; (c) was supplied to the Receiving Party without restriction by a third party, who, to the knowledge of the Receiving Party, was under no obligation to the Disclosing Party to keep such information confidential; (d) was independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party; or (e) was disclosed with the prior written approval of the Disclosing Party. Gulf Power, or its agent acting as Transmission Provider under the Tariff, may release or disclose certain Confidential Information of the Disclosing Party to other Transmission Providers, SERC, or NERC if necessary or appropriate in connection with its role as Transmission Provider. If a court, government agency or entity with the right, power, and authority to do so, requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. In the absence of a protective order or waiver the Party shall disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

17.20 Cooperation. Each Party to this Agreement shall reasonably cooperate with the other as to all aspects relating to the performance of its respective obligations under this Agreement; provided, however, this agreement of cooperation shall not constitute a waiver or relinquishment of either Party's rights under this Agreement in law or equity.

17.21 Negotiated Agreement. The Parties agree that this Agreement is the result of mutual compromise and shall not be construed as having been drafted by either Party. The Parties agree to support the acceptance of the Agreement in its entirety by FERC.

17.22 Subcontractors. Nothing in this Agreement shall be construed as preventing either Party from utilizing the services of subcontractors as it deems appropriate; provided, however, that all such contractors comply with the applicable terms and conditions of this Agreement. The creation of any subcontract relationship shall not relieve the retaining Party of any of its obligations under this Agreement.

17.23 EWG Status. Nothing in this Agreement shall require Generator to take any action that could result in its inability to obtain, or its loss of, status as an Exempt Wholesale Generator within the meaning of the Public Utility Holding Company Act of 1935, as amended.

[THE FOLLOWING PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, Generator and Gulf Power have caused this Agreement to be executed by their duly authorized representatives on the Day and year first above written.

SOUTHERN POWER COMPANY
"Generator"

By: _____

Title: _____

Date: _____

GULF POWER COMPANY
"Gulf Power"

By: _____

Title: _____

Date: _____

APPENDIX A

INTERCONNECTION PROCEDURES

The following requirements apply to Generator's Facility when operated in parallel with the Gulf Power Electric System.

A. Operating Limits.

In order to minimize objectionable and adverse operating conditions on the electric service provided to other customers by Gulf Power, the Facility shall meet the following operating criteria:

1. Voltage.

When Generator is delivering power to the Gulf Power Electric System, Generator shall operate its generation to meet the voltage schedule, as measured at the transmission bus serving the Facility, communicated by Gulf Power. The current voltage schedules for the Interconnection Point to the Facility is attached to this Appendix A. If the Generator cannot hold the voltage schedule but is producing or absorbing its maximum amount of MVARs for the level of MW output that it is then operating at, then that is acceptable performance provided that each unit of the Generator that is then generating is producing no less than 0.33 MVAR/MW x the unit's Continuous Rated MW Output or absorbing no less than 0.23 MVAR/MW x the unit's Continuous Rated MW Output. For purposes of this paragraph, the "Continuous Rated MW Output" shall be 574 MW which is the combined total output of the Generator's units comprising the Facility.

2. Frequency.

The Facility shall maintain a nominal operating frequency of 60 hertz. Generator may be required to assist in supporting system frequency if requested by Gulf Power.

3. Governor Characteristics.

The Facility shall be capable of providing an immediate and sustained response to abnormal frequency excursions within the machine design parameters. The governors shall be properly maintained and shall provide droop characteristics consistent with the requirements of NERC, SERC and the Gulf Power Electric System. At a minimum, governors shall be fully responsive to frequency deviations consistent with the requirements of NERC, SERC and the Gulf Power Electric System during normal operating conditions only, as defined by Good Utility Practices. In no event shall the governors be blocked by Generator without the express written permission of Gulf Power.

4. Minimum Acceptable Reactive Capability.

a. Reactive Power Production. At continuous rated output, simulations must show that Generator's Facility shall have the capability of dynamically supplying at least 0.33 MVARs at the 230 kV Interconnection Point for each MW supplied when the Facility is tested at 1.02% of nominal voltage.

b. Reactive Power Absorption. The Facility shall also be capable of dynamically absorbing 0.23 MVARs from the transmission system for each MW supplied at the 230 kV Interconnection Point during simulations when the Facility is tested at 1.05% of nominal voltage. Simple Cycle combustion turbines used as peaking generation may be exempted from the MVAR absorption requirements.

5. Harmonics.

The Facility shall not introduce excessive distortion to the Gulf Power Electric System's voltage and current waveforms. The harmonic distortion measurements shall be made at the transmission facility serving the Facility and be within the limits specified in the tables below.

5.1 Current Harmonics.

MAXIMUM ALLOWABLE HARMONIC CONTENT (CURRENT)
(in percent of total current)
Harmonic Order Number (h)

	$h < 11$	$11 \leq h < 17$	$17 \leq h < 23$	$23 \leq h < 35$	$35 \leq h$
ODD	2.0	1.0	0.75	0.30	0.15
EVEN	0.50	0.25	0.19	0.075	0.04

Total current harmonic distortion may not exceed 2.5%

5.2 Voltage Harmonics.

MAXIMUM ALLOWABLE HARMONIC CONTENT (VOLTAGE)
(in percent)

Maximum Individual Harmonic: 1.00
Maximum Total Harmonic Distortion: 1.50

B. Generator Step-Up Transformer.

To minimize possible adverse effects on other Gulf Power customers, a power transformer is required between Generator's generating units and the Gulf Power Electric System. This transformer's windings shall be connected according to the requirements of Gulf Power.

C. Energization of Gulf Power Equipment by Generator.

Generator shall not energize, or de-energize, Gulf Power equipment. The necessary control devices shall be installed by Generator on the Facility to prevent the energization of de-energized Gulf Power equipment by Generator's Facility.

D. Synchronization of Generator's Facility.

Generator is responsible for the synchronization of the Facility to the Gulf Power Electric System. Gulf Power shall have bus differential relaying at the Interconnection Point and Generator must insure that its Facility is disconnected from Gulf Power whenever the bus is de-energized. Gulf Power may re-energize the bus by remote control and Gulf Power shall not be responsible for damage to Facility due to an out of phase condition during re-energization.

E. Telemetered Quantities.

Gulf Power shall provide the data protocol, and Generator shall install as part of the Interconnection Facilities any equipment necessary to deliver telemetered signals to Gulf Power specifying the voltage and watts, vars, and wathours delivered to the Gulf Power Electric System at the Interconnection Point.

**VOLTAGE SCHEDULES
AT THE INTERCONNECTION POINT
FOR
SOUTHERN POWER LANSING SMITH COMBINED CYCLE UNIT 3**

Commencing with the effective date of the Interconnection Agreement, Generator shall maintain the following voltage schedules as communicated by Gulf Power from time to time:

Voltage scheduling Evaluation for Lansing Smith CC Unit #3 generation (230 kV)	
Schedule #1 - Southern Control Area Maximum Load for the day Greater Than 33,000MW	
Operating Time	Lansing Smith CC3 230 kV
0000 – 0400	235
0400 – 0500	236
0500 – 0600	237
0600 – 1700	238
1700 – 1800	237
1800 – 1900	236
1900 – 2400	235
Schedule #2 - Southern Control Area Maximum Load for the day Between 28,000 and 33,000MW	
Operating Time	Lansing Smith CC3 230 kV
0000 – 0400	235
0400 – 0500	236
0500 – 0600	237
0600 – 1700	238
1700 – 1800	237
1800 – 1900	236
1900 – 2400	235
Schedule #3 - Southern Control Area Maximum Load for the day Between 23,000 and 28,000MW	
Operating Time	Lansing Smith CC3 230 kV
0000 – 0600	235
0600 – 1800	236
1800 – 2400	235
Schedule #4 - Southern Control Area Maximum Load for the day Below 23,000MW	
Operating Time	Lansing Smith CC3 230 kV
0000 – 0600	235
0600 – 1800	235
1800 – 2400	235

Gulf Power's determination of whether Schedule 1, 2, 3, or 4 should be used for a given period shall be based on expectations of system requirements and conditions. The voltage schedule to be used, for the upcoming week, shall be communicated to Generator each Friday and at such other times as changing system requirements and conditions may require.

