



Florida Power
A Progress Energy Company

ORIGINAL

JAMES A. MCGEE
ASSOCIATE GENERAL COUNSEL

June 20, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

020557-EQ

Re: Petition of Florida Power Corporation for approval of a negotiated qualifying facility contract with Jefferson Power, LLC; **Request for Confidential Classification.**

Dear Ms. Bayó:

Enclosed for filing in the subject matter is Florida Power Corporation's Request for Confidential Classification accompanied by a sealed envelope containing the document subject to the Request, with the confidential information highlighted. Also enclosed with the Request are two copies of the document with the confidential information redacted. **The highlighted portions of the unredacted version should be held as Confidential Information in accordance with Rule 25-22.006, F.A.C.**

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

Very truly yours,

James A. McGee

JAM/scc
Enclosure

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RLM
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

06469 JUN 24 8

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for approval of a negotiated qualifying facility contract with Jefferson Power, LLC.

Docket No. 020557-EQ
Submitted for filing:
June 21, 2002

REQUEST FOR CONFIDENTIAL CLASSIFICATION

Florida Power Corporation (Florida Power or the Company), pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., hereby requests confidential classification of designated portions of (a) Exhibit A to the above captioned Petition of Florida Power filed in conjunction with this request, which consists of a negotiated qualifying facility (QF) contract for the purchase of firm capacity and energy between Jefferson Power, LLC (Jefferson), and Florida Power, dated June 1, 2002 (the Contract), and (b) Exhibit B to the Petition, which consists of a summary comparison of projected capacity and energy costs under the Contract against the capacity and energy costs under Florida Power's recently approved standard offer contract. Exhibits A and B to the Petition are attached to this request in a separate, sealed envelope, with the information for which Florida Power seeks confidential classification highlighted in transparent ink. In support of its request, Florida Power states as follows:

1. Subsection 366.093(1) provides that any records "found by the commission to be proprietary confidential business information shall be kept

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confidential and shall be exempt from s. 119.07(1) [requiring disclosure under the Public Records Act]." Proprietary confidential business information includes, but is not limited to, "[i]nformation concerning. . . contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d). It also includes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Section 366.093(3)(e).

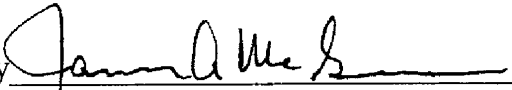
2. The designated pricing terms of the Contract contained in Exhibit A and the calculation of cost savings Florida Power's customers will receive as a result of these pricing terms contained in Exhibit B constitute proprietary confidential business information entitled to protection under Section 366.093 and Rule 25-22.006. This information is intended to be and is treated by Florida Power as private and has not been disclosed.

3. Disclosure of the requested confidential information would jeopardize the ability of Florida Power to negotiate similar contracts with owners of other QFs on favorable terms, to the detriment of its customers. Potential and existing QF suppliers who may be interested in negotiating or renegotiation contracts with Florida Power would have knowledge of the pricing terms of the Contract most favorable to Jefferson and would use these terms as a beginning point in their negotiations, thus compromising the Company's bargaining position.

WHEREFORE, Florida Power respectfully requests that the highlighted information in Exhibits A and B to the Petition be classified as confidential for the reasons set forth above.

Respectfully submitted,

FLORIDA POWER CORPORATION

By 

James A. McGee
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St. Petersburg, FL 33733-4042
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EXHIBIT A

THE JEFFERSON CONTRACT

Public Version
Confidential Information Redacted

CONTRACT FOR THE PURCHASE OF
FIRM CAPACITY AND ENERGY BETWEEN

JEFFERSON POWER, LLC

And

FLORIDA POWER CORPORATION

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**CONTRACT FOR THE PURCHASE OF FIRM CAPACITY
AND ENERGY FROM JEFFERSON POWER**

THIS CONTRACT is made and entered this 1st day of June 2002, by and between Jefferson Power, LLC (hereinafter "Jefferson Power" or "the QF"), and Florida Power Corporation (hereinafter "FPC"), a private utility corporation organized and existing under the laws of the State of Florida. The QF and FPC shall be identified herein as the "Parties". This Contract contains three Appendices which are incorporated into and made part of this agreement: Appendix A: Pay for Performance Provisions, Monthly Capacity Payment Calculation; Appendix B: Parallel Operating Procedures; and Appendix C, Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.091, F.A.C.

WITNESSETH:

WHEREAS, the QF desires to sell, and FPC desires to purchase electricity to be generated by the QF consistent with FPSC Rules 25-17.080 through 25-17.091 F.A.C.; and

WHEREAS, the QF has signed an interconnection agreement with FPC ("Interconnection Agreement"), or has signed an interconnection/transmission service ("wheeling") agreement with the utility in whose service territory the Facility is to be located, pursuant to which the QF assumes contractual responsibility to make any and all wheeling-related arrangements (including control area services) between the QF and the wheeling utility for delivery of the Facility's firm capacity and energy to FPC; and

WHEREAS, FPC will seek approval of this Contract for the Purchase of Firm Capacity and Energy from Jefferson Power (the "Contract") from the Florida Public Service Commission; and

WHEREAS, the QF represents that the Facility is capable of delivering firm capacity and energy to FPC for the term of this Contract in a manner consistent with the provisions of this Contract;

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

1. Facility; Qualifying Status

The QF contemplates operating a 10.5 KVA steam turbine generator located at Monticello, Florida (hereinafter called the "Facility"). The generator is designed to produce a maximum of 9,375 kilowatts (kW) of electric power at a 90% lagging to 90% leading power factor. The Facility's location and generation capabilities are as described in the table below.

TECHNOLOGY AND GENERATOR CAPABILITIES

Location: Specific legal description (e.g., metes and bounds or other legal description with street address required)	City: Monticello County: Jefferson
Generator Type (Induction or Synchronous)	Synchronous
Type of Facility (Cogeneration, Small Power Production, MSW)	Small Power Production
Technology	Steam Turbine
Fuel Type and Source	Wood (from waste)
Generator Rating (KVA)	10.5
Maximum Capability (kW)	9.375 MW based on existing permit
Net Output (kW)	9.375 MW
Power Factor (%)	90%
Operating Voltage (kV)	13.6
Peak Internal Load kW	.7 MW

The Facility has been certified or has self-certified as a "qualifying facility" pursuant to the regulations of the Federal Energy Regulatory Commission ("FERC"). The QF shall maintain the "qualifying" status of the Facility throughout the term of this Contract. Any information provided to FERC regarding QF's qualifying status shall at the same time be provided to FPC. QF shall at all times keep FPC informed of any changes in its business which affects its qualifying status. FPC shall have the right at all times to inspect the Facility and to examine any books, records, or other documents of the QF that FPC deems necessary to verify the Facility's qualifying status. On or before March 31 of each year during the term of this Contract, the QF shall provide to FPC a certificate signed by an officer of the QF certifying that the QF continuously maintained qualifying status during the prior calendar year.

2. Term of Contract

- 2.1** Except as otherwise provided herein and upon Florida Public Service Commission approval, this Contract shall become effective immediately upon its execution by the Parties and shall end at 12:01 a.m., October, 1, 2006, unless terminated earlier in accordance with the provisions hereof. The parties may extend this contract by mutual agreement for up to five years, provided that any such extension shall be in writing and executed by the Parties at least 30 days prior to October 1, 2006.

FPC and the QF agree to implement the terms of this Agreement subject to the approval of the Florida Public Service Commission. In the event the parties have not received from the Florida Public Service Commission by November 30, 2002 a final order approving the Agreement that is no longer subject to appeal, then FPC may terminate this Agreement, but will pay the QF for all purchases made pursuant to this Agreement prior to termination. If the decision of the Commission is to not approve the Agreement, then the Agreement will terminate at the time of such decision, but the QF will retain payment for the capacity and energy delivered to FPC to that point.

- 2.2** In the event that the QF qualifies as a supplier for an environmental energy program in the future and a supply contract under the environmental energy program is more advantageous to the QF, then the QF can terminate this Contract with ninety (90) days prior written notice to FPC. FPC has the right to match any such environmental energy supply contract.
- 2.3** Notwithstanding the foregoing, if the Capacity Delivery Date of the Facility is not accomplished by the QF before June 18, 2002 (or such later date as may be permitted by FPC pursuant to Section 4), this Contract shall become void and of no force and effect.

3. Sale of Electricity by the QF

3.1 Purchase by FPC

Consistent with the terms hereof, the QF shall sell to FPC and FPC shall purchase from the QF electric power generated by the Facility. The purchase and sale of electricity pursuant to this Contract shall be a net billing arrangement. The QF is not obligated to generate and FPC is not obligated to accept any energy produced more than two hours before the beginning of the Billing Hours or more than two hours after the Billing Hours except as mutually agreed in Section 6.1.

- 3.2** The QF shall not rely on interruptible standby service for the start up requirements (initial or otherwise) of the Facility.

4. Committed Capacity/Capacity Delivery Date

- 4.1** The QF commits to sell capacity to FPC, the amount of which shall be determined in accordance with this Section 4 (the "Committed Capacity"). Subject to Section 4.3 the Committed Capacity is set at 8,000 kW, with an expected Capacity Delivery Date of June 1, 2002.
- 4.2** Testing of the capacity of the Facility (each such test a "Committed Capacity Test") has been successfully performed in accordance with the procedures set forth in Section 5.
- 4.3** In addition to the first Committed Capacity Test, FPC shall have the right to require the QF, upon reasonable notice to Jefferson Power of not less than three business days, to validate the Committed Capacity by means of a Committed Capacity Test at any time, up to four (4) times per calendar year. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity as set forth in Section 4.1. If any Committed Capacity Test required by FPC pursuant to this subsection results in a reduction in Committed Capacity, then QF shall have the right perform one additional Committed Capacity Test per calendar year upon reasonable notice to FPC.
- 4.4** Notwithstanding anything to the contrary herein, the Committed Capacity may not exceed the amount set forth in Section 4.1 without the consent of FPC to be granted in FPC's sole discretion.
- 4.5** The "Capacity Delivery Date" shall be defined as the first calendar day following the date the Agreement has been fully executed by both parties on which Jefferson Power delivers energy to FPC.
- 4.6** In no event shall FPC make capacity payments to the QF prior to the Capacity Delivery Date.
- 4.7** The QF shall be entitled to receive capacity payments each calendar month beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs on or after May 1, 2002 and on or before June 18, 2002.

5. Testing Procedures

- 5.1** FPC shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract.
- 5.2** The Committed Capacity Test results shall be based on a test period of either (i) twenty-four (24) consecutive hours or (ii) the On-Peak hours from two

consecutive days (the "Committed Capacity Test Period") at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The Committed Capacity Test Period shall commence at such time requested by FPC pursuant to Section 4.3; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that FPC is notified of, and consents to, such earlier time.

- 5.3 Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by law, shall be in service during the Committed Capacity Test Period.
- 5.4 The Capacity of the Facility (the "Capacity") shall be the minimum hourly net capacity (generator output minus auxiliary) measured over the Committed Capacity Test Period.
- 5.5 The Committed Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of the QF.

