

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination)
of Need for Expansion of an)
Electrical Cogeneration Power)
Plant in Palm Beach County by)
Florida Power & Light Company and)
New Hope Power Partnership)
_____)

DOCKET NO. 040766-EI

FILED: JULY 21, 2004

DIRECT TESTIMONY

OF

GUSTAVO R. CEPERO

ON BEHALF OF

NEW HOPE POWER PARTNERSHIP

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
JOINT PETITION FOR A DETERMINATION OF NEED FOR THE
EXPANSION OF THE OKEELANTA COGENERATION PLANT

DIRECT TESTIMONY OF GUSTAVO R. CEPERO

5

1 **Q. Please state your name, address, and position.**

2 **A.** My name is Gustavo R. Cepero, and my business address is 1 N. Clematis
3 St., West Palm Beach, Florida 33401. I am Vice President of Florida Crystals
4 Corporation.

5

6 **Q. Please describe your duties, qualifications, and experience.**

7 **A.** I have been with Florida Crystals for 13 years and am responsible for energy
8 activities as well as corporate planning and business development activities. I
9 have degrees in engineering, business administration, and law and over 30
10 years of engineering, business, and regulatory experience in power and
11 energy related matters.

12 I worked for Florida Power & Light Company (“FPL”) from 1971 to
13 1991. During my tenure with FPL, I served in various engineering and
14 managerial positions, including at various times heading up the departments
15 responsible for power system planning, fuel procurement and delivery, and
16 bulk power market transactions

17

18 **Q. Have you previously testified before the Florida Public Service**
19 **Commission?**

20 **A.** While employed by FPL, I testified before the Florida Public Service
21 Commission numerous times in dockets related to need determinations, cost

1 recovery of capital projects under the oil back-out clause, cogeneration and
2 energy efficiency rulemaking, approval of cogeneration agreements, and fuel
3 adjustment and cost recovery clauses. While employed by Florida Crystals, I
4 have participated in FPSC dockets and/or workshops related to renewable
5 energy, competitive bidding, and regional transmission organizations.

6
7 **PURPOSE AND SUMMARY OF TESTIMONY**

8 **Q. What is the purpose of your testimony?**

9 **A.** I am testifying on behalf of New Hope Power Partnership, which owns and
10 operates the Okeelanta Cogeneration Plant and which will own and operate
11 the expansion Project as well. My testimony, in conjunction with the
12 testimony filed by FPL's witness Steven D. Scroggs, demonstrates that the
13 proposed expansion ("Project") of the Okeelanta Cogeneration Plant
14 ("Okeelanta Plant" or "Plant") satisfies the requirements established by the
15 Commission to find that there is a need for the Project pursuant to the
16 Commission's need determination statute, Section 403.519, Florida Statutes,
17 Commission Rules 25-22.080-.081, Florida Administrative Code, the Florida
18 Electrical Power Plant Siting Act, and the Florida Energy Efficiency and
19 Conservation Act.

20 **My testimony (a) describes the Plant and the proposed Project, (b)**
21 **describes the Power Purchase Agreement with FPL (the "PPA"), and (c)**
22 **explains the reasons why the Project will be cost effective to Florida**
23 **ratepayers and will contribute to the diversification of fuel supplies in the**
24 **state.**

1 Q. Are you sponsoring any exhibits to your testimony?

2 A. Yes. I am sponsoring the following exhibit:

3

4 Exhibit ____ (GRC-1): Power Purchase Agreement Between Florida
5 Power & Light Company and New Hope Power
6 Partnership.

7

8

THE OKEELANTA COGENERATION PLANT

9 Q. Please provide a summary description of the Plant.

10 A. The Okeelanta Plant is a 74.9 MW biomass-fired cogeneration facility
11 located in western Palm Beach county and is part of an agro-industrial
12 complex which includes facilities to mill and process sugar cane into food
13 grade sugar and related products. The Plant is interconnected with the FPL
14 system at the FPL Okeelanta 138 kV substation via two (2) 138 kV lines, the
15 Okeelanta-South Bay 138 kV line and the Okeelanta-Clewiston 138 kV line.