**APPENDIX B
SPECIFICATIONS
TO
INTERCONNECTION AGREEMENT
BETWEEN
SOUTHERN POWER (SMITH COMBINED CYCLE UNIT 3)
AND
GULF POWER COMPANY**

1. Location of Interconnection Point:

The location of the Interconnection Point will be in Bay County, Florida, near Panama City, Florida.

2. Projected Dates Generator's Facilities will connect to Gulf Power:

Station Service Date:	July 1, 2001
Initial Synchronization Date:	September 1, 2001
Commercial Operation Date:	June 1, 2002

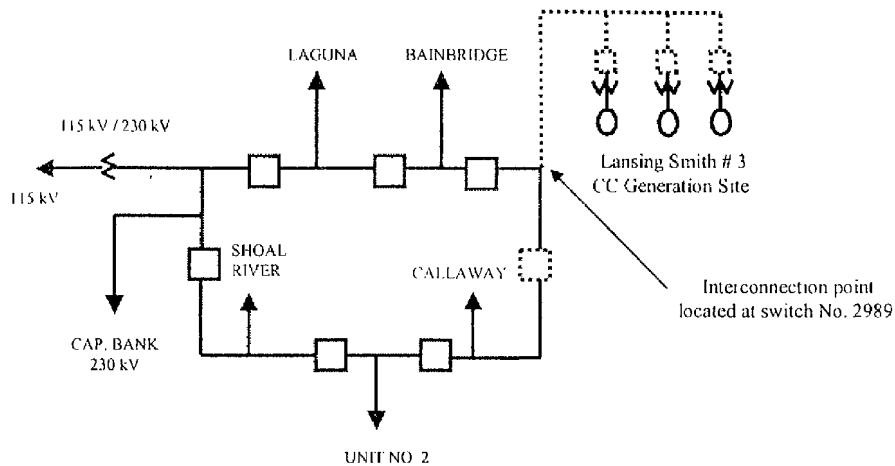
3. Description of Interconnection Point:

The point at which Generator's one (1) 230 kV circuit connects to Gulf Power's motor operated disconnect switch No. 2989 in the Gulf Power Lansing Smith 230 kV Substation, as such is indicated on the single line diagram below.

4. Description of Generator's Facility

The Generator's Facility under this Agreement is a 574 MW Combined Cycle (CC) facility located in Bay County, FL, which is more fully described in the Interconnection Application made by Southern Power to Southern Company on August 09, 2000.

Lansing Smith unit #3
Interconnection Layout



L. Smith 230kV Substation

5. Description of Station Service Connections:

Should Generator require station service in addition to that which Generator can self-provide, separate arrangements will be made by Generator.

6. Interconnection Facility Requirements:

The Interconnection Facilities are sufficient to accommodate approximately 574 MW Summer rating upon completion.

7. Description of Gulf Power's Interconnection Facilities:

Interconnection Facilities under this Agreement include the following:

Responsible Party/Estimated Cost

1. Rearrangement of lines in the Lansing Smith 230 kV Substation.

Design & Construction
By Gulf Power
(\$ 1,200,000)

- | | |
|--|--|
| 2. Install one (1) IPO 230 kV circuit breaker and associated switches and control equipment. Terminate line from the Generator's Facility. | Design & Construction
By Gulf Power
(\$ 363,000) |
| 3. Replace six (6) 230 kV circuit breakers with IPO circuit breakers. | Design & Construction
By Gulf Power
(\$ 1,200,000) |

8. Description of Generator's Interconnection Equipment:

Generator's Interconnection Equipment under this Agreement includes the following:

Estimated Cost

- | | |
|---|--|
| 1. 3 PCB Collector Bus at the 230 kV Lansing Smith Switching Station (SS) | Design & Construction
by Southern Power |
| 2. 230 kV transmission connection between the SS and the Collector Bus | Design & Construction
by Southern Power |

The specifications for all such equipment in Items 7 and 8, above, will be determined in accordance with this Agreement, the results of the Interconnection Study dated May 25, 2001, Gulf Power specifications provided to the Generator in writing and Good Utility Practices.

APPENDIX C

Estimated Construction Costs

The Generator's estimated total construction cost responsibility for the Interconnection Facilities is \$2,763,000.

OPERATING AGREEMENT

between

Gulf Power Company

and

Southern Power Company

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OPERATING AGREEMENT
between
Gulf Power Company
and
Southern Power Company

THIS AGREEMENT is made and entered into this ____ day of _____, 2001, to be effective as of the close of business on _____, (the "Effective Date") by and between Gulf Power Company ("Operator") and Southern Power Company ("Owner").

WITNESSETH:

WHEREAS, Operator and Owner are each a wholly-owned subsidiary of The Southern Company ("Southern"), a registered holding company under the Public Utility Holding Company Act of 1935 (the "1935 Act"); and

WHEREAS, Owner owns certain generation stations, plants and other generation-related facilities within the service territory of Operator and may construct or acquire additional facilities in the future; and

WHEREAS, Owner intends to sell on the wholesale market the electric power generated by such facilities; and

WHEREAS, Operator owns and operates generation stations, plants and other related generation facilities and has developed the expertise and experience to efficiently and economically operate such facilities; and

WHEREAS, Owner believes that in order to more efficiently and economically provide for the operation, maintenance, repair, and rehabilitation of its generating stations, plants and other generation-related facilities, such activities should be conducted and coordinated by Operator; and

WHEREAS, Owner desires that Operator undertake the operation, maintenance, repair and rehabilitation of its generating stations, plants and other generation-related facilities identified on Schedule 1, subject to the receipt of any necessary regulatory approvals, and Operator has agreed to do so under the terms and conditions set forth below.

NOW THEREFORE, in consideration of these premises, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1

Definitions

As used herein, the following terms and phrases shall have, respectively, the following meanings:

1.1 “Generation Facility” shall mean, and refer to, respectively, each of the fossil fuel, hydro-electric and pumped storage generation stations, plants and other generation-related facilities owned by Owner, located within the service territory of Operator and identified on Schedule 1 attached hereto and incorporated herein; provided, however, that should activities concerning a Generation Facility be undertaken with respect to one unit of such station, plant or facility, the phrase “Generation Facility” shall mean and refer to that unit and related common facilities. Generation stations, plants and other generation-related facilities may be removed from or added to the definition of “Generation Facilities” as contemplated in Section 2.3.

1.2 “Governmental Authority” shall mean any local, state, regional or federal legislative, regulatory, administrative, legal, judicial or executive agency, commission, department or other entity and any person acting on behalf of any such entity.