6. Payment for Electricity Produced by the Facility

6.1 Energy

Prior to the Capacity Delivery Date, FPC agrees to pay the QF under the Agreement for Purchase of As-Available Energy as approved by the Florida Public Service Commission and as may be amended from time to time. After the Capacity Delivery Date, FPC agrees to pay the QF a price based on a beginning price of ██████ per MWh for energy produced by the Facility and delivered to FPC and adjusted annually as provided herein. The rate of ██████ per MWh shall be adjusted annually on June 1 by multiplying by a fraction, the numerator for which is the average CPI in effect for the year prior to the year for which the adjustment is being made, and the denominator of which is the average CPI in effect for the year two years prior to the year for which the adjustment is being made; provided, that in no event shall the energy price fall below ██████ per MWh. CPI shall mean the revised monthly consumer price index for All Urban Consumers, U.S. City Average (CPI-U) (All Items 1982-84 = 100) promulgated by the Bureau of Labor Statistics of the United States Department of Labor. The average CPI is calculated by dividing by twelve the sum of each monthly CPI for a particular calendar year. If this index is discontinued or modified, the CPI shall be the successor or modified index adopted by the Bureau of Labor Statistics or, if none, any similar index as agreed by the Parties.

The Parties agree that extraordinary circumstances may arise in which the QF has the ability to provide energy in excess of the capacity described in Section 4 and

FPC has the need for and may request such energy. In these limited cases, the Parties may mutually agree on an energy rate for this excess energy.

6.2 Capacity

FPC agrees to pay the QF ██████ per kW per month for the Committed Capacity described in Section 4 using the methodology described in Appendix A.

6.3 Payment for energy in excess of the Committed Capacity

In the event that the QF delivers energy in excess of its Committed Capacity in the absence of a request by FPC for such excess generation (the price for which requested excess energy is governed by Section 6.1), FPC agrees to pay for such excess energy at its As-Available (COG-1) rate as approved by the Florida Public Service Commission. The Parties recognize that the As-Available (COG-1) rate may be amended from time to time.

6.4 Payments

Payments due the QF will be made monthly, and normally by the twentieth business day following the end of the month . The megawatt-hours sold by the QF and the applicable energy rate at which payments are being made shall accompany the payment to the QF.

7. Charges To Qualifying Facility

The QF shall be responsible for all applicable charges as currently approved or as they may be approved or modified by the Florida Public Service Commission from time to time, including, but not limited to:

7.1 Retail Service Charges

The QF shall be responsible for all FPSC approved charges for any retail service that may be provided by FPC. The QF shall be billed \$74.42 monthly for the costs of meter reading, billing, and other administrative costs. This charge is approved by the Florida Public Service Commission and may be changed from time to time.

7.2 Interconnection Charge for Variable Utility Expenses

In lieu of the actual expenses for the variable utility expenses associated with the operation, maintenance and repair of the interconnection facilities, QF shall pay a monthly charge equal to 0.50% of the installed cost of the interconnection facilities. This monthly rate shall be adjusted periodically. Until adjusted, the monthly charge shall be \$403.60.

8. Electricity Production and Plant Maintenance Schedule

- 8.1** No later than sixty (60) calendar days subsequent to the Capacity Delivery Date, and prior to October 1 of each calendar year thereafter during the term of this Contract, the QF shall submit to FPC in writing a detailed plan of the amount of electricity to be generated by the Facility and delivered to FPC for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in capacity.
- 8.2** By October 31 of each calendar year, FPC shall notify the QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If FPC does not accept any of the requested scheduled maintenance periods, FPC shall advise the QF of the time period closest to the requested period(s) when the outage(s) can be scheduled. The QF shall only schedule outages during periods approved by FPC, and such approval shall not be unreasonably withheld. Once the schedule for the detailed plan has been established and approved, either Party requesting a subsequent change in such schedule, except when such change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.

The QF shall comply with reasonable requests by FPC regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

8.3 Dispatch and Control

- 8.3.1** Power supplied by the QF hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of 13,600 volts (13.6 kV) and power factor dispatchable and controllable in the range of 90% lagging to 90% leading as measured at the interconnection point to maintain system operating parameters, including power factor, as specified from time to time by FPC.
- 8.3.2** The QF shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPC's system, except for normal testing and repair in accordance with good engineering and operating practices as agreed by the Parties. The QF shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. All QF facilities shall meet IEEE and industry standards. The QF shall have independent, third party qualified personnel test, calibrate and certify in writing all protective equipment at least once every twelve (12) months in accordance with good engineering and operating practices. A unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers and results provided to FPC in writing prior to returning the equipment to service.

The specifics of the unit functional trip test will be consistent with good engineering and operating practices as agreed by the Parties.

- 8.3.3** If the Facility is separated from the FPC system for any reason, under no circumstances shall the QF reconnect the Facility to FPC's system without first obtaining FPC's specific approval, whose approval may not unreasonably be withheld. Notwithstanding the foregoing, the parties understand and agree that FPC may not withhold its consent to reconnection for economic reasons related to the purchases of energy from QF under this contract.
- 8.3.4** During the term of this Contract, the QF shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPC. The QF shall ensure that operating personnel are on duty at all times that the plant is operating. Additionally, during the term of this Contract, the QF shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and prudent industry operating practices for facilities of this type and size.

FPC shall not be obligated to purchase, and may require curtailed or reduced deliveries of energy to the extent allowed under FPSC Rule 25-17.086 and under any curtailment plan which FPC may have on file with the FPSC from time to time. During such curtailments or if FPC is unable to accept the QF's energy, all such hours shall be excluded from the calculation of the Monthly Capacity Factor and the Rolling Capacity Billing Factor.

- 8.3.5** During the term of this Contract, the QF shall maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two- (72) hour period. At FPC's request, the QF shall demonstrate this capability to FPC's reasonable satisfaction.

9. Default

Notwithstanding the occurrence of any Force Majeure as described in Section 13, each of the following shall constitute an Event of Default:

- (a) The QF fails to maintain the "qualifying" status of the Facility specified in Section 1 of this Contract;
- (b) The QF changes or modifies the Facility from that provided in Section 1 with respect to its type, location, technology or fuel source, without prior written approval from FPC;

- (c) After the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix A, of at least fifty percent (50%);
- (d) The QF, or the entity which owns or controls the QF, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against the QF or the entity which owns or controls the QF; or if a receiver shall be appointed for the QF or any of its assets or properties, or for the entity which owns or controls the QF; or if any part of the QF's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof; or if the QF shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;
- (e) The QF fails to give proper assurance of adequate performance as specified under this Contract within thirty (30) calendar days after FPC, with reasonable grounds for insecurity, has requested in writing such assurance;
- (i) The QF materially fails to perform as specified under this Contract, including but not limited to, the QF's obligations under Sections 8, and 11-15;
- (j) The QF fails to achieve licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to operate the Facility by no later than May 31, 2002;
- (k) Any of the representations or warranties made by the QF in this Contract is false or misleading in any material respect as of the time made;
- (l) The occurrence of an event of default by the QF under the Interconnection Agreement;
- (m) If, at any time after the Capacity Delivery Date, the QF reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 4.1 (as such level may be reduced by Section 4.3) within twelve (12) months following the occurrence of such event of Force Majeure;
- (n) The QF breaches any material provision of this Contract not specifically mentioned in this Section 9.

10. FPC's Rights in the Event of Default

- 10.1** Upon the occurrence of any of the Events of Default in Section 9, FPC shall not declare the QF to be in default without first informing the QF and providing the QF an opportunity to cure. The QF shall have sixty (60) days after receiving

notice from FPC unless the same Event of Default has occurred more than twice. Upon expiration of the cure period, if any, FPC may, at its option:

10.1.1 Terminate this Contract, without penalty or further obligation, except as set forth in Section 10.2, by written notice to the QF, and offset against any payment(s) due from FPC to the QF, any monies otherwise due from the QF to FPC;

10.1.2 Exercise any other remedy(ies) which may be available to FPC at law or in equity.

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

11. Indemnification

11.1 FPC and the QF shall each be responsible for its own facilities. FPC and the QF shall each be responsible for ensuring adequate safeguards for other FPC customers, FPC's and the QF's personnel and equipment, and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "FPC Entities" and "QF Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) caused by, arising out of, or resulting from:

- (a) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;
- (b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system;
- (c) any defect in, failure of, or fault related to, the Indemnifying Party's generation system;
- (d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or
- (e) any other event or act that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees.

11.2 Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under Section 11. No Indemnified Party under Section 11 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have no obligations under Section 11 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 11 shall survive termination of this Agreement.

12. Insurance

12.1 The QF shall procure or cause to be procured and shall maintain throughout the entire term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable to FPC on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "QF Insurance"). At a minimum, the QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract and the Interconnection Agreement, or (ii) caused by operation of the Facility or any of the QF's equipment or by the QF's failure to maintain the Facility or the QF's equipment in satisfactory and safe operating condition. Without limiting the foregoing, the QF Insurance must be reasonably acceptable to FPC. Any premium assessment or deductible shall be for the account of the QF and not FPC.

12.2 The QF Insurance shall have a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury (including death) or property damage.

12.3 To the extent that the QF Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the effective date of this Contract or such other date as may be agreed upon to protect the interests of the FPC Entities and the QF Entities. Furthermore, to the extent the QF Insurance is on a "claims made" basis, the QF's duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the QF Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the QF during the term of this Contract.

12.4 The QF Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to FPC. The QF shall provide FPC with a copy of any material communication or notice related to the QF Insurance within ten (10) business days of the QF's receipt or issuance thereof.

12.5 The QF shall be designated as the named insured and FPC shall be designated as an additional named insured under the QF Insurance. The QF Insurance shall be endorsed to be primary to any coverage maintained by FPC.

13. Force Majeure

Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorist acts, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement). QF equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the Facility, or a QF failure to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered an event of Force Majeure, unless the QF can conclusively demonstrate, to the reasonable satisfaction of FPC, that the event was not reasonably foreseeable, was beyond the QF's reasonable control and was not caused by the negligence or lack of due diligence of the QF or its agents, contractors or suppliers.

13.1 Except as otherwise provided in this Contract, each Party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of Force Majeure.

13.2 In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party claiming Force Majeure shall notify the other Party in writing within five (5) business days of the occurrence of the event of Force Majeure, of the nature cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A Party claiming Force Majeure shall not be entitled to any relief therefore unless and until conforming notice is provided. The Party claiming Force Majeure shall notify the other Party of the cessation of the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force Majeure in either case within two (2) business days thereof.

13.3 The Party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes,

lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.

- 13.4 If the QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the QF may, upon notice to FPC temporarily adjust the Committed Capacity as provided in Sections 13.5 and 13.6. Such adjustment shall be effective the first calendar day immediately following FPC's receipt of the notice or such later date as may be specified by the QF. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.
- 13.5 If the Facility is rendered completely inoperative as a result of Force Majeure, the QF shall temporarily set the Committed Capacity equal to 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 kW, FPC shall have no obligation to make capacity payments hereunder.
- 13.6 If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the QF shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
- 13.7 Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cessation or cure, FPC shall have the right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this Section 13.7. Any Committed Capacity Test required by FPC under this Section shall be additional to any Committed Capacity Test under Section 4.3.
- 13.8 During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 13.4 all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for-performance provisions in Appendix A.
- 13.9 The QF agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with FPC's system if the same is (are) rendered inoperable due to actions of the QF, its agents, or Force Majeure events affecting the QF, the Facility or the interconnection with FPC. FPC agrees to reactivate, at its own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by FPC or its agents.