16 The Plant supplies process steam to the adjacent Okeelanta sugar mill
17 during the sugar cane grinding season, which is usually October through
18 March, and to the sugar refinery on a year-round basis. The Plant also sells
19 electricity to the Florida wholesale markets. For example, during 2003, the
20 Plant supplied about 3.4×10^9 pounds of process steam, or about 45 percent
21 of the Plant's total steam production, to the sugar mill and refinery and sold
22 about 500,000 MWH of energy to Florida utilities, including FPL, Tampa
23 Electric Company ("TECO"), and Seminole Electric Cooperative, Inc.
24 ("Seminole").

25 The Plant is a renewable energy facility in that biomass fuels
26 represent over 98 percent of the fuel consumed by the Plant. The sources of
27 biomass are bagasse, which is the fibrous residue of the sugar cane grinding
28 process, and clean, processed wood waste. Bagasse is supplied by the

1 Okeelanta sugar mill and occasionally by other sugar mills in the vicinity.
2 Clean wood waste is procured from multiple municipal and private waste
3 recyclers and wood processing operations throughout south and southwest
4 Florida. The clean wood waste includes urban yard waste; woody materials
5 (whole trees and shrubs) from land, road, and right-of-way clearing
6 activities; forestry wood; and the clean wood component of construction and
7 demolition debris. During 2003, the existing Plant used over 900,000 tons of
8 bagasse and over 700,000 tons of clean wood waste.

9 Fossil fuels (No. 2 fuel oil or natural gas) represent the other 1 to 2%
10 of the fuel supply and are normally used only during start-up or upset
11 conditions.

12
13 **Q. Please describe the major Plant equipment and systems.**

14 **A.** Steam is generated by three (3) identical Combustion Engineering stoker
15 fired boilers, each with a design maximum continuous rating of 440,000
16 lbs/hour of steam at 1500 psig and 950°F (Plant total of 1,320,000 lbs/hour).
17 The Plant feedwater system includes redundant feedwater pumps, a
18 deaerator, and four (4) heaters.

19 Biomass fuel is delivered to the boilers via two (2) independent and
20 redundant biomass fuel storage, retrieving, and feeding systems, one for
21 bagasse and one for wood fuel. The Plant can run on bagasse only, wood
22 waste only, or any combination of bagasse and wood waste.

23 The Plant emissions control systems include dust collectors and
24 electrostatic precipitators for particulate control, selective non-catalytic
25 reduction for controlling emissions of oxides of nitrogen ("NOx"), and
26 carbon injection for mercury control. The boiler combustion control system
27 also manages carbon monoxide emissions.

1 Steam is delivered to a single steam turbine generator ("STG") with
2 multiple extraction ports, which direct steam to the sugar mill and to the
3 plant feedwater heaters. The generator is rated at 85 MVA at a 0.85 power
4 factor.

5 Steam that exhausts from the turbine is condensed in a water-cooled
6 surface condenser. Heat is removed from the condenser by a closed-loop
7 circulating water system, which includes a mechanical draft cooling tower.

8 The balance of plant equipment includes a state of the art, plant-wide
9 digital control system ("DCS"); water treatment and demineralizer plant; and
10 typical auxiliary air and water systems.

11

12 **Q. Please briefly describe the ownership structure of the Plant and the**
13 **relationship to Florida Crystals.**

14 **A.** The Plant is owned by New Hope Power Partnership ("New Hope"), which is
15 a Florida partnership. Florida Crystals, through subsidiaries, owns 100
16 percent of the partnership interests in New Hope. Florida Crystals also owns
17 the Okeelanta sugar mill and refinery.

18

19 **Q. Is the Okeelanta Plant a qualifying facility?**

20 **A.** The Plant is certified by the Federal Energy Regulatory Commission
21 ("FERC") as a qualifying facility ("QF"). The Plant meets the requirement
22 for a "cogeneration facility" and additionally meets the requirements for a
23 "small power production facility". Following completion of the proposed
24 expansion Project, the Plant will continue to qualify as a "cogeneration
25 facility", even though it will exceed the 80 MW limit for small power
26 production facilities.

27

1 New Hope will update the QF status of the facility when the Project
2 commences commercial operation.

3
4 **Q. # Please describe how the plant currently sells its power and to whom.**

5 **A.** The Plant sells all of its net capacity and energy to the wholesale markets,
6 typically under short-term arrangements. Over the past five (5) years, the
7 Plant has generated and sold to various wholesale market participants
8 approximately 2,100,000 MWH of energy. Virtually 100 percent of this
9 energy has been sold to Florida retail utilities. More specifically, about 68
10 percent of this energy was sold to FPL under FPL's COG-1 tariff, and most
11 of the remainder was sold to Tampa Electric and to Seminole under bilateral
12 agreements. Small amounts have been sold to other Florida utilities.