1.3 “Legal Requirements” shall mean all laws, codes, ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, written agreements, regulations and requirements of or issued by every Governmental Authority having jurisdiction over the matter in question, whether federal, regional, state or local, which may be applicable to Operator, or to Owner, or to any Generation Facility or any of the real or personal property comprising the Generation Facilities, or to services to be provided to Owner hereunder, or the use, occupancy, possession, operation, maintenance, construction, retirement, acquisition, installation, alteration, replacement, reconstruction or disposal of any one or more of the Generation Facilities or any part thereof.

1.4 “New Investment Projects” shall mean projects for the Generation Facilities relating to the planning, design, licensing, acquisition, construction, completion, renewal, improvement, addition, repair, replacement or enlargement of any Unit of Property (as described in the Federal Energy Regulatory Commission’s “Units of Property for Use in Accounting for Additions and Retirements of Electric Plants”), under circumstances where expenditures on or for such projects are to be capitalized in accordance with the Electric Plant Instructions of the Uniform System of Accounts prescribed for Class A and B utilities by the Federal Energy Regulatory Commission.

1.5 “New Investment Services” shall mean work on or for any New Investment Project, including, but not limited to, any planning, design, engineering, labor, procurement of materials and supplies, materials management, quality assurance, training, security, and environmental protection, together with maintaining or obtaining licenses and regulatory approvals related thereto, governmental affairs or regulatory relationships, administration of payables and receivables, and all other activity required for the safe and

reliable operation of the New Investment Project and/or the relevant Generation Facility or that may be required to comply with Legal Requirements.

1.6 “Operating Services” shall mean New Investment Services, and Operation and Maintenance Services.

1.7 “Operation and Maintenance Services” shall mean work for Owner relating to the possession, management, control, start-up, operation, availability, production of energy, maintenance, improvement, renewal, replacement, and shutdown, including, but not limited to, any planning, design, engineering, labor, procurement of materials and supplies, materials management, quality assurance, training, security, and environmental protection, together with maintaining or obtaining licenses and regulatory approvals related thereto, governmental affairs or regulatory relationships, administration of payables and receivables, and all other activity required for the safe and reliable operation of the Generation Facilities or that may be required to comply with Legal Requirements.

1.8 “Prudent Utility Practice” shall mean at a particular time any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. “Prudent Utility Practice” is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or

acts having due regard for, among other things, manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction.

ARTICLE 2

Operator's Authority and Responsibility with Respect to Operation of the Generation Facilities

2.1 Responsibility of Operator. Operator, consistent with such written guidelines as may be jointly developed with Owner, shall provide and be responsible for (i) the operation and maintenance of the Generation Facilities in a safe and reliable manner in accordance with all Legal Requirements and with Prudent Utility Practice, (ii) the generation of power and energy at the Generation Facilities to the credit of and for the benefit of the Owner as economically as is reasonably practicable, (iii) the repair and rehabilitation of the Generation Facilities as may, from time to time, be necessary, appropriate or reasonably practicable and advisable and (iv) as and to the extent deemed by Owner to be necessary or appropriate, the construction of new or additional non-nuclear generation facilities for Owner. Operator also shall make such further changes and additions to and retirements from the Generation Facilities in its service territory as shall be consistent with such operation, maintenance, repair and rehabilitation. Such services and construction may be provided by Operator through its own personnel or, in part, by others, including without limitation affiliate personnel, under contractual or other arrangements, including the use of Owner's personnel under the direction and supervision of Operator.

2.2 Authorization of Operator. In furtherance of the foregoing, Owner authorizes Operator, and Operator agrees to provide, Operation and Maintenance Services for the Generation Facilities and, as authorized herein, New Investment Services. Owner hereby authorizes Operator to take all actions that, in the discretion and judgment of Operator consistent

with Prudent Utility Practice, are deemed necessary or advisable in providing these Operating Services. Owner hereby authorizes Operator, as operator, to take any and all action necessary to comply with all Legal Requirements and to take all action necessary to fulfill any requirements for the safe and reliable operation of the Generation Facilities. The authority vested in Operator shall include, but not be limited to, the authority to incur costs, liabilities, and obligations, to purchase equipment, materials and supplies, to perform and arrange for performance of work, to select and retain contractors, engineers, consultants, architect-engineers, attorneys, accountants and other firms or persons, and to take all actions in connection with the Generation Facilities that are within the scope set forth above. Without limiting the foregoing, the authority vested in Operator shall include the following:

2.2.1. Plant Operation and Maintenance. Operator shall have the authority to possess, operate and maintain the Generation Facilities in accordance with policies and decisions established and made by Owner. Subject to the provisions of this Agreement, Operator shall in accordance with Prudent Utility Practice endeavor to achieve reliable performance of each Generation Facility, to maximize the capacity and availability factors and minimize forced outage rates and durations at each Generation Facility and to produce busbar costs as low as reasonably possible.

(a) Staff and Personnel. Subject to the provisions of Section 2.8.1 respecting Strategic Plans and approval of Owner or Owner's designated representative, Operator shall have the authority to select, hire, compensate, control and discharge (when deemed appropriate by Operator) those persons, firms or corporations which are required to satisfy its obligations under this Agreement. Operator shall keep Owner informed of any plans to change either

the Operator officer responsible for any of Owner's Generation Facilities or the Operator manager of such Generation Facility. Any input from Owner on such plans will be considered by Operator, but Operator's decisions on personnel matters shall be final. Operator shall also consider any positive or negative comments from Owner regarding the performance of any of Operator's officers or managers, but management decisions on whether to take personnel or salary administration actions shall be made solely by Operator.

(b) Licenses and Permits for Generation Facilities. Operator is authorized to obtain and maintain compliance with all licenses, approvals and permits for each Generation Facility from Governmental Authorities required for operation and maintenance of the Generation Facility. Upon mutual agreement of Operator and Owner, or as required by Legal Requirements, Operator will be designated in such licenses, approvals and permits as having operating responsibility for the Generation Facilities.

(c) Reductions in Capacity and Outages at Each Plant. Owner recognizes that, in the course of operating the Generation Facilities, it may be necessary to decide whether to operate the Generation Facilities at less than full power or to terminate or suspend such operations altogether in light of technical, legal, regulatory, safety, economic, power system, testing, or other considerations. Operator recognizes the need to minimize periods of reduced capacity or outages at the Generation Facilities that could have an adverse effect on Owner's power supply system or its cost of providing reliable electric service. Operator will endeavor to consult with Owner concerning any operating conditions which are

expected to result in capacity reductions of fifty percent (50%) or more at a Generation Facility or outages at a unit of any Generation Facility, and Operator will only take those actions when they determine they are prudent and necessary from an operating standpoint.

(d) Events About Which Owner is to be Notified. In the event of an occurrence at a Generation Facility of any unplanned outage, any significant extension of a planned outage, any unplanned reduction in the capacity of a unit for an extended period, or any event at a Generation Facility or any regulatory action which is likely to attract substantial media attention or to affect substantially the operation of the Generation Facility, Operator shall inform Owner as soon as practical, or in accordance with guidelines acceptable to Owner, after the occurrence of such event.

(e) No Changes to Transmission or Distribution Facilities. In order that the safe operation of the Generation Facilities is assured, Owner shall not effect any operating or physical changes to its transmission and distribution facilities which may adversely affect the safe operation of the Generation Facilities without prior consultation with and the concurrence of Operator.

(f) Operation in Accordance with Operating Plan. Each Generation Facility shall be operated in accordance with Prudent Utility Practice and pursuant to an operating plan developed and updated regularly by Operator and Owner and in accordance with Owner's obligations, if any, under any interconnection agreements, power pooling arrangements or other applicable arrangements, as such obligations may presently exist or may hereafter be modified from time to

time, including the obligations, if any, of Owner to maintain the design integrity of each Generation Facility under the requirements of the Southeast Electric Reliability Council and the National Electric Reliability Council.