14. Representations, Warranties, and Covenants of QF

The QF represents and warrants that as of the Effective Date:

14.1 Organization, Standing and Qualification

The QF is a limited liability company duly organized and validly existing in good standing under the laws of Florida and has all necessary power and authority to carry on its business as presently conducted to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The QF is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on FPC.

14.2 Due Authorization, No Approvals, No Defaults

Each of the execution, delivery and performance by the QF of this Contract has been duly authorized by all necessary action on the part of the QF, does not require any approval, except as has been heretofore obtained, of the partners of the QF or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the QF, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the bylaws of the QF, or any agreement, judgment, injunction, order, decree or other instrument binding upon the QF, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

14.3 Compliance with Laws

The QF has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The QF is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the QF or FPC.

14.4 Governmental Approvals

Except as expressly contemplated herein, neither the execution and delivery by the QF of this Contract, nor the consummation by the QF of any of the transaction contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action with respect to governmental authority, except with respect to permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the QF has no reason to believe

that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

14.5 No Suits, Proceedings

There are no actions, suits, proceedings or investigations pending or, to the knowledge of the QF, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the QF's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The QF has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment.

14.6 Environmental Matters

To the best of its knowledge after diligent inquiry, the QF knows of no (a) existing violations of any environmental laws at the Facility, including those governing hazardous materials or (b) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by governmental authorities or other third parties alleging violations of any environmental law or permit which would materially and adversely affect the operation of the Facility as contemplated by this Contract.

15. General Provisions

15.1 Permits

The QF hereby agrees to obtain and maintain any and all permits, certifications, licenses, consents or approvals of any governmental authority which the QF is required to obtain as a prerequisite to engaging in the activities specified in this Contract.

15.2 Assignment

The QF may not assign this Contract, without FPC's prior written approval, which approval may be withheld at FPC's sole discretion.

15.3 Disclaimer

In executing this Contract, FPC does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the QF or any assigns of this Contract.

15.4 Notification

All formal notices relating to this Contract shall be deemed duly given when delivered in person, or sent by registered or certified mail, or sent by fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated below. The Parties designate the following individuals to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions to contact another individual:

For the QF:

Mitchell Larkins
Route 3, Box 66M
Bristol, Florida 32321

For FPC:

Florida Power Corporation
Manager, Purchased Power Resources
200 Central Avenue
St. Petersburg, Florida 33701

15.5 Applicable Law

This Contract shall be construed in accordance with and governed by, and the rights of the parties shall be construed in accordance with the laws of the State of Florida. The Parties hereby relinquish and waive their rights to a jury trial in any action brought hereunder.

15.6 Severability

If any part of this Contract, for any reason, is declared invalid or unenforceable by a public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.

15.7 Complete Agreement and Amendments

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties. This Contract constitutes the entire agreement between the Parties.

15.8 Survival of Contract

This Contract, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.

15.9 Record Retention

The QF agrees to maintain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all QF Entities to retain for the same period all such records.

15.10 No Waiver

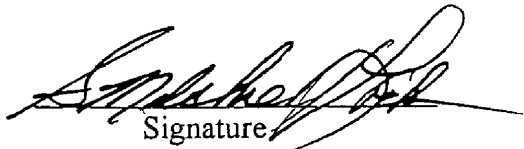
No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

15.11 Set-Off

FPC may at any time, but shall be under no obligation to, set off any and all sums due from the QF against sums due to the QF hereunder.

IN WITNESS WHEREOF, the QF and FPC executed this Contract on the later of the dates set forth below.

JEFFERSON POWER, LLC



Signature

Mitchell Barlin
Print Name

Senior Vice President and
General Manager

June 4, 2002
Date

FLORIDA POWER CORPORATION


Signature

ROBERT F. CALDWELL
Print Name

V.P. REGULATED COMMERCIAL OPERATIONS
Title

6/5/02
Date

APPENDIX A

PAY FOR PERFORMANCE PROVISIONS MONTHLY CAPACITY PAYMENT CALCULATION

1. Monthly Capacity Payments (MCP) shall be paid each calendar month and shall be computed based on performance according to the following:

- A. In the event that the Rolling Capacity Billing Factor ("RCBF"), as defined below, is less than 50%, then no Monthly capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

- B. In the event that the RCBF is equal to or greater than 50% but less than 75%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times \text{CC} \times [1 - (75\% - \text{RCBF}) \times 2]$$

- C. In the event that the RCBF is equal to or greater than 75%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times \text{CC}$$

Where:

MCP = Monthly Capacity Payment in dollars.

BCP = █████/kW/Month

CC = Committed Capacity in kW.

RCBF = Rolling Capacity Billing Factor. This Rolling Average Billing Factor shall be defined as the electric energy actually received during the Billing Hours in a Billing Month by FPC for the Billing Months during the last 12 calendar months preceding the date of calculation, divided by the product of the Committed Capacity and the number of Billing Hours in the Billing Periods for the Billing Periods during the last 12 calendar months preceding the date of calculation. During the first 12 calendar months commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the RCBF shall be performed as follows (a) during the first Billing Month, the Rolling Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the RCBF shall be computed by electric energy actually received by FPC for the number of

Billing Periods preceding the date of calculation, divided by the product of the Committed Capacity and the number of Billing Hours in the number of Billing Periods preceding the date of calculation. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average RCBF. For the month not included in the definition of Billing Periods, the last calculated RCBF shall be applied.

- MCF Monthly Capacity Factor. The total energy received during the Billing Hours in a Billing Month for which the calculation is made, divided by the product of Committed Capacity times the total Billing Hours during the Billing Month.
- Billing Periods = January, February, March 1-15, April 15-30, May, June, July, August, September, October 1-15, and December 15-31. The Billing Periods shall include Saturdays and Sundays; provided, however, that in the event of operational difficulties or similar hardships QF may request FPC to exclude a particular future weekend from the calculations of Billing Hours and of RCBF. Such a request must be submitted to FPC at least 3 days in advance whenever practicable. In its discretion and upon a showing of a bona fide hardship FPC may grant such a request; provided, that FPC shall not grant such a request when QF's capacity is projected to be needed to avoid a capacity shortfall, and provided that no more than a total of 6 weekends shall be excluded from the calculation of Billing Hours and RCBF on the basis of such requests by QF in any calendar year.
- Billing Hours = 6:00 a.m. to 6:00 p.m. for January, February, March 1-15 and December 15-31
10:00 a.m. to 10:00 p.m. for April 15-30, May, June, July, August, September and October 1-15.
- Monthly Billing Period = The period beginning on the first calendar day in a Billing Period of each calendar month that is included in a Billing Period, except that the initial Monthly Billing Period shall consist of the period beginning 6:01 a.m., on the Capacity Delivery Date and ending with the last calendar day of such month.

APPENDIX B

PARALLEL OPERATING PROCEDURES

1.0 Purpose

This appendix provides general operating, testing, and inspection procedures intended to promote the safe parallel operation of the Facility with the Company's system. All requirements contained herein shall apply in addition to and not in lieu of the provisions of the Agreement.

2.0 Schematic Diagram

Exhibit B-1, attached hereto and made a part hereof, is a schematic diagram showing the major circuit components connecting the Facility and the Company's 115 kV transmission line and showing the Point of Delivery and the Point of Metering and/or Point of Ownership, if different. All switch number designations initially left blank on Exhibit B-1 will be inserted by the Company on or before the date on which the Facility first operates in parallel with the Company's system.

3.0 Operating Standards

3.1 The QF and the Company will independently provide for the safe operation of their respective facilities, including periods during which the other Party's facilities are unexpectedly energized or de-energized.

3.2 The QF shall reduce, curtail, or interrupt electrical generation or take other appropriate action for so long as it is reasonably necessary, which in the judgment of the QF or the Company may be necessary to operate and maintain a part of either Party's system, to address, if applicable, an emergency on either Party's system.

3.3 As provided in the Agreement, the QF shall not operate the Facility's electric generation equipment in parallel with the Company's system without prior written consent of the Company. Such consent shall not be given until the QF has satisfied all criteria under the Agreement and has:

- (i) submitted to and received consent from the Company of its as-built electrical specifications;

- (ii) demonstrated to the Company's satisfaction that the Facility is in compliance with the insurance requirements of the Agreement; and
- (iii) demonstrated to the Company's satisfaction that the Facility is in compliance with all regulations, rules, orders, or decisions of any governmental or regulatory authority having jurisdiction over the Facility's generating equipment or the operation of such equipment.

3.4 After any approved Facility modifications are completed, the QF shall not resume parallel operation with the Company's system until the QF has demonstrated that it is in compliance with all the requirements of section 4.2 hereof.

3.5 The QF shall be responsible for coordination and synchronization of the Facility's equipment with the Company's electrical system, and assumes all responsibility for damage that may occur from improper coordination or synchronization of the generator with the utility's system.

3.6 The Company shall have the right to open and lock, with a Company padlock, manual disconnect switch numbers 89LD and isolate the Facility's generation system without prior notice to the QF. To the extent practicable, however, prior notice shall be given. Any of the following conditions shall be cause for disconnection:

1. Company system emergencies and/or maintenance repair and construction requirements;
2. hazardous conditions existing on the Facility's generating or protective equipment as determined by the Company;
3. adverse effects of the Facility's generation to the Company's other electric consumers and/or system as determined by the Company;
4. failure of the QF to maintain any required insurance; or
5. failure of the QF to comply with any existing or future regulations, rules, orders or decisions of any governmental or regulatory authority having jurisdiction over the Facility's electric generating equipment or the operation of such equipment.

3.7 The Facility's electric generation equipment shall not be operated in parallel with the Company's system when auxiliary power is being provided from a source other than the Facility's electric generation equipment.

3.8 Neither Party shall operate switching devices owned by the other Party, except that the Company may open the manual disconnect switch number 89LD owned by the QF pursuant to section 3.6 hereof.

3.9 Should one Party desire to change the operating position of a switching device owned by the other Party, the following procedures shall be followed:

- (i) The Party requesting the switching change shall orally agree with an authorized representative of the other Party regarding which switch or switches are to be operated, the requested position of each switching device, and when each switch is to be operated.
- (ii) The Party performing the requested switching shall notify the requesting Party when the requested switching change has been completed.
- (iii) Neither Party shall rely solely on the other party's switching device to provide electrical isolation necessary for personnel safety. Each Party will perform work on its side of the Point of Ownership as if its facilities are energized or test for voltage and install grounds prior to beginning work.
- (iv) Each Party shall be responsible for returning its facilities to approved operating conditions, including removal of grounds, prior to the Company authorizing the restoration of parallel operation.
- (v) The Company shall install one or more red tags similar to the red tag shown in Exhibit B-2 attached hereto and made a part hereof, on all open switches. **Only Company personnel on the Company's switching and tagging list shall remove and/or close any switch bearing a Company red tag under any circumstances.**

3.10 Should any essential protective equipment fail or be removed from service for maintenance or construction requirements, the Facility's electric generation equipment shall be disconnected from the Company's system. To accomplish this disconnection, the QF shall either (i) open the generator breaker number 89L; or (ii) open the manual disconnect switch number 89LD.

3.10.1 If the QF elects option (i), the breaker assembly shall be opened and drawn out by QF personnel. As promptly as practicable, Company personnel shall install a Company padlock and a red tag on the breaker enclosure door.

3.10.2 If the QF elects option (ii), the switch shall be opened by QF personnel or by Company personnel and, as promptly as practicable, Company personnel will install a Company padlock and a red tag.