(g) Point of Interconnection. The point of interconnection between any Generation Facility and Operator's or a third party's transmission system and the extent of Operator's operational responsibility therefor shall be determined from time to time by Owner and Operator.

2.2.2. New Investment Services. Operator shall have responsibility for all New Investment Services. Operator is authorized to enter into such arrangements as it deems appropriate for the Generation Facilities and to make all decisions regarding the completion of New Investment Projects that were contemplated in the construction budgets for the Generation Facilities as of this acquisition by Owner or that have been approved and provided for in an Operating Budget or Capital Budget under the procedures contemplated in Section 2.8 and as applicable Section 2.3.3. All equipment, materials and supplies included in such New Investment Projects for each Generation Facility shall be acquired in the name of Owner and shall be the property of Owner.

2.3 Retirement, Removal or Addition of Generating Facilities. Owner shall retain the exclusive authority (i) to determine when the economic life of the Generation Facility has ended and thereupon to retire the Generation Facility from commercial operation or (ii) to remove a particular generation station, plant or other generation-related Facility from the provisions of this Agreement and to arrange for other means for its operation and maintenance. Owner and Operator may agree to add new generation stations, plants or other generation-related facilities of Owner within Operator's service territory to this Agreement.

2.3.1 Retirement. Upon Owner informing Operator of any retirement or removal of a Generation Facility, Operator shall take such action as may be necessary to reduce operation of the Generation Facility or to terminate operation and place the Generation Facility or unit in a safe shutdown condition. Owner retains the authority to determine whether any to-be-retired Generation Facility should be placed in standby status or operated at reduced output for economic reasons or Owner's need for the capacity or energy of the Generation Facility. Operator shall also take such steps as may be necessary to decommission and dispose of and thereafter maintain, to the extent necessary, any to-be-retired Generation Facility or any unit thereof designated for retirement.

2.3.2 Removal. Upon Owner informing Operator of any removal of a Generation Facility from this Agreement, Operator shall take such action as may be necessary to transfer operational control of such Generation Facility, and to comply with the provisions of Sections 12.1.2 and 12.1.3, which shall also apply. Upon the transfer of operational control of a Generation Facility as contemplated above and in Sections 12.1.2 and 12.1.3, such generation station, plant or other generation-related facility shall cease to be a "Generation Facility."

2.3.3 Addition. Upon Owner and Operator agreeing to the addition of a generation station, plant or other generation-related facility to this Agreement, such generation station, plant or other generation-related facility shall be a "Generation Facility" and shall be subject to all of the provisions of this Agreement.

2.4 Authority to Act as Agent for Owner and Right of Third Parties to Rely on Agency. In the conduct of the authority vested in Operator in Sections 2.1 and 2.2 above, Owner

hereby designates and authorizes Operator to act as its attorney-in-fact and agent for such purposes, including, without limitation, authority to enter into and administer contracts on behalf of Owner for procurement of material, equipment or services and authority to administer contracts entered into by Owner with respect to the Generation Facilities. As relates to all third parties, the designation of Operator as agent shall be binding on Owner. Operator accepts such appointment as agent of Owner. Upon request from Operator, Owner shall provide written confirmation of this agency relationship to third parties.

2.5 Assignment of Contracts; Liability and Allocation of Risks.

2.5.1 Contracts with Third Parties. Upon mutual agreement of Operator and Owner, Owner shall assign and transfer to Operator those contracts with third parties relating to the operation of each Generation Facility. Prior to assignment and transfer of such contracts, Operator may request Owner to appoint Operator as agent for administration of any such contracts. After receipt of any such assignment, transfer or authorization to administer, Operator shall have the exclusive responsibility for the administration and enforcement thereof in accordance with the terms thereof.

2.5.2 Acceptance of Contract Provisions. To the extent permitted pursuant to Section 2.8, Operator in such contracts with third parties may agree to such matters as limitations on the liability of contractors for work performed or materials furnished, restrictions on warranties, agreements to indemnify the contractors from liability, requirements that Owner be bound by financial protection provisions, waivers, releases, indemnifications, limitations of liability and further transfers or assignments under such contracts, and other similar provisions (each contract with a third party that contains any of the provisions, terms or other effects described in this sentence, shall be referred to as a

“Material Contract”). Owner waives any claims against Operator for entering into Material Contracts approved pursuant to the process provided in Section 2.8. Owner also agrees to be bound by the requirements for financial protection, waivers, releases, indemnification, limitation of liability and further transfers or assignments that bind Operator as they now exist in existing Material Contracts or as they may exist in the future with respect to Material Contracts approved or entered into pursuant to such process provided in Section 2.8.

2.5.3 Enforcement of Rights Under Contracts. Owner covenants that, Owner will notify Operator in writing in advance if Owner intends to threaten suit or bring suit against third parties or otherwise make any claim under any contract or arrangement relating to any of the Generation Facilities or Operating Services being provided by Operator. If Owner desires for Operator to threaten or bring suit or otherwise to make any claim, or desires that such action contemplated by Operator shall not be taken, Owner shall, by written notice to Operator, request it so to act or refrain from acting. Upon Operator’s receipt of a notice under one of the previous two sentences, Owner and Operator shall arrange for consultation within ten (10) working days thereafter on the questions raised, or such lesser period of time as Operator or Owner shall specify in the light of circumstances requiring a more expeditious determination. Neither Operator nor Owner shall make its final determination whether it will or will not bring any such suit or make any such claim until after such consultation; however, the determination by Operator regarding the action that it will or will not take, shall be final and binding (irrespective of what Owner decides to do), and the decision of Owner regarding the

action that it will or will not take will also be final and binding (irrespective of what Operator decides to do).

2.6 Cooperation of Owner. Subject to the requirements and procedures of Sections 2.5.2 and 2.8, and in the case of New Investment Services Section 2.2.2 and as applicable Section 2.3.3, Owner agrees that it will take all necessary action in a prompt manner to execute any agreements with respect to the provision of Operation and Maintenance Services for the Generation Facilities, and New Investment Services, as and when requested by Operator to permit Operator to carry out its authority and responsibilities pursuant to this Article 2. Owner shall be responsible for procuring all fuel for the Generation Facilities and to make such fuel available in the quantities and at the rates of delivery required to accommodate Operator's scheduling instructions. Operator may request Owner to furnish services or assistance, materials, supplies, licenses, offices and real property rights including, without limitation, power supply services, transmission and distribution system repair, replacement, construction and maintenance, accounting services, maintenance personnel, security services, and other personnel, services or assistance as Operator may require with respect to any one or more Generation Facilities. Any such items which Owner agrees to furnish to Operator shall be provided at cost and shall be provided in accordance with Prudent Utility Practice.

2.7 Operator Interface Procedure. Operator and Owner will jointly establish and maintain an Operator Interface Procedure to govern the working relationships between the two companies. The Operator Interface Procedure shall contain procedures by which Owner can maintain an overview of Generation Facility operations, procedures for administering this Operating Agreement through designated executive points of contact, and procedures to define interfaces for support services and assistance provided by Owner pursuant to Section 2.6 hereof.