4.0 Inspection and Testing

4.1 The inspection and testing of all electrical relays governing the operation of the generator's circuit breaker shall be performed in accordance with manufacturer's recommendations, but in no case less than once every 12 months. This inspection and testing shall include, but not be limited to, the following:

- (i) electrical checks on all relays and verification of settings electrically;
- (ii) cleaning of all contacts;
- (iii) complete testing of tripping mechanisms for correct operating sequence and proper time intervals; and
- (iv) visual inspection of the general condition of the relays.

4.2 In the event that any essential relay or protective equipment is found to be inoperative or in need of repair, the QF shall notify the Company of the problem and cease parallel operation of the generator until repairs or replacements have been made. The QF shall be responsible for maintaining records of all inspections and repairs and shall make said records available to the Company upon request.

4.3 The Company shall have the right to operate and test any of the Facility's protective equipment to assure accuracy and proper operation. This testing shall not relieve the QF of the responsibility to assure proper operation of its equipment and to perform routine maintenance and testing.

5.0 Notification

5.1 Communications made for emergency or operational reasons may be made to the following persons and shall thereafter be confirmed promptly in writing:

To The Company: System Dispatcher on Duty
Title: System Dispatcher
Telephone: (727)384-7211
Telecopier: (727)384-7865

To The QF: Operator in Charge
Title:
Telephone: (850) 997-0515
Telecopier: (850) 643-4795

5.2 Each Party shall provide as much notification as practicable to the other Party regarding planned outages of equipment that may affect the other Party's operation.

EXHIBIT B-1

Exhibit B-1 will be unique for each Facility
and must be complete prior to parallel
operation with the Company

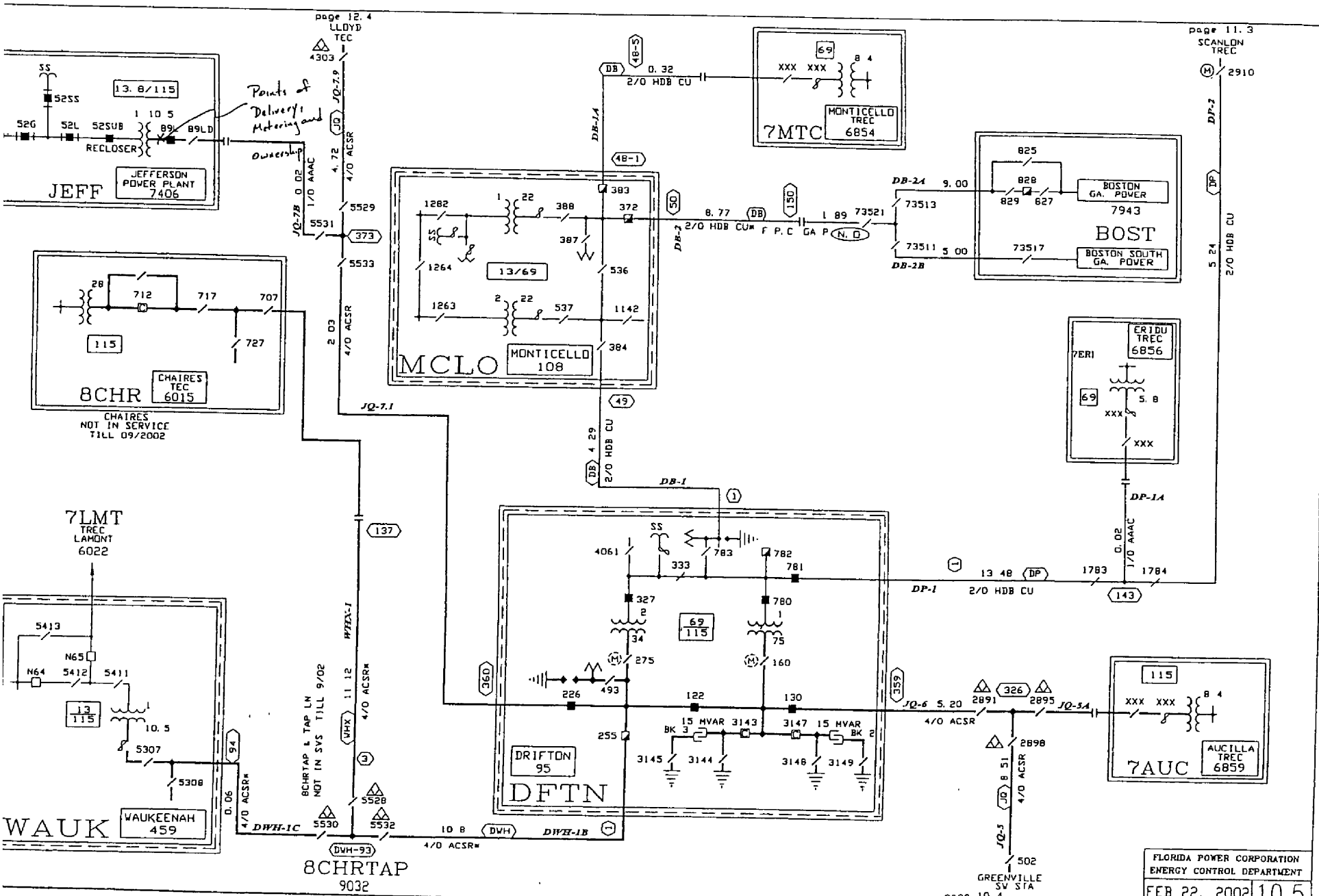


EXHIBIT B-2

A switch or switch point (i.e., elbow, open jumpers, etc.) with a red tag attached is open and shall not be closed under any circumstances. After a switch has been red tagged, that switch cannot be closed until the red tag is removed. Red tags can only be removed when authorized by a specific written order.

Appendix C - FPSC Rules 25-17.080 through 25-17.091

PART III

UTILITIES' OBLIGATIONS WITH REGARD TO
COGENERATORS AND SMALL POWER PRODUCERS

25-17.080	Definitions and Qualifying Criteria
25-17.081	Reserved
25-17.082	The Utility's Obligation to Purchase
25-17.0825	As-Available Energy
25-17.083	Firm Energy and Capacity (Repealed)
25-17.0831	Contracts (Repealed)
25-17.0832	Firm Capacity and Energy Contracts
25-17.0833	Planning Hearings (Repealed)
25-17.0834	Settlement of Disputes in Contract Negotiations
25-17.0835	Wheeling (Repealed)
25-17.0836	Modification to Existing Contracts; Explanation of When Approval is Required
25-17.0837	Negotiations with Other Utility and Non-utility Generating Facilities
25-17.084	The Utility's Obligation to Sell
25-17.085	Reserved
25-17.086	Periods During Which Purchases Are Not Required
25-17.087	Interconnection and Standards
25-17.088	Transmission Service for Qualifying Facilities (Repealed)
25-17.0882	Transmission Service Not Required for Self-Service (Repealed)
25-17.0883	Conditions Requiring Transmission Service for Self-service
25-17.0889	Transmission Service for Qualifying Facilities
25-17.089	Contractual Rights (Repealed)
25-17.090	Reserved
25-17.091	Governmental Solid Waste Energy and Capacity

25-17.080 Definitions and Qualifying Criteria.

(1) For the purpose of these rules the Commission adopts the Federal Energy Regulatory Commission Rules 292.101 through 292.207, effective March 20, 1980, regarding definitions and criteria that a small power producer or cogenerator must meet to achieve the status of a qualifying facility. Small power producers and cogenerators which fail to meet the FERC criteria for achieving qualifying facility status but otherwise meet the objectives of economically reducing Florida's dependence on oil and the economic deferral of utility power plant expenditures may petition the Commission to be granted qualifying facility status for the purpose of receiving energy and capacity payments pursuant to these rules.

(2) In general, under the FERC regulations, a small power producer is a qualifying facility if:

- (a) the small power producer does not exceed 80 MW; and
- (b) the primary (at least 50%) energy source of the small power producer is biomass, waste, or another renewable resource; and
- (c) the small power production facility is not owned by a person primarily engaged in the generation or sale of electricity. This criterion is met if less than 50% of the equity interest in the facility is owned by a utility, utility holding company, or a subsidiary of them.

(3) In general, under the FERC regulations, a cogenerator is a qualifying facility if:

(a) the useful thermal energy output of a topping cycle cogeneration facility is not less than 5% of the facility's total energy output per year; and

(b) the useful power output plus half of the useful thermal energy output of a topping cycle cogeneration facility built after March 13, 1980, with any energy input of natural gas or oil is greater than 42.5% or 45% if the useful thermal energy output is less than 15% of the total energy output of the facility; and

(c) the useful power output of a bottoming cycle cogeneration facility built after March 13, 1980, with any energy input as supplementary firing of natural gas or oil is not less than 45% of the natural gas or oil input on an annual basis; and

(d) the cogeneration facility is not owned by a person primarily engaged in the generation or sale of electricity. This criterion is met if less than 50% of the equity interest in the facility is owned by a utility, utility holding company, or a subsidiary of them.

Specific Authority: 366.05(1), 350.127(2), F.S.

Law Implemented: 366.05(1), F.S.

History: New 5/13/81, amended 9/4/83, formerly 25-17.80.

25-17.081 Reserved.

25-17.082 The Utility's Obligation to Purchase; Customer's Selection of Billing Method.

(1) Upon compliance by the qualifying facility with Rule 25-17.087, each utility shall purchase electricity produced and sold by qualifying facilities at rates which have been agreed upon by the utility and qualifying facility or at the utility's published tariff. Each utility shall file a tariff or tariffs and a standard offer contract or contracts for the purchase of energy and capacity from qualifying facilities which reflects the provisions set forth in these rules.

(2) Unless the Commission determines that alternative metering requirements cause no adverse effect on the cost or reliability of electric service to the utility's general body of customers, each tariff and standard offer contract shall specify the following metering requirements for billing purposes:

(a) Hourly recording meters shall be required for qualifying facilities with an installed capacity of 100 kilowatts or more.

(b) For qualifying facilities with an installed capacity of less than 100 kilowatts, at the option of the qualifying facility, either hourly recording meters, dual kilowatt-hour register time-of-day meters, or standard kilowatt-hour meters shall be installed. Unless special circumstances warrant, meters shall be read at monthly intervals on the approximate corresponding day of each meter reading period.

(3)(a) A qualifying facility, upon entering into a contract for the sale of firm capacity and energy or prior to delivery of as-available energy to a utility, shall elect to make either simultaneous purchases from the interconnecting utility and sales to the purchasing utility or net sales to the purchasing utility. Once made, the selection of a billing methodology may only be changed:

1. when a qualifying facility selling as-available energy enters into a negotiated contract or standard offer contract for the sale of firm capacity and energy; or
2. when a firm capacity and energy contract expires or is lawfully terminated by either the qualifying facility or the purchasing utility; or
3. when the qualifying facility is selling as-available energy and has not changed billing methods within the last twelve months; and
4. when the election to change billing methods will not contravene the provisions of Rule 25-17.0832 or any contract between the qualifying

facility and the utility.

Firm capacity and energy contracts in effect prior to the effective date of this rule shall remain unchanged.

(b) If a qualifying facility elects to change billing methods in accordance with this rule, such change shall be subject to the following provisions:

1. upon at least thirty days advance written notice;
2. upon the installation by the utility of any additional metering equipment reasonably required to effect the change in billing and upon payment by the qualifying facility for such metering equipment and its installation; and
3. upon completion and approval by the utility of any alterations to the interconnection reasonably required to effect the change in billing and upon payment by the qualifying facility for such alterations.

(c) Should a qualifying facility elect to make simultaneous purchases and sales, purchases of electric service by the qualifying facility from the interconnecting utility shall be billed at the retail rate schedule under which the qualifying facility load would receive service as a non-generating customer of the utility; sales of electricity delivered by the qualifying facility to the purchasing utility shall be purchased at the utility's avoided energy and capacity rates, where applicable, in accordance with Rules 25-17.0825 and 25-17.0832.

(d) Should a qualifying facility elect a net billing arrangement, the hourly net energy and capacity sales delivered to the purchasing utility shall be purchased at the utility's avoided energy and capacity rates, where applicable, in accordance with Rules 25-17.0825 and 25-17.0832; purchases from the interconnecting utility shall be billed pursuant to the utility's applicable standby service or supplemental service rate schedules.

(4)(a) Payments for energy and capacity sold by a qualifying facility shall be rendered monthly by the purchasing utility and as promptly as possible, normally by the twentieth business day following the day the meter is read. The kilowatt-hours sold by the qualifying facility, the applicable avoided energy rate at which payments were made, and the rate and amount of the applicable capacity payment shall accompany the payment by the utility to the qualifying facility.

(b) Where simultaneous purchases and sales are made by a qualifying facility, avoided energy and capacity payments to the qualifying facility may, at the option of the qualifying facility, be shown as a credit to the qualifying facility's bill; the kilowatt-hours produced by the qualifying facility, the avoided energy rate at which payments were made, and the rate and amount of the capacity payment shall accompany the bill to the qualifying facility. A credit shall not exceed the amount of the qualifying facility's bill from the utility and the excess, if any, shall be paid directly to the qualifying facility in accordance with this rule.

(5) A utility may require a security deposit from each interconnected qualifying facility in accordance with Rule 25-6.097 for the qualifying facility's purchase of power from the utility. Each utility's tariff shall contain specific criteria for determining the applicability and amount of a deposit from an interconnected qualifying facility consistent with projected net cash flow on a monthly basis.

(6) Each utility shall keep separate accounts for sales to qualifying facilities and purchases from qualifying facilities.

Specific Authority: 366.051, 350.127(2), F.S.

Law Implemented: 350.115, 366.03, 366.04(2)(a), 366.04(2)(c), 366.04(5), 366.041(1), 366.051, 366.06(1), F.S.

History: New 5/13/81, Amended 9/4/83, formerly 25-17.82, amended 10/25/90.

25-17.0825 As-Available Energy.

(1) As-available energy is energy produced and sold by a qualifying facility on an hour-by-hour basis for which contractual commitments as to the quantity, time, or reliability of delivery are not required. Each utility shall purchase as-available energy from any qualifying facility. As-available energy shall be sold by a qualifying facility and purchased by a utility pursuant to the terms and conditions of a published tariff or a separately negotiated contract.

As-available energy sold by a qualifying facility shall be purchased by the utility at a rate, in cents per kilowatt-hour, not to exceed the utility's avoided energy cost. Because of the lack of assurances as to the quantity, time, or reliability of delivery of as-available energy, no capacity payments shall be made to a qualifying facility for the delivery of as-available energy.

(a) Tariff Rates: Each utility shall publish a tariff for the purchase of as-available energy from qualifying facilities. Each utility's published tariff shall state that the rate of payment for as-available energy is the utility's avoided energy cost as defined in subsection (2) of this rule, less the additional costs directly attributable to the purchase of such energy from a qualifying facility. The additional costs directly associated with the purchase of as-available energy from qualifying facilities shall be specifically identified in the utility's tariff.

(b) Contract Rates: Each utility may enter into a separately negotiated contract for the purchase of as-available energy from a qualifying facility. All contracts for the purchase of as-available energy between a qualifying facility and a utility shall be filed with the Commission within 10 working days of their signing. Those qualifying facilities wishing to negotiate a contract for the sale of firm capacity and energy with terms different from those in a utility's standard offer contract may do so pursuant to Rule 25-17.0832(2). Where parties cannot agree on the terms and conditions of a negotiated contract, either party may apply to the Commission for relief pursuant to Rule 25-17.0834.

(2) (a) Avoided energy costs associated with as-available energy are defined as the utility's actual avoided energy cost before the sale of interchange energy. Avoided energy costs associated with as-available energy shall be all costs the utility avoided due to the purchase of as-available energy, including the utility's incremental fuel, identifiable variable operating and maintenance expense, and identifiable variable utility power purchases. Demonstrable utility administrative costs required to calculate avoided energy costs may be deducted from avoided energy payments. Avoided line losses reflecting the voltage at which generation by the qualifying facility is received by the utility shall also be included in the determination of avoided energy costs. Each utility shall calculate its avoided energy cost associated with as-available energy deterministically, on an hour-by-hour basis, after accounting for interchange sales which have taken place, using the utility's actual avoided energy cost for the hour, as affected by the output of the qualifying facilities connected to the utility's system. A megawatt block size at least equal to the most recent available estimate of the combined average hourly generation of all qualifying facilities making energy sales based on the utility's as-available energy rate to the utility shall be used to calculate the utility's hourly avoided energy costs associated with as-available energy. For the purpose of this subsection, interchange sales are inter-utility sales which are provided at the option of the selling utility exclusive of central pool dispatch transactions.

(b) Each utility's tariff shall include a description of the methodology to be used in the calculation of avoided energy cost implementing subsection (2) of this Rule. Each utility's implementation methodology shall specify the method by which the utility's incremental fuel and operating and maintenance costs and line losses are determined.

(3) (a) For qualifying facilities with hourly recording meters, monthly

payments for as-available energy shall be made and shall be calculated based on the product of: (1) the utility's actual avoided energy rate for each hour during the month; and (2) the quantity of energy sold by the qualifying facility during that hour.

(b) For qualifying facilities with dual kilowatt-hour register time-of-day meters, monthly payments for as-available energy shall be calculated based on the average of the utility's actual hourly avoided energy rate for the on-peak and off-peak periods during the month.

(c) For qualifying facilities with standard kilowatt-hour meters, monthly payments for as-available energy shall be calculated based on the average of the utility's actual hourly avoided energy rate for the off-peak periods during the month.

(4) Each utility shall file with the Commission by the twentieth business day of the following month, a monthly report of their actual hourly avoided energy costs, the average of their actual hourly avoided energy costs for the on-peak and off-peak periods during the month, and the average of their actual hourly avoided energy costs for the month with the Commission. A copy shall be furnished to any individual who requests such information.

(5) Upon request by a qualifying facility or any interested person, each utility shall provide within 30 days its most current projections of its generation mix, fuel price by type of fuel, and at least a five year projection of fuel forecasts to estimate future as-available energy prices as well as any other information reasonably required by the qualifying facility to project future avoided cost prices including, but not limited to, a 24 hour advance forecast of hour-by-hour avoided energy costs. The utility may charge an appropriate fee, not to exceed the actual cost of production and copying, for providing such information.

(6) Utility payments for as-available energy made to qualifying facilities pursuant to the utility's tariff shall be recoverable by the utility through the Commission's periodic review of fuel and purchased power. Utility payments for as-available energy made to qualifying facilities pursuant to a separately negotiated contract shall be recoverable by the utility through the Commission's periodic review of fuel and purchased power costs if the payments are not reasonably projected to result in higher cost electric service to the utility's general body of ratepayers or adversely affect the adequacy or reliability of electric service to all customers.

Specific Authority: 366.051, 350.127(2), F.S.

Law Implemented: 366.04(2)(c), (2)(f), &(5), 366.041(1), 366.051, 366.06(1), F.S.

History: New 9/4/83, formerly 25-17.82, amended 10/25/90.

25-17.083 Firm Energy and Capacity.

Specific Authority: 366.04(1), 366.05(1), 366.05(9), 350.127(2), F.S.

Law Implemented: 366.05(9), F.S.

History: New 9/4/83, formerly 25-17.83, Repealed 10/25/90.

25-17.0831 Contracts.

Specific Authority: 366.05(9), 350.127(2), F.S.

Law Implemented: 366.05(9), F.S.

History: New 5/13/81, amended 9/4/83, formerly 25-17.831, Repealed 10/25/90.

25-17.0832 Firm Capacity and Energy Contracts.

(1) Firm capacity and energy are capacity and energy produced and sold by a qualifying facility and purchased by a utility pursuant to a negotiated contract or a standard offer contract subject to certain contractual provisions as to the

quantity, time, and reliability of delivery.

(a) Within one working day of the execution of a negotiated contract or the receipt of a signed standard offer contract, the utility shall notify the Director of the Division of Electric and Gas and provide the amount of committed capacity and the type of generating unit, if any, which the contracted capacity is intended to avoid or defer.

(b) Within 10 working days of the execution of a negotiated contract or receipt of a signed standard offer contract for the purchase of firm capacity and energy, the purchasing utility shall file with the Commission a copy of the signed contract and a summary of its terms and conditions. At a minimum, summary shall report:

1. The name of the utility and the owner and operator of the qualifying facility, who are signatories of the contract;
2. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements;
3. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility;
4. The type of unit being avoided, its size, and its in-service year;
5. The in-service date of the qualifying facility; and
6. The date by which the delivery of firm capacity and energy is expected to commence.

(2) Negotiated Contracts. Utilities and qualifying facilities are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer the construction of all planned utility generating units which are not subject to the requirements of Rule 25-22.082. If a utility is required to issue a Request for Proposals (RFP) pursuant to Rule 25-22.082, negotiations with qualifying facilities shall be governed by the utility's RFP process. Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the utility that the purchase of firm capacity and energy from the qualifying facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the qualifying facility under the contract. Negotiated contracts shall not be counted towards the subscription limit of the avoided unit in a standard offer contract, thus preserving the standard offer for small qualifying facilities as described in subsection (4).

(3) Cost Recovery for Negotiated Contracts. In reviewing negotiated firm capacity and energy contracts for the purpose of cost recovery, the Commission shall consider factors relating to the contract that would impact the utility's general body of retail and wholesale customers including:

(a) Whether additional firm capacity and energy is needed by the purchasing utility and by Florida utilities from a statewide perspective;

(b) Whether the cumulative present worth of firm capacity and energy payments made to the qualifying facility over the term of the contract are projected to be no greater than:

1. The cumulative present worth of the value of a year-by-year deferral of the construction and operation of generation or parts thereof by the purchasing utility over the term of the contract, calculated in accordance with subsection (5) and paragraph (6)(a) of this rule, provided that the contract is designed to contribute towards the deferral or avoidance of such capacity; or
2. The cumulative present worth of other capacity and energy related

costs that the contract is designed to avoid such as fuel, operation, and maintenance expenses or alternative purchases of capacity, provided that the contract is designed to avoid such costs;

(c) To the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs, whether the contract contains provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that the qualifying facility fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract, provided, however, that provisions to ensure repayment may be based on forecasted data; and

(d) Considering the technical reliability, viability, and financial stability of the qualifying facility, whether the contract contains provisions to protect the purchasing utility's ratepayers in the event the qualifying facility fails to deliver firm capacity and energy in the amount and times specified in the contract.

(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities. In lieu of a separately negotiated contract, standard offer contracts are available to the following types of qualifying facilities:

1. A small power producer or other qualifying facility using renewable or non-fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;
2. A qualifying facility, as defined by Rule 25-17.080(3), with a design capacity of 100 kW or less; or
3. A municipal solid waste facility as defined by Rule 25-17.091.