2.8 Plans and Budgets. Strategic Plans, Operating Budgets, Capital Budgets, and Material Contracts shall be submitted to Owner by Operator as provided in Paragraphs 2.8.1 through 2.8.4 below. The contents of these plans, budgets and Material Contracts shall conform to the requirements and guidelines established pursuant to the Operator Interface Procedure. Owner shall approve or disapprove each such plan, budget or Material Contract within thirty (30) days after its submittal. In the event Owner disapproves a plan, budget or Material Contract, Owner shall inform Operator of the basis for such disapproval. Operator shall then modify such plan, budget or Material Contracts as required to make it acceptable to Owner and shall resubmit it for approval; provided, however, that in no event shall Operator be required to submit plans, budgets or Material Contracts which would cause Operator to operate a Generation Facility in violation of any Legal Requirements or in a manner that fails to provide reasonable assurance of health and safety to employees. Operator shall attempt to provide Operating Services in accordance with such approved plans and within the aggregate annual amount of such budgets. Notwithstanding the foregoing, Operator makes no representation, warranty or promise of any kind as to accuracy of any such plan or budget, or that any attempt referred to in the preceding sentence will be successful, and in no event shall Owner be relieved of its responsibility to pay costs incurred by Operator as required in Article 4 hereof.

2.8.1 Strategic Plan. A Strategic Plan for each Generating Facility shall be submitted to Owner by Operator no later than July 1 of each year. Owner may separately approve or disapprove individual projects which are classified as planned improvement projects pursuant to Paragraph (d) below, but shall otherwise approve or disapprove each Strategic Plan in its entirety. Strategic Plans may cover one or more Generation

Facilities. Each Strategic Plan shall identify key assumptions to be used in the preparation of budgets and forecasts, including:

(a) Five-year Operating and Planned Outage Schedule. This section shall identify the scheduled operating cycles and planned outages for maintenance and other work during the succeeding five years. The schedule shall describe in reasonable detail the time and duration of each planned outage and the maintenance and other work planned to be performed during such outage.

(b) Availability and Performance Goals. This section shall contain overall performance goals which have been established by Operator for the Generation Facility for the current year.

(c) Planned Mandatory Projects. A mandatory project is any project with a total estimated cost in excess of one million dollars (\$1,000,000) or such other amount as Owner may establish, including but not limited to any upgrade, replacement, addition or program, which is needed in order to support normal operations in accordance with Prudent Utility Practice or in order to comply with regulatory or safety requirements. The associated schedule and estimated annual funding requirements shall be included.

(d) Planned Improvement Projects. An improvement project is any project with a total estimated cost in excess of one million dollars (\$1,000,000) or such other amount as Owner may establish, including but not limited to any upgrade, replacement, addition, or program, which is not mandatory as defined in (c) above. Examples of such projects include efforts to improve performance of a Generation Facility or conditions, such as improved Generation Facility capacity

or efficiency, enhanced working conditions, and appearance. The associated schedule and estimated annual funding requirements shall be included.

(e) Authorized Level of Staffing. This section shall provide the current authorized number of permanent staff positions which are assigned to the Generation Facility and its offsite support. Such number of positions shall be broken down by functional areas (e.g., operations, maintenance, administrative, technical, corporate support), shall include positions which are located either on-site or off-site, and shall include all positions regardless of the actual employer. This section shall also show any estimates of planned changes in such authorized number of positions over the succeeding five years.

2.8.2 Operating Budget. By September 1 of each year, Operator shall submit to Owner a written Operating Budget showing the estimated costs of operating and maintaining Owner's Generation Facilities during the next calendar year, with a forecast of budget requirements for the succeeding four calendar years. Each budget shall be supported by detail reasonably adequate for the purpose of review by Owner.

2.8.3 Capital Budget. By September 1 of each year, Operator shall submit to Owner a written Capital Budget estimate of capital expenditures for each of Owner's Generation Facilities for the next calendar year, with a forecast of budget requirements for the succeeding four calendar years. Each budget shall be supported by detail reasonably adequate for the purpose of review by Owner.

2.8.4 Material Contracts. Reasonably in advance of the time it plans to enter into a Material Contract with a third party, Operator shall submit to Owner a draft of such Material Contract. Each draft Material Contract will be supported with all attachments

and sufficient information for Owner to evaluate the provisions that render such draft a Material Contract.

2.9 Information and Reports. Operator shall furnish to Owner the following information and reports:

2.9.1 Generation Facility Data. At the time of submittal of each Strategic Plan, Operator shall also furnish a comparison of the performance of each Generation Facility with other generating facilities using performance indicators in common use in the electric utility industry or as may be specified by Owner.

2.9.2 Generation Facility Budget Reports. Operator shall furnish monthly data showing actual costs for operation and maintenance, and capital expenditures with comparisons to the respective budgets. This report will normally be provided by the end of the succeeding month.

2.9.3 Generation Facility Strategic Plan Reports. At least quarterly, Operator shall furnish data showing actual performance for each unit at each Generation Facility compared to goals contained in the Strategic Plan for the Generation Facility.

2.9.4 Audit Reports. Operator shall make available for review by Owner copies of financial or accounting reports concerning Owner's Generation Facilities containing the results of audits by or for Southern Company Services, Inc., or any affiliate or subsidiary of The Southern Company, or by any regulatory agency.

2.9.5 Correspondence to and from Regulatory Agencies. At the request of Owner, Operator shall furnish to Owner copies of correspondence to and from regulatory agencies concerning one or more of Owner's Generation Facilities.

2.9.6 Responses to Owner Inquiries. In addition to the obligation of Operator to provide the information as explicitly required herein, Operator shall respond to reasonable written or verbal requests from Owner for information not otherwise specifically provided for herein.

2.10 Plant Tours. Owner shall have the right to have its representatives and guests visit its Generation Facilities, to tour the facilities, and observe activities at the Generation Facilities; provided that such visits or tours will not interfere with the operation of the Generation Facilities, or the security or safety of such facilities. Owner shall assure that its representatives and guests comply with all applicable rules and regulations in effect at a Generation Facility whether imposed by Governmental Authority or by Operator.

2.11 Management Audit. Owner shall have the right to conduct a management audit, at its own cost, of Operator's performance hereunder either by Owner officers and employees or through their duly authorized agents or representatives. Operator shall cooperate with Owner in the conducting of such audit and, subject to applicable Legal Requirements and the requirements of vendors, give Owner reasonable access to all contracts, records and other documents relating to the Generating Facilities. Following any such management audit, Operator shall respond to the findings of such audit if requested to do so by Owner. Management audits by Owner shall be scheduled so as to minimize the number of audits required and so as to not to exceed one management audit in any consecutive twelve-month period.

ARTICLE 3

Entitlement to Output

3.1 Entitlement to Output. Owner shall be entitled to all of the output from its Generation Facilities at the time generation in such units occurs. Subject to Operator's primary

responsibility for safe operation of the Generation Facilities, Owner shall have the right to schedule and dispatch the capacity and energy needed from the facilities, and Operator shall use its best efforts to honor such schedule.

3.2 Determination of Output-Responsibility for Station Service and Losses. Output of each Generation Facility shall be the gross generation of the facility, less station service requirements, and less adjustments for losses experienced. Owner shall be responsible for providing all off-site electric power required at the Generation Facility whenever the station service and losses exceed the gross generation of the Generation Facility.