(b) The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility. Rates for payment of capacity sold by a qualifying facility shall be specified in the contract for the duration of the contract. In reviewing a utility's standard offer contract or contracts, the Commission shall consider the criteria specified in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information relating to the determination of the utility's full avoided costs.

(c) The utility shall evaluate, select, and enter into standard offer contracts with eligible qualifying facilities based on the benefits to the ratepayers. Within 60 days of receipt of a signed standard offer contract, the utility shall either:

1. Accept and sign the contract and return it within five days to the qualifying facility; or
2. Petition the Commission not to accept the contract and provide justification for the refusal. Such petitions may be based on:
 - a. A reasonable allegation by the utility that acceptance of the standard offer will exceed the subscription limit of the avoided unit or units; or
 - b. Material evidence showing that because the qualifying facility is not financially or technically viable, it is unlikely that the committed capacity and energy would be made available to the utility by the date specified in the standard offer.

(d) A standard offer contract which has been accepted by a qualifying facility shall apply towards the subscription limit of the unit designated in the contract

effective the date the utility receives the accepted contract. If the contract is not accepted by the utility, its effect shall be removed from the subscription limit effective the date of the Commission order granting the utility's petition.

(e) Minimum Specifications. Each standard offer contract shall, at minimum, specify:

1. The avoided unit or units on which the contract is based;
 2. The total amount of committed capacity, in megawatts, needed to fully subscribe the avoided unit specified in the contract;
 3. The payment options available to the qualifying facility including all financial and economic assumptions necessary to calculate the firm capacity payments available under each payment option and an illustrative calculation of firm capacity payments for a minimum ten year term contract commencing with the in-service date of the avoided unit for each payment option;
 4. The date on which the standard contract offer expires;
 5. A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period;
 6. The date by which firm capacity and energy deliveries from the qualifying facility to the utility shall commence. This date shall be no later than the anticipated in-service date of the avoided unit specified in the contract;
 7. The period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit;
 8. The minimum performance standards for the delivery of firm capacity and energy by the qualifying facility during the utility's daily seasonal peak and off-peak periods. These performance standards shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract;
 9. The description of the proposed facility including the location, steam host, generation technology, and fuel sources;
 10. Provisions to ensure repayment of payments to the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the avoided unit specified in the contract in the event that the qualifying facility fails to perform pursuant to the terms and conditions of the contract. Such provisions may be in the form of a surety bond or equivalent assurance of repayment of payments exceeding the year-by-year value of deferring the avoided unit specified in the contract.
- (f) The utility may include the following provisions:
1. Provisions to protect the purchasing utility's ratepayers in the event the qualifying facility fails to deliver firm capacity and energy in the amount and times specified in the contract which may be in the form of an up-front payment, surety bond, or equivalent assurance of payment. Payment or surety shall be refunded upon

completion of the facility and demonstration that the facility can deliver the amount of capacity and energy specified in the contract; and

2. A listing of the parameters, including any impact on electric power transfer capability, associated with the qualifying facility as compared to the avoided unit necessary for the calculation of the avoided cost.
3. Provisions that allow for revisions to the contract based upon changes to the purchasing utility's avoided costs.

(g) Firm Capacity Payment Options. Each standard offer contract shall also contain, at a minimum, the following options for the payment of firm capacity delivered by the qualifying facility:

1. Value of deferral capacity payments. Value of deferral capacity payments shall commence on the anticipated in-service date of the avoided unit. Capacity payments under this option shall consist of monthly payments escalating annually of the avoided capital and fixed operation and maintenance expense associated with the avoided unit and shall be equal to the value of a year-by-year deferral of the avoided unit, calculated in accordance with paragraph (6)(a) of this rule.
2. Early capacity payments. Each standard offer contract shall specify the earliest date prior to the anticipated in-service date of the avoided unit when early capacity payments may commence. The early capacity payment date shall be an approximation of the lead time required to site and construct the avoided unit. Early capacity payments shall consist of monthly payments escalating annually of the avoided capital and fixed operation and maintenance expense associated with the avoided unit, calculated in conformance with paragraph (6)(b) of the rule. At the option of the qualifying facility, early capacity payments may commence at any time after the specified early capacity payment date and before the anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility. Where early capacity payments are elected, the cumulative present value of the capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(g)1. of this rule.
3. Levelized capacity payments. Levelized capacity payments shall commence on the anticipated in-service date of the avoided unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance portion of capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the avoided unit calculated in conformance with paragraph (6)(a) of this rule. Where levelized capacity payments are elected, the cumulative present value of the levelized capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(g)1. of this rule, value of deferral capacity payments.
4. Early levelized capacity payments. Each standard offer contract

shall specify the earliest date prior to the anticipated in-service date of the avoided unit when early levelized capacity payments may commence. The early capacity payment date shall be an approximation of the lead time required to site and construct the avoided unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance expense shall be calculated in conformance with paragraph (6)(b) of this rule. At the option of the qualifying facility, early levelized capacity payments shall commence at any time after the specified early capacity date and before the anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility. Where early levelized capacity payments are elected, the cumulative present value of the capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(g)1. of this rule.

(5) Avoided Energy Payments for Standard Offer Contracts.

(a) For the purpose of this rule, avoided energy costs associated with firm energy sold to a utility by a qualifying facility pursuant to a utility's standard offer contract shall commence with the in-service date of the avoided unit specified in the contract. Prior to the in-service date of the avoided unit, the qualifying facility may sell as-available energy to any utility pursuant to Rule 25-17.0825.

(b) To the extent that the avoided unit would have been operated, had that unit been installed, avoided energy costs associated with firm energy shall be the energy cost of this unit. To the extent that the avoided unit would not have been operated, the avoided energy costs shall be the as-available avoided energy cost of the purchasing utility. During the periods that the avoided unit would not have been operated, firm energy purchased from qualifying facilities shall be treated as as-available energy for the purposes of determining the megawatt block size in Rule 25-17.0825(2)(a).

(c) The energy cost of the avoided unit specified in the contract shall be defined as the cost of fuel, in cents per kilowatt-hour, which would have been burned at the avoided unit plus variable operation and maintenance expense plus avoided line losses. The cost of fuel shall be calculated as the average market price of fuel, in cents per million Btu, associated with the avoided unit multiplied by the average heat rate associated with the avoided unit. The variable operating and maintenance expense shall be estimated based on the unit fuel type and technology of the avoided unit.

(6) Calculation of standard offer contract firm capacity payment options.

(a) Calculation of year-by-year value of deferral. The year-by-year value of deferral of an avoided unit shall be the difference in revenue requirements associated with deferring the avoided unit one year and shall be calculated as follows:

$$VAC_n = 1/12 [KI_n(1-R)/(1-R^L) + O_n]$$

Where, for a one year deferral:

- VAC_n = utility's monthly value of avoided capacity, in dollars per kilowatt per month, for each month of year n;
 K = present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present value to the middle of the first year;

- R = $(1+ip)/(1+r)$;
- I_n = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the avoided unit with an in-service date of year n, including all identifiable and quantifiable costs relating to the construction of the avoided unit that would have been paid had the avoided unit been constructed;
- O_n = total fixed operation and maintenance expense for the year n, in mid-year dollars per kilowatt per year, of the avoided unit;
- i_p = annual escalation rate associated with the plant cost of the avoided unit(s);
- i_o = annual escalation rate associated with the operation and maintenance expense of the avoided unit(s);
- r = annual discount rate, defined as the utility's incremental after tax cost of capital;
- L = expected life of the avoided unit; and
- n = year for which the avoided unit is deferred starting with its original anticipated in-service date and ending with the termination of the contract for the purchase of firm energy and capacity.

(b) Calculation of early capacity payments. Monthly early capacity payments shall be calculated as follows:

- $A_m = [A_c (1 + ip)^{(m-1)} + A_o (1 + i_o)^{(m-1)}] / 12$ for m=1 to t
- Where: A_m = monthly early capacity payments to be made to the qualifying facility for each month of the contract year n, in dollars per kilowatt per month;
- i_p = annual escalation rate associated with the plant cost of the avoided unit;
 - i_o = annual escalation rate associated with the operation and maintenance expense of the avoided unit(s);
 - m = year for which early capacity payments to a qualifying facility are made, starting in year one and ending in the year t;
 - t = the term, in years, of the contract for the purchase of firm capacity;

- Where: $F = \frac{A_c}{r} \left[\frac{1 - (1+ip)^{-t}}{1+ip} \right]$ the cumulative present value in the year that the contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the avoided unit(s);
- R = $(1+ip)/(1+r)$; and
 - r = annual discount rate, defined as the utility's incremental after tax cost of capital; and
 - $A_o = G \left[\frac{1 - (1-R)^{-t}}{1-R} \right]$

- Where: G = The cumulative present value in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the avoided unit; and
- R = $(1+i_o)/(1+r)$.

(c) Levelized and early levelized capacity payments. Monthly levelized and early levelized capacity payments shall be calculated as follows:

- $P_L = F/12 \{ r/[1 - (1+r)^{-t}] \} + O$
- Where: P_L = the monthly levelized capacity payment, starting on or prior to the in-service date of the avoided unit;
- F = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of

- the capacity payments which would have been made had the capacity payments not been levelized;
- r = the annual discount rate, defined as the utility's incremental after tax cost of capital; and
- t = the term, in years, of the contract for the purchase of firm capacity.
- O = the monthly fixed operation and maintenance component of the capacity payments, calculated in accordance with paragraph (5)(a) for levelized capacity payments or with paragraph (5)(b) for early levelized capacity payments.

(7) Upon request by a qualifying facility or any interested person, each utility shall provide within 30 days its most current projections of its future generation mix including type and timing of anticipated generation additions, and at least a 20-year projection of fuel forecasts, as well as any other information reasonably required by the qualifying facility to project future avoided cost prices. The utility may charge an appropriate fee, not to exceed the actual cost of production and copying, for providing such information.

(8)(a) Firm energy and capacity payments made to a qualifying facility pursuant to a separately negotiated contract shall be recoverable by a utility through the Commission's periodic review of fuel and purchased power costs if the contract is found to be prudent in accordance with subsection (2) of this rule.

(b) Upon acceptance of the contract by both parties, firm energy and capacity payments made to a qualifying facility pursuant to a standard offer contract shall be recoverable by a utility through the Commission's periodic review of fuel and purchased power costs.

(c) Firm energy and capacity payments made pursuant to a standard offer contract signed by the qualifying facility, for which the utility has petitioned the Commission to reject, is recoverable through the Commission's periodic review of fuel and purchased power costs if the Commission requires the utility to accept the contract because it satisfies subsection (4) of this rule.

Specific Authority: 350.127, 366.04(1), 366.051, 366.05(1) & (8), F.S.

Law Implemented: 366.051, 403.503, F.S.

History: New 10/25/90, amended 01/07/97.

25-17.0833 Planning Hearings.

Specific Authority: 366.05(8), 366.051, 350.127(2), F.S.

Law Implemented: 366.051, F.S.

History: New 10/25/90, Repealed 6/9/97.

25-17.0834 Settlement of Disputes in Contract Negotiations.

(1) Public utilities shall negotiate in good faith for the purchase of capacity and energy from qualifying facilities and interconnection with qualifying facilities. In the event that a utility and a qualifying facility cannot agree on the rates, terms, and other conditions for the purchase of capacity and energy, either party may apply to the Commission for relief. Qualifying facilities may petition the Commission to order a utility to sign a contract for the purchase of capacity and energy which does not exceed a utility's full avoided costs as defined in 366.051, Florida Statutes, should the Commission find that the utility failed to negotiate in good faith.

(2) To the extent possible, the Commission will dispose of an application for relief within 90 days of the filing of a petition by either a utility or a qualifying facility.

(3) If the Commission finds that a utility has failed to negotiate or deal in good faith with qualifying facilities, or has explicitly dealt in bad faith with

qualifying facilities, it shall impose an appropriate penalty on the utility as approved by section 350.127, Florida Statutes.

Specific Authority: 366.051, 350.127(2), F.S.

Law Implemented: 350.127(1), 366.051, F.S.

History: New 10/25/90.

25-17.0835 Wheeling.

Specific Authority: 366.05(9), 350.127(2), F.S.

Law Implemented: 366.05(9), 366.055(3), F.S.

History: New 9/4/83, repealed 10/4/85, formerly 25-17.835.

25-17.0836 Modification to Existing Contracts; Explanation of When Approval is Required.

(1) Each investor-owned utility shall notify the Director of the Division of Electric and Gas of all modifications to existing contracts for the purchase of firm capacity and energy, the costs of which are reviewed through the Commission's periodic review of fuel and purchased power costs, within 30 days of the modification. At a minimum, the following information shall be submitted:

(a) A description of the modification and a statement indicating whether the modification is a material change;

(b) A copy of the documents that evidence the modification;

(c) A detailed statement explaining whether the existing contract would be viable if no modification is made;

(d) A statement indicating whether the in-service date of the project will change because of the modification; and

(e) A description of the price, performance, or other concessions that result from the contract modification between the purchasing utility and the qualifying facility, nonutility generator, or other utility.

(2) In order for a utility to recover its costs, Commission approval is required for a modification that affects the overall efficiency, cost-effectiveness or nature of the project. Such modifications include, but are not limited to, changes to contractual terms such as location, prime mover technology type, fuel type, performance requirements, contracted megawatt output, the timing of capacity payments, or amount of capacity payments.

(3) Commission approval is not required for modifications explicitly contemplated by the terms of the contract or routine administrative changes. Such

modifications include, but are not limited to, an assignment expressly authorized by the terms of the contract, typographical corrections, change of address for payments, or change of name of resident agent.

(4) In cases where approval of a contract modification is required for utility cost recovery, a utility shall file with the Division of Records and Reporting a petition for contract modification approval that provides the information required by paragraphs (1)(a) through (1)(e) above. The petition shall also comply with the requirements of Rule 25-22.036, Florida Administrative Code. When a petition is filed, the petition shall serve as the notice required by subsection (1) above.

(5) The utility shall demonstrate any benefits to the general body of ratepayers that result from contract modifications and renegotiations.

(6) The modifications and concessions of the utility and developer shall be evaluated against both the existing contract and the current value of the purchasing utility's avoided cost.

(7) On its own motion, the Commission may review a contract modification to determine whether the modification requires approval.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.05(7) & (8), 366.051, F.S.

History: New 01/07/97

25-17.0837 Negotiations with Other Utility and Nonutility Generating Facilities.

(1) If an investor owned utility's planned generation unit is not subject to Rule 25-22.082, utilities are encouraged to negotiate contracts for the purchase of firm capacity and energy with other utility and nonutility generators for this capacity.

(2) If a utility has issued a Request for Proposal (RFP) pursuant to Rule 25-22.082, negotiations with other utilities and nonutility generators shall be governed by the utility's request for proposal process. Prior to or in conjunction with issuing a RFP, the utility may specify the date and time when ongoing negotiations shall cease.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.05(8), F.S.

History: New 01/07/97.

25-17.084 The Utility's Obligation to Sell.

Upon compliance with Rule 25-17.087, each utility shall sell energy to qualifying facilities at rates which are just, reasonable, and non-discriminatory.

Specific Authority: 350.127(2), F.S.

Law Implemented: 366.04(1), 366.051, 366.06(1), F.S.

History: New 5/13/81, amended 9/4/83, formerly 25-17.84.

25-17.085 Reserved.

25-17.086 Periods During Which Purchases are not Required.

Where purchases from a qualifying facility will impair the utility's ability to give adequate service to the rest of its customers or, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, or otherwise place an undue burden on the utility, the utility shall be relieved of its obligation under Rule 25-17.082 to purchase electricity from a qualifying facility. The utility shall notify the qualifying facility(ies) prior to the instance giving rise to those conditions, if practicable. If prior notice is not practicable, the utility shall notify the qualifying facility(ies) as soon as

practicable after the fact. In either event the utility shall notify the Commission, and the Commission staff shall, upon request of the affected qualifying facility(ies), investigate the utility's claim. Nothing in this section shall operate to relieve the utility of its general obligation to purchase pursuant to Rule 25-17.082.

Specific Authority: 350.127(2), F.S.

Law Implemented: 366.04(5), 366.051, F.S.

History: New 5/13/81, Amended 9/4/83, formerly 25-17.86.

25-17.087 Interconnection and Standards.

(1) Each utility shall interconnect with any qualifying facility which:

- (a) is in its service area;
- (b) requests interconnection;
- (c) agrees to meet system standards specified in this rule;
- (d) agrees to pay the cost of interconnection; and
- (e) signs an interconnection agreement.

(2) Nothing in this rule shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and modifying the general standards specified in this rule to reflect the result of such an evaluation.

(3) Where a utility refuses to interconnect with a qualifying facility or attempts to impose unreasonable standards pursuant to subsection (2) of this rule, the qualifying facility may petition the Commission for relief. The utility shall have the burden of demonstrating to the Commission why interconnection with the qualifying facility should not be required or that the standards the utility seeks to impose on the qualifying facility pursuant to subsection (2) are reasonable.

(4) Upon a showing of credit worthiness, the qualifying facility shall have the option of making monthly installment payments over a period no longer than 36 months toward the full cost of interconnection. However, where the qualifying facility exercises that option the utility shall charge interest on the amount owing. The utility shall charge such interest at the 30-day commercial paper rate. In any event, no utility may bear the cost of interconnection.

(5) Application for Interconnection. A qualifying facility shall not operate electric generating equipment in parallel with the utility's electric system without the prior written consent of the utility. Formal application for interconnection shall be made by the qualifying facility prior to the installation of any generation related equipment. This application shall be accompanied by the following:

- (a) Physical layout drawings, including dimensions;
- (b) All associated equipment specifications and characteristics including technical parameters, ratings, basic impulse levels, electrical main one-line diagrams, schematic diagrams, system protections, frequency, voltage, current and interconnection distance;
- (c) Functional and logic diagrams, control and meter diagrams, conductor sizes and length, and any other relevant data which might be necessary to understand the proposed system and to be able to make a coordinated system;
- (d) Power requirements in watts and vars;
- (e) Expected radio-noise, harmonic generation and telephone interference factor;
- (f) Synchronizing methods; and
- (g) Operating/instruction manuals.

Any subsequent change in the system must also be submitted for review and written approval prior to actual modification. The above mentioned review, recommendations and approval by the utility do not relieve the qualifying facility

from complete responsibility for the adequate engineering design, construction and operation of the qualifying facility equipment and for any liability for injuries to property or persons associated with any failure to perform in a proper and safe manner for any reason.

(6) Personnel Safety. Adequate protection and safe operational procedures must be developed and followed by the joint system. These operating procedures must be approved by both the utility and the qualifying facility. The qualifying facility shall be required to furnish, install, operate and maintain in good order and repair, and be solely responsible for, without cost to the utility, all facilities required for the safe operation of the generation system in parallel with the utility's system.

The qualifying facility shall permit the utility's employees to enter upon its property at any reasonable time for the purpose of inspection and/or testing the qualifying facility's equipment, facilities, or apparatus. Such inspections shall not relieve the qualifying facility from its obligation to maintain its equipment in safe and satisfactory operating condition.

The utility's approval of isolating devices used by the qualifying facility will be required to ensure that these will comply with the utility's switching and tagging procedure for safe working clearances.

(a) Disconnect Switch. A manual disconnect switch, of the visible load break type, to provide a separation point between the qualifying facility's generation system and the utility's system, shall be required. The utility will specify the location of the disconnect switch. The switch shall be mounted separate from the meter socket and shall be readily accessible to the utility and be capable of being locked in the open position with a utility padlock. The utility may reserve the right to open the switch (i.e. isolating the qualifying facility's generation system) without prior notice to the qualifying facility. To the extent practicable, however, prior notice shall be given.

Any of the following conditions shall be cause for disconnection:

1. Utility system emergencies and/or maintenance requirements;
2. Hazardous conditions existing on the qualifying facility's generating or protective equipment as determined by the utility;
3. Adverse effects of the qualifying facility's generation to the utility's other electric consumers and/or system as determined by the utility;
4. Failure of the qualifying facility to maintain any required insurance; or
5. Failure of the qualifying facility to comply with any existing or future regulations, rules, orders or decisions of any governmental or regulatory authority having jurisdiction over the qualifying facility's electric generating equipment or the operation of such equipment.

(b) Responsibility and Liability. The utility and the qualifying facility shall each be responsible for its own facilities. The utility and the qualifying facility shall each be responsible for ensuring adequate safeguards for other utility customers, utility and qualifying facility personnel and equipment, and for the protection of its own generating system. The utility and the qualifying facility shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:

1. Any act or omission by a party or that party's contractors, agents, servants and employees in connection with the installation or operation of that party's generation system or the operation thereof in connection with the other party's system;
2. Any defect in, failure of, or fault related to a party's generation system;
3. The negligence of a party or negligence of that party's contractors, agents, servants or employees; or

4. Any other event or act that is the result of, or proximately caused by, a party.

For the purposes of this paragraph, the term party shall mean either utility or qualifying facility, as the case may be.

(c) Insurance.

The qualifying facility shall deliver to the utility, at least fifteen days prior to the start of any interconnection work, a certificate of insurance certifying the qualifying facility's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Florida naming the qualifying facility as named insured, and the utility as an additional named insured, which policy shall contain a broad form contractual endorsement specifically covering the liabilities accepted under this agreement arising out of the interconnection to the qualifying facility, or caused by operation of any of the qualifying facility's equipment or by the qualifying facility's failure to maintain the qualifying facility's equipment in satisfactory and safe operating condition.

1. The policy providing such coverage for a standard offer contract shall provide public liability insurance, including property damage, in the amount of \$1,000,000 for each occurrence.

2. The policy providing such coverage for a negotiated contract shall provide public liability insurance, including property damage, in an amount not less than \$1,000,000 for each occurrence. The parties may negotiate the amount of insurance over \$1,000,000.

3. The above required policy shall be endorsed with a provision requiring the insurance company to notify the utility thirty days prior to the effective date of cancellation or material change in the policy.

4. The qualifying facility shall pay all premiums and other charges due on said policy and keep said policy in force during the entire period of interconnection with the utility.

(7) Protection and Operation. It will be the responsibility of the qualifying facility to provide all devices necessary to protect the qualifying facility's equipment from damage by the abnormal conditions and operations which occur on the utility system that result in interruptions and restorations of service by the utility's equipment and personnel. The qualifying facility shall protect its generator and associated equipment from overvoltage, undervoltage, overload, short circuits (including ground fault condition), open circuits, phase unbalance and reversal, over or under frequency condition, and other injurious electrical conditions that may arise on the utility's system and any reclose attempt by the utility.