ARTICLE 4

Costs, Billing, Accounting and Audit

4.1 Cost of Operation and Maintenance. Owner shall pay to Operator all direct costs incurred by Operator relating to Operation and Maintenance Services for the Generation Facilities (including all costs identified in Section 9.3 and any costs incurred by Operator as a consequence of termination hereunder). Such costs shall include all payments made to Operator employees (including payment of wages, salaries, workmen's compensation and other benefits) relating to work performed by such employees while on the premises of any of the Generation Facilities. Operator and Owner acknowledge that all such payments made to Operator employees, relating to work performed by such employees while on Generation Facility premises, are effectively made by Owner, since Owner is responsible for such payments and they are made from funds placed on deposit by Owner for those purposes. Owner shall also pay to Operator the Generation Facility allocated share of other of Operator's costs. Allocation of costs to Operation and Maintenance Services shall be performed in accordance with the methodology agreed-upon from time to time by Owner and Operator.

4.2 New Investment Costs. Owner shall pay to Operator all costs incurred by Operator relating to New Investment Services for the Generation Facilities, including obligations incurred to third parties, direct costs of Operator associated with such New Investment Services and the Generation Facilities' allocated share of Operator's other costs associated with such activities. Allocation of costs to New Investment Services shall be performed in accordance with the methodology agreed-upon from time to time by Owner and Operator pursuant to Section 4.1 hereof.

4.3 Other Costs Required by Legal Requirements. Owner shall pay to Operator all direct costs incurred by Operator and the Generation Facilities' allocated share of other of Operator's costs associated with any other activities of Operator relative to the Generation Facilities that are required to meet Legal Requirements.

4.4 Revision. Should Operator undertake to perform services for any other affiliated company or for any non-affiliated company where the cost to Operator of providing such services affects the cost of Operator to provide Operating Services pursuant to this Agreement, Operator shall discuss the matter and reach agreement with Owner respecting the need for or the terms of any amendment of this Section 4 as may be appropriate to assure the continued fairness of the determination of the responsibility for costs payable to Operator hereunder.

4.5 Billing. Operator shall render to Owner a monthly billing statement, with detailed data in a computer readable form as reasonably requested by Owner, no later than the fifth (5th) day of each month detailing costs incurred for Operation and Maintenance Services during the preceding month pursuant to Section 4.1; costs incurred for New Investment Services during the preceding month pursuant to Section 4.2; and the other costs incurred during the preceding month pursuant to Section 4.3.

4.6 Payment. The obligation to make payments as specified herein shall continue notwithstanding the capability (or lack of capability) of the Generation Facilities to produce power for any reason.

4.7 General Accounting Matters. Determinations by Operator on all accounting matters related to the transactions contemplated by this Agreement will be in accordance with Generally Accepted Accounting Principles and the Securities and Exchange Commission's Uniform System of Accounts for Mutual and Subsidiary Service Companies, utilizing the accrual method of accounting, unless otherwise specifically provided in this Agreement or mutually agreed by Operator and Owner or as prescribed by other regulatory agencies having jurisdiction, as in effect from time to time.

4.8 Right to Inspect Records. During normal business hours and subject to conditions consistent with the conduct by Operator of its regular business affairs and responsibilities, Operator will provide Owner or any auditor utilized by Owner and reasonably acceptable to Operator, or any nationally recognized accounting firm retained by Owner, access to Operator's books, records, and other documents directly related to the performance of Operator's obligations under this Agreement and, upon request, copies thereof, which pertain to (a) costs applicable to Operation and Maintenance Services, New Investment Services, and Other Costs for Owner's Generation Facilities to the extent necessary to enable Owner to verify the costs which have been billed to Owner pursuant to the provisions of this Agreement; (b) compliance with all environmental Legal Requirements; and (c) matters relating to the design, construction and operation and retirement of Owner's Generation Facilities in proceedings before any Governmental Authority.

4.9 Disputed Invoice. In the event Owner shall question any statement rendered by Operator in accordance with the provisions of Section 4.1 hereof, Owner shall nevertheless promptly pay amounts called for by Operator under Section 4.1 hereof but such payment shall not be deemed to prevent Owner from claiming an adjustment of any statement rendered.

ARTICLE 5

Advancement of Funds

5.1 Operator shall prepare forecasts, in such frequency, form and detail as Owner shall direct, of the funds required to pay Operator's anticipated costs of the services to be provided to Owner and the dates on which payment of such costs shall become due. Owner shall advance funds to Operator in such amounts and at such times determined on the basis of such forecasts, to enable Operator to pay its costs of services on or before payment of such costs shall be due. Such advances shall be made by deposits or bank transfers to accounts of Operator with such financial institutions as Operator shall designate. Any excess funds in such accounts shall be invested by Operator in accordance with prudent cash management practices and all investment income and appreciation received on such funds shall be credited against the cost of service provided to Owner.

ARTICLE 6

Taxes

6.1 Owner shall report, file returns with respect to, be responsible for and pay all real property, franchise, business or other taxes, except payroll and sales or use taxes, arising out of or relating to its ownership of the Generation Facilities.

ARTICLE 7

Compliance with Provisions of Permits and Requirements of Governmental Agencies

7.1 Owner and Operator shall cooperate in taking whatever action may be necessary to comply with the terms and provisions of all permits and licenses for the Generation Facilities and with all applicable lawful requirements of any federal, state or local agency or regulatory body having jurisdiction in or over the Generation Facilities.

ARTICLE 8

Confidentiality of Information

8.1 Each party to this Agreement may, from time to time, come into possession of information of the other parties that is either confidential or proprietary. Any party having any such information which is known to be considered by any other party as either confidential or proprietary will not reproduce, copy, use or disclose (except when required by a Governmental Authority) any such information in whole or in part for any purpose without the written consent of the other party. In disclosing confidential or proprietary information to a Governmental Authority, the disclosing party shall cooperate with the other party in minimizing the amount of such information furnished. At the specific request of the other party, the disclosing party will endeavor to secure the agreement of such Governmental Authority to maintain specified portions of such information in confidence. Public dissemination of information by the furnishing party before or after it is furnished shall constitute a termination of the confidentiality requirement as to that specific information.

ARTICLE 9

Damage to Persons or Property; Penalties; Fines

9.1 Applicability of Article. Since Operator is undertaking its responsibilities hereunder (i) at cost and (ii) in order to assist Owner in meeting its responsibilities with respect to its Generation Facilities, the following provisions shall be applicable to loss or damage to the

property of any or all of the parties hereto (including Generation Facilities property) or of third parties, or injuries to or loss of life by any person, including employees of the parties hereto, and to penalties or fines assessed with respect to the Generation Facilities:

9.2 Absence of Warranty. Operator does not warrant that its performance of Operating Services will meet the standards set forth in Sections 2.1 and 2.2 hereof, and its sole obligation if it fails to meet such standards is to reperform at the request of Owner the deficient work at cost payable by Owner in a manner that complies with such standards. Owner acknowledges that such services are not subject to any warranty of any nature, express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose.

9.3 Liabilities to Third Parties and Owner. (a) To the fullest extent provided by law, all liability to third parties other than liability for Operator's Willful Misconduct (as defined in 9.4 below), fraud or gross negligence whether arising in contract (including breach of warranty), tort (including negligence, product liability, breach of fiduciary duty or any other theory of tort liability), under the laws of real property or otherwise, or as a result of fines or other penalties imposed by any Governmental Authority, that results from or is in any way connected with the provision of Operation and Maintenance Services, or New Investment Services for the Generation Facilities shall be borne by Owner in their entirety. Owner shall indemnify and hold harmless Operator, its agents servants, directors, employees and affiliates (the "Indemnified Parties") from and against any and all claims, losses, damages, expenses and costs of any kind, including without limitation attorneys fees, costs of investigation and court costs, other than those attributable to Willful Misconduct, fraud or gross negligence of Operator, whether direct or indirect, on account of or by reason of bodily injuries (including death) to any person or persons or property damage arising out of or occurring in connection with the provision of Operation and

Maintenance Services, or New Investment Services for the Generation Facilities, whether or not such claims, losses, damages, expenses or costs were caused by or alleged to have been caused by or contributed to by the active, passive, affirmative, sole or concurrent negligence or by breach of any statutory or other duty (whether non-delegable or otherwise) of any of the Indemnified Parties.