The utility may reserve the right to perform such tests as it deems necessary to ensure safe and efficient protection and operation of the qualifying facility's equipment.

(a) Loss of Source: The qualifying facility shall provide, or the utility will provide at the qualifying facility's expense, approved protective equipment necessary to immediately, completely, and automatically disconnect the qualifying facility's generation from the utility's system in the event of a fault on the qualifying facility's system, a fault of the utility's system, or loss of source on the utility's system. Disconnection must be completed within the time specified by the utility in its standard operating procedure for its electric system for loss of a source on the utility's system.

This automatic disconnecting device may be of the manual or automatic reclose type and shall not be capable of reclosing until after service is restored by the utility. The type and size of the device shall be approved by the utility depending upon the installation. Adequate test data or technical proof that the device meets the above criteria must be supplied by the qualifying facility to the

utility. The utility shall approve a device that will perform the above functions at minimal capital and operating costs to the qualifying facility.

(b) Coordination and Synchronization. The qualifying facility shall be responsible for coordination and synchronization of the qualifying facility's equipment with the utility's electrical system, and assumes all responsibility for damage that may occur from improper coordination or synchronization of the generator with the utility's system.

(c) Electrical Characteristics. Single phase generator interconnections with the utility are permitted at power levels up to 20 KW. For power levels exceeding 20 KW, a three phase balanced interconnection will normally be required. For the purpose of calculating connected generation, 1 horsepower equals 1 kilowatt. The qualifying facility shall interconnect with the utility at the voltage of the available distribution or the transmission line of the utility for the locality of the interconnection, and shall utilize one of the standard connections (single phase, three phase, wye, delta) as approved by the utility.

The utility may reserve the right to require a separate transformation and/or service for a qualifying facility's generation system, at the qualifying facility's expense. The qualifying facility shall bond all neutrals of the qualifying facility's system to the utility's neutral, and shall install a separate driven ground with a resistance value which shall be determined by the utility and bond this ground to the qualifying facility's system neutral.

(d) Exceptions. A qualifying facility's generator having a capacity rating that can:

1. produce power in excess of 1/2 of the minimum utility customer requirements of the interconnected distribution or transmission circuit; or
 2. produce power flows approaching or exceeding the thermal capacity of the connected utility distribution or transmission lines or transformers; or
 3. adversely affect the operation of the utility or other utility customer's voltage, frequency or overcurrent control and protection devices; or
 4. adversely affect the quality of service to other utility customers; or
 5. interconnect at voltage levels greater than distribution voltages,
- will require more complex interconnection facilities as deemed necessary by the utility.

(8) Quality of Service. The qualifying facility's generated electricity shall meet the following minimum guidelines:

(a) Frequency. The governor control on the prime mover shall be capable of maintaining the generator output frequency within limits for loads from no-load up to rated output. The limits for frequency shall be 60 hertz (cycles per second), plus or minus an instantaneous variation of less than 1%.

(b) Voltage. The regulator control shall be capable of maintaining the generator output voltage within limits for loads from no-load up to rated output. The limits for voltage shall be the nominal operating voltage level, plus or minus 5%.

(c) Harmonics. The output sine wave distortion shall be deemed acceptable when it does not have a higher content (root mean square) of harmonics than the utility's normal harmonic content at the interconnection point.

(d) Power Factor. The qualifying facility's generation system shall be designed, operated and controlled to provide reactive power requirements from 0.85 lagging to 0.85 leading power factor. Induction generators shall have static capacitors that provide at least 85% of the magnetizing current requirements of the induction generator field. (Capacitors shall not be so large as to permit self-excitation of the qualifying facility's generator field).

(e) DC Generators. Direct current generators may be operated in parallel with the utility's system through a synchronous inverter. The inverter must meet all criteria in these rules.

(9) Metering. The actual metering equipment required, its voltage rating, number of phases, size, current transformers, potential transformers, number of inputs and associated memory is dependent on the type, size and location of the electric service provided. In situations where power may flow both in and out of the qualifying facility's system, power flowing into the qualifying facility's system will be measured separately from power flowing out of the qualifying facility's system.

The utility will provide, at no additional cost to the qualifying facility, the metering equipment necessary to measure capacity and energy deliveries to the qualifying facility. The utility will provide, at the qualifying facility's expense, the necessary additional metering equipment to measure energy deliveries by the qualifying facility to the utility.

(10) Cost Responsibility. The qualifying facility is required to bear all costs associated with the change-out, upgrading or addition of protective devices, transformers, lines, services, meters, switches, and associated equipment and devices beyond that which would be required to provide normal service to the qualifying facility if the qualifying facility were a non-generating customer. These costs shall be paid by the qualifying facility to the utility for all material and labor that is required. Prior to any work being done by the utility, the utility shall supply the qualifying facility with a written cost estimate of all its required materials and labor and an estimate of the date by which construction of the interconnection will be completed. This estimate shall be provided to the qualifying facility within 60 days after the qualifying facility supplies the utility with its final electrical plans. The utility shall also provide project timing and feasibility information to the qualifying facility.

(11) Each utility shall submit to the Commission, a standard agreement for interconnection by qualifying facilities as part of their standard offer contract or contracts required by Rule 25-17.0832(3).

Specific Authority: 366.051, 350.127(2), F.S.

Law Implemented: 366.04(2)(c)&(5), 366.051, F.S.

History: New 9/4/83, formerly 25-17.87, Amended 10/25/90, 5/6/93.

25-17.088 Transmission Service for Qualifying Facilities.

Specific Authority: 350.127(2), 366.051, F.S.

Law Implemented: 366.051, 366.04(3), 366.055(3), F.S.

History: New 10/4/85, formerly 25-17.88, Amended 2/3/87, Repealed 10/25/90.

25-17.0882 Transmission Service Not Required for Self-Service.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.05(9), 366.04(3), 366.055(3), F.S.

History: New 10/4/85, formerly 25-17.882, Repealed 10/25/90.

25-17.0883 Conditions Requiring Transmission Service for Self-service.

Public utilities are required to provide transmission and distribution services to enable a retail customer to transmit electrical power generated at one location to the customer's facilities at another location when the provision of such service and its associated charges, terms, and other conditions are not reasonably projected to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers. The determination of whether transmission service for self service is likely to result in higher cost electric service may be made using cost effectiveness methodology employed by the Commission in evaluating conservation programs of the utility, adjusted as appropriate to reflect the qualifying facility's contribution to the utility for standby service and

wheeling charges, other utility program costs, the fact that qualifying facility self-service performance can be precisely metered and monitored, and taking into consideration the unique load characteristics of the qualifying facility compared to other conservation programs.

Specific Authority: 366.051, 350.127(2), F.S.

Law Implemented: 366.051, F.S.

History: New 10/25/90.

25-17.0889 Transmission Service for Qualifying Facilities.

(1) Upon request by a qualifying facility, each electric utility in Florida shall provide, subject to the provisions of subsection (3) of this rule, transmission service to wheel as-available energy or firm energy and capacity produced by a Qualifying Facility from the Qualifying Facility to another electric utility.

(2) The rates, terms, and conditions for transmission services as described in subsection (1) and in Rule 25-17.0883 which are provided by an investor-owned utility shall be those approved by the Federal Energy Regulatory Commission.

(3) An electric utility may deny, curtail, or discontinue transmission service to a Qualifying Facility on a non-discriminatory basis if the provision of such service would adversely affect the safety, adequacy, reliability, or cost of

providing electric service to the utility's general body of retail and wholesale customers.

Specific Authority: 366.051, 350.127(2), F.S.

Law Implemented: 366.04(2)(c), 366.04(5), 366.051, 366.055(3), F.S.

History: New 10/25/90.

25-17.089 Contractual Rights.

Specific Authority: 366.04(1), 366.05(1), F.S.

Law Implemented: 366.82(6), F.S.

History: New 5/13/81, Repealed 9/4/83, formerly 25-17.89.

25-17.090 Reserved.

25-17.091 Governmental Solid Waste Energy and Capacity.

(1) Definitions and Applicability:

(a) "Solid Waste Facility" means a facility owned or operated by, or on behalf of, local government, the purpose of which is to dispose of solid waste, as that term is defined in section 403.703(13), Fla. Stat. (1988), and to generate electricity.

(b) A facility is owned by or operated on behalf of a local government if the power purchase agreement is between the local government and the electric utility.

(c) A solid waste facility shall include a facility which is not owned or operated by a local government but is operated on its behalf. When the power purchase agreement is between a non-governmental entity and an electric utility, the facility is operated by a private entity on behalf of a local government if:

1. One or more local governments have entered into a long-term agreement with the private entity for the disposal of solid waste for which the local governments are responsible and that agreement has a term at least as long as the term of the contract for the purchase of energy and capacity from the facility; and
2. The Commission determines there is no undue risk imposed on the electric ratepayers of the purchasing utility, based on:
 - a. The local government's acceptance of responsibility for the private entity's performance of the power purchase contract, or
 - b. Such other factors as the Commission deems appropriate, including, without limitation, the issuance of bonds by the local government to finance all, or a substantial portion, of the costs of the facility; the reliability of the solid waste technology; and the financial capability of the private owner and operator.
3. The requirements of subparagraph 2 shall be satisfied if a local government described in subparagraph 1 enters into an agreement with the purchasing utility providing that in the event of a default by the private entity under the power purchase contract, the local government shall perform the private entity's obligations, or cause them to be performed, for the remaining term of the contract, and shall not seek to renegotiate the power purchase contract.

(d) This rule shall apply to all contracts for the purchase of energy or capacity from solid waste facilities entered into, or renegotiated as provided in subsection (3), after October 1, 1988.

(2) Except as provided in subsections (3) and (4) of this rule, the provisions of Rules 25-17.080 - 25-17.089, Florida Administrative Code, are applicable to contracts for the purchase of energy and capacity from a solid waste facility.

(3) Any solid waste facility which has an existing firm energy and capacity

contract in effect before October 1, 1988, shall have a one-time option to renegotiate that contract to incorporate any or all of the provisions of subsection (2) and (4) into their contract. This renegotiation shall be based on the unit that the contract was designed to avoid but applying the most recent Commission-approved cost estimates of Rule 25-17.0832(5)(a), Florida Administrative Code, for the same unit type and in-service year to determine the utility's value of avoided capacity over the remaining term of the contract.

(4) Because section 377.709(4), Fla. Stat., requires the local government to refund early capacity payments should a solid waste facility be abandoned, closed down or rendered illegal, a utility may not require risk-related guarantees as required in Rule 25-17.0832, paragraph (2)(c), (2)(d), (3)(e)8, and (3)(f)1. However, at its option, a solid waste facility may provide such risk related guarantee.

(5) Nothing in this rule shall preclude a solid waste facility from electing advance capacity payments authorized pursuant to section 377.709(3)(b), F.S., which advanced capacity payments shall be in lieu of firm capacity payments otherwise authorized pursuant to this rule and Rule 25-17.0832, F.A.C. The provisions of subsection (4) are applicable to solid waste facilities electing advanced capacity payments.

Specific Authority: 350.127(2), 377.709(5), F.S.

Law Implemented: 366.051, 366.055(3), 377.709, F.S.

History: New 8/8/85, formerly 25-17.91, Amended 4/26/89, 10/25/90.