Except for consequences of Operator's Willful Misconduct or fraud, Owner and its affiliates, servants, employees, agents and insurers hereby release, acquit and forever discharge the Indemnified Parties, to the fullest extent permitted by applicable law, from any and all damages, claims, causes of action, damage to property of Owner or expenses of whatever kind or nature, that are in any manner connected with the provision of any Operating Services or the performance and prosecution of any project or work by any of the Indemnified Parties for or on behalf of Owner for its Generation Facilities, whether arising in tort (including negligence, strict liability, breach of fiduciary duty or any other theory of tort liability), contract (including breach of warranty), under the laws of real property or otherwise, or as a result of any fine or other penalty imposed by any Governmental Authority. This release shall be effective whether or not such claims, causes of action, damages, or expenses were caused or alleged to have been caused by or contributed to by the active, passive, affirmative, sole or concurrent negligence or by breach of any statutory or other duty (whether non-delegable or otherwise) of any of the Indemnified Parties.

9.4 Willful Misconduct. As used in this Agreement, the term "Willful Misconduct" shall mean any act or omission by any of the Indemnified Parties that is performed or omitted consciously with actual knowledge that such conduct is likely to result in damage or injury to persons or property; provided, however, that any such act or omission, if performed or omitted by

an Indemnified Party, shall not be deemed Willful Misconduct unless an officer or employee of Operator at or above the officer level of Vice President or the employee level of plant manager shall have expressly authorized such act or omission. Operator shall exercise reasonable and customary supervision or control over the activities of its agents, servants and employees, and its affiliates, so as to minimize the potential for adverse willful actions by such agents, servants or employees or affiliates; provided, however, that failure of Operator to prevent such adverse willful actions shall not itself be considered Willful Misconduct. Liability attributable to Operator's Willful Misconduct, fraud or gross negligence shall be borne by Operator, subject to the limitations of liability in Section 9.5 below and the last paragraph of Section 9.3 above in the case of liability to Owner.

9.5 Limitation of Liability. Notwithstanding Sections 9.3 and 9.4 hereof, Owner agrees that in no event shall any of the Indemnified Parties be liable to Owner for any indirect, special, punitive, incidental or consequential damages including, without limitation, (1) loss of profits or revenues, (2) damages suffered as a result of the loss of the use of Owner's power system, Generation Facilities or equipment, (3) cost of purchase of replacement power (including any differential in power costs), or (4) cost of capital with respect to any claim based on or in any way connected with this Agreement whether arising in contract (including breach of warranty), tort (including negligence, strict liability, breach of fiduciary duty or any other theory of tort liability), under the laws of real property or any other legal or equitable theory of law, or as a result of any fine or other penalty imposed by any Governmental Authority. Owner shall release, acquit, forever discharge, indemnify, and hold harmless the Indemnified Parties from and against any claim by any customer of Owner, or any other third party, for any direct, indirect, special, punitive, incidental or consequential damages arising out of any performance or failure to

perform under this Agreement. The provisions of this Section 9.5 shall apply to the fullest extent permitted by law.

9.6 Severability. In the event that any particular application of any of the limitations of liability contained in this Article 9 should be finally adjudicated to be void as a violation of the public policy of the State of Florida, then such limitation of liability shall not apply with respect to such application to the extent (but only to the extent) required in order for such limitation of liability not to be void as a violation of such public policy, and such limitations of liability shall remain in full force and effect with respect to all other applications to the fullest extent permitted by law.

ARTICLE 10

Insurance

10.1 Parties' Obligations Generally. During the term of this Agreement, Owner and Operator shall make reasonable efforts to procure and maintain in force such physical damage and loss, public liability, worker's compensation, officers' liability and other insurance as Owner may deem appropriate with respect to all losses, damages, liability and claims arising out of Owner's ownership of its Generation Facilities and Operator's operation thereof and the provision of Operating Services hereunder. All such insurance policies shall identify Operator and Owner as additional insureds thereunder as their interests may appear, and shall contain a waiver of subrogation clause in favor of Operator and Owner to the extent of the applicable limits of such policies. The aggregate cost of all insurance, applicable to each Generation Facility and procured by Operator pursuant to this Agreement, and any payment by Operator of any deductible, self-insured retention, or co-payment in connection with any policy claim arising out of Operator's performance of this Agreement shall be included in the costs of Operating

Services. Operator will take steps to meet the requirements of such insurance policies and cooperate with Owner to furnish information, establish procedures, erect or change physical facilities and otherwise meet the requirements of the insurers to maintain coverage in effect and to collect claims that may be made under such insurance. In the event that any of the insurance described in this Article 10 is canceled by a party, that party shall give written notice of such cancellation to the other party at least sixty (60) days prior to the effective date of such cancellation.

10.2 Commercial Liability Insurance. Operator will carry insurance to cover the legal obligations to pay damages because of bodily injury or property damage. The limits and deductibles of such coverage shall be as mutually agreed by Operator and Owner.

10.3 Workmen's Compensation Insurance. Operator shall qualify as a self-insurer in Florida and with the U.S. Department of Labor for purposes of the U.S. Longshoreman's and Harbor Worker's Act, but will provide an umbrella policy to cover benefits in excess of its assumed liability for workmen's compensation, the Longshoreman's and Harbor Worker's Act, and employers liability. Owner and Operator acknowledge that, pursuant to the terms of this Agreement, all premiums for Operator's workmen's compensation insurance and all payments to Operator employees, including workmen's compensation benefits, relating to work performed by such employees while on the premises of a Generation Facility, are effectively made by the Owner, since such premiums and payments constitute direct charges incurred by Operator in relation to the performance of Operating Services for such Generation Facility. It is the intent of Owner and Operator that for purposes of workmen's compensation Owner not be exposed to greater liability by virtue of this Agreement than Owner would have if Owner had utilized Owner

employees to perform Operating Services. If Operator and Owner agree, as an alternative, the parties can purchase any such insurance.

10.4 Additional Insurance. In the event Owner at any time or from time to time shall have elected to participate in supplemental insurance programs to cover other risks arising from the ownership and operation of a Generation Facility, including the extra costs of replacement power, the costs of such protection shall be borne by Owner.

10.5 Waiver of Subrogation - Allocation and Payment of Premium. Each insurance policy obtained by a party hereto shall contain waivers of subrogation against the other party, if obtainable from the insurer. The aggregate cost of all insurance, applicable to the Generation Facilities and procured by Operator pursuant to this Agreement, shall be considered an operating cost subject to reimbursement under Section 4.1. In the event that any of the foregoing insurance policies is canceled by a party, that party shall give written notice of such cancellation to the other party sixty (60) days prior to the effective date of such cancellation.

ARTICLE 11

Term

11.1 Term. The term of this Agreement shall commence on the Effective Date, subject nevertheless to any applicable rules, regulations or approvals of any regulatory authority whose approval is required. This Agreement shall expire (i) when all Generation Facilities have been retired and each site has been returned to a condition acceptable to Owner, all in compliance with Legal Requirements; (ii) upon termination pursuant to Section 12.1; or (c) upon mutual agreement of the parties. Owner's obligation to make payments to Operator under this

Agreement that have not been satisfied prior to the expiration of the term of this Agreement shall survive such expiration of the term.

11.1.1 It is recognized in the case of expiration under Sections 11.1(i) or 11.1(iii), however, that this Agreement shall not expire, unless all necessary regulatory approvals, if any, have been obtained to transfer the operating responsibility for all Generation Facilities to Owner or Owner's designee. Until the date on which such transfer of operating responsibility is accomplished, or as Owner may otherwise notify Operator in writing, Operator agrees to continue to provide Operating Services for the Generation Facilities.

ARTICLE 12

Remedies

12.1 Termination. In the event Owner determines that it is in its interest to do so, or Operator determines that it is in Operator's interest to do so, either Operator or Owner may at will terminate this Agreement as provided below. Except as may be otherwise provided in Section 11.1, this Section 12.1 and Article 9 hereof, this right of termination shall be Owner's sole and exclusive remedy, legal or equitable, for any failure by Operator at any time to perform its duties, responsibilities, obligations, or functions under this Agreement, or for any other breach by Operator of this Agreement. The procedure for exercise of this right of termination shall be as follows:

12.1.1 Owner shall give written notice to Operator of Owner's determination to terminate this Agreement or Operator shall give written notice to Owner of its determination to terminate this Agreement.

12.1.2 Following the giving of such notice, the parties agree to cooperate, in good faith, to accomplish the transfer of operating responsibility in a prompt manner, including without limitation assigning contracts, transferring employees, and modifying licenses, approvals and permits as necessary to reflect such change (including, if required to effectuate transfer to Owner for regulatory purposes of the operating responsibility for the Generation Facilities).

12.1.3 It is recognized that no termination shall be accomplished until all necessary regulatory approvals, if any, have been obtained to transfer the operating responsibility for all Generation Facilities to Owner or Owner's designee. During the period between the giving of the notice of determination to terminate, and the date on which such transfer of operating responsibility is accomplished, Operator agrees to continue the provision of Operating Services for the Generation Facilities.

12.1.4 Upon receipt of all necessary governmental authorization for transfer of operating responsibility for each Generation Facility from Operator to Owner or Owner's designee, this Agreement shall terminate. Except as may otherwise be provided in Section 11.1 and this Section 12.1 and except for the consequences of Operator's Willful Misconduct, fraud or gross negligence and the other limitations provided in Article 9 hereof, Owner hereby agrees that from and after such termination Owner shall indemnify and forever hold Operator, its servants, directors, employees, affiliates and its agents harmless from and against any and all liability, costs, expenses (including reasonable attorneys' fees) and judgments, which may thereafter be experienced by Operator, which are in any way related to, arise out of or are in connection with the activities of Operator, its agents, servants, directors, employees and affiliates under this Agreement (whether the

cause occurred before or after termination). Except as may otherwise be provided in Section 11.1 and this Section 12.1 and except for the consequences of Operator's Willful Misconduct or fraud and the other limitations provided in Article 9 hereof, Owner further waives any claim Owner may have against Operator, its officers, directors, employees, affiliates and agents for damage to property of Owner, that arose out of or in connection with the activities of Operator, its officers, directors, employees, affiliates and agents under this Agreement. The indemnification and waiver contained herein shall survive termination and shall be specifically enforceable by Operator against Owner.

ARTICLE 13

Miscellaneous

13.1 No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create or constitute a partnership, joint venture or association among the parties hereto or any of them, the sole purpose of this Agreement being limited to providing for the orderly and efficient operation, maintenance, repair, upgrade, rehabilitation, renewal, replacement, additions and construction of the Generation Facilities.

13.2 Owner's Designated Representatives. Owner hereby designates its President as Owner's Representative, who shall receive notices and communications from Operator under the provisions of this Agreement and who shall send to the designated Representative of Operator all notices and communications under the provisions of this Agreement.

13.3 Operator's Designated Representative, Operator hereby designates its President as the Operator Representative, who shall receive notices and communications from Owner's Representative under the provisions of this Agreement and who shall send to Owner's Representative all notices and communications concerning the provisions of this Agreement.

13.4 Depreciation. Owner shall determine the basis and method it will use for purposes of depreciation and other matters where investment in Generation Facilities property is relevant.

13.5 Holidays, Business Days. Any obligations to perform under this Agreement, including payment obligations, which shall become due on a non-business day shall become due upon the next business day. The term “business day” shall mean any day other than a day on which banking institutions in the City of Pensacola, Florida are authorized by law to close.

13.6 Owner’s Services to be Furnished at Cost. To the extent that Owner may, from time to time, provide goods or services to Operator, Operator shall pay for such goods and services at Owner's cost determined as herein provided, which payments shall thereupon be treated as Generation Facilities costs under Article 4.

13.7 Entire Agreement. This Agreement constitutes the entire understanding among the parties hereto, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. No party hereto has relied or will rely upon any verbal or written representation or verbal or written information made or given to such party by any representative of the other party or anyone on its behalf.

13.8 Amendments. This Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived verbally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing, and signed by both parties hereto, and all necessary regulatory approvals have been obtained.

13.9 Notices. Any notice, request, consent or other communication permitted or required by this Agreement shall be in writing and shall be deemed given when deposited in the United States Mail, first class postage prepaid, and addressed as follows:

If to Operator: Gulf Power Company
One Energy Place
Pensacola, Florida 32520
Attention: President

If to Owner: Southern Power Company
270 Peachtree Street
Atlanta, GA 30303
Attention: President

Unless a different officer or address shall have been designated by the respective party by notice in writing.

13.10 Captions. The descriptive captions of the various Articles, Sections and Paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

13.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.12 No Waiver. Failure of any party to enforce any rights or to require performance of any other party of any of the provisions of this Agreement shall not release any party of any of its obligations under this Agreement and shall not be deemed a waiver of any rights of the parties to insist on performance thereof, or of any of the parties' rights or remedies hereunder, and in no way shall affect the validity of these terms and conditions or any part thereof, or the right of any party thereafter to enforce every provision hereof.

13.13 Singular and Plural. Throughout this Agreement, whenever any word in the singular number is used, it shall include the plural unless the context otherwise requires; and

whenever the plural number is used, it shall include the singular unless the context otherwise requires.

13.14 Third Party Beneficiaries. This Agreement is for the benefit of Owner and Operator, and no person or entity other than Owner and Operator is or shall be entitled to bring any action to enforce any provision of this Agreement against anyone.

13.15 Severability. Should any provision of this Agreement be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect, provided that deletion of the invalid or unenforceable provision does not materially affect the agreement of the parties contained herein.

ARTICLE 14

Successors and Assigns

14.1 This Agreement and all of the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any of Operator's obligations hereunder shall be assignable by Operator, in whole or in part, without the express written consent of Owner. Any mortgage indenture trustee which shall foreclose on substantially all of the electric generation properties of Owner may, at such trustee's own election, be deemed to be a successor and assign of Owner under this Agreement.

ARTICLE 15

Governing Law

15.1 This Agreement shall be construed in accordance with, and to be governed by, the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and by their duly authorized representatives as of the day and year first above written.

“Operator”
Gulf Power Company
By: _____
Name: _____
Title: _____

“Owner”
Southern Power Company
By: _____
C.B. Harreld
Vice President, Comptroller and Chief Financial Officer

SCHEDULE 1

SOUTHERN POWER COMPANY GENERATION FACILITIES

GENERATING STATION

Smith Unit 3

LOCATION

Lynn Haven, Florida