13 14 **THE OKEELANTA EXPANSION PROJECT**

15 **Q. Please describe the expansion Project.**

16 **A.** As stated above, the Plant supplies process steam to the Okeelanta sugar mill
17 and refinery. The process steam demand is seasonal; it is higher in the fall
18 and winter than in the spring and summer. Accordingly, during the spring
19 and summer when the process steam demand is lower, the plant has the
20 capacity to generate additional steam but is constrained by the size of the
21 existing STG. The basic idea of the expansion Project is to add a steam
22 turbine generator, plus related auxiliaries, to more effectively utilize the
23 steam generating capacity of the Plant on a year-round basis.

24 The Project will consist of a second steam turbine generator, rated for
25 approximately 65 MW net, which would increase the Plant's total net
26 generating capacity to approximately 140 MW (74.9 MW existing plus 65
27 MW new). The Project will also include a condenser, cooling tower and

1 associated equipment, expansion of the fuel yard, step-up transformer and
2 protective systems to interconnect the new generator to the FPL system, and
3 necessary modifications to the mechanical, electrical, and control systems to
4 accommodate the new equipment.

5 The projected in-service date of the Project is May 31, 2006.

6
7 **Q. What is the expected output of the Project?**

8 **A.** New Hope projects that the net output of the Project will range from 150,000
9 MWH/year to 190,000 MWH/year. Most of this electrical energy will be
10 produced during the spring and summer months.

11 It should be emphasized that the actual output will be a function of
12 several variables, some of which are outside the control of New Hope, such
13 as variability in process steam deliveries to the mill and general wholesale
14 market conditions. Therefore, the actual output for any given year may
15 deviate from the above range.

16 New Hope projects that virtually all the additional energy will be
17 generated with biomass fuels. New Hope plans to continue to use fossil fuels
18 only for start-up and transient conditions.

19
20 **THE POWER PURCHASE AGREEMENT BETWEEN**
21 **NEW HOPE AND FPL**

22 **Q. Please describe the Power Purchase Agreement between New Hope and**
23 **FPL.**

24 **A.** FPL and New Hope executed the PPA on July 19, 2004. Pursuant to the
25 terms of the PPA, New Hope will sell and FPL will purchase 70 percent of
26 the net output of the Project for a minimum term of five (5) years, which
27 commences on January 1, 2007 and extends to December 31, 2011. At the

1 end of the initial 5-year term, the parties, subject to mutual agreement, have
2 the option to extend the term by up to three more 5-year terms.

3 The energy will be sold at a 1 percent discount from FPL's avoided
4 energy cost, i.e., at 99 percent of FPL's hourly COG-1 energy purchase rate.
5 Therefore, the sale is by definition cost effective to FPL's customers because
6 FPL will be paying less than it would otherwise cost FPL to generate or
7 purchase the same amount of electrical energy.

8 The terms of delivery will be the same as in FPL's COG-1 tariff. New
9 Hope will control the quantity delivered for any given hour of the period,
10 provided that New Hope delivers 70 percent of the net output of the Project
11 for each calendar year of the term. If New Hope fails to deliver 70 percent of
12 the net output during any given calendar year, the PPA includes a true-up
13 provision that effectively requires New Hope to deliver 100 percent of the
14 net output of the Project to FPL until the prior year's commitment is
15 satisfied.

16 New Hope is required to maintain the QF status of the facility for the
17 term of the agreement and will operate the facility, including the Project, in
18 accordance with the terms of the Interconnection Agreement between the
19 parties.

20 The Power Purchase Agreement becomes effective only upon
21 approval by the Commission of the need for the Project and of the PPA
22 itself.

23 New Hope retains the right to terminate the PPA without any further
24 obligation or liability at any time prior to July 1, 2005. In such an event,
25 New Hope must surrender or withdraw any pending applications for or
26 actual approvals of certification under the Power Plant Siting Act, including
27 any determinations of need issued by the Commission.

1 **Q. Please explain New Hope's plans for the 30 percent of the Project's**
2 **output that is not contractually committed to FPL.**

3 **A.** First, the Power Purchase Agreement contemplates that New Hope can sell
4 ~~4~~ more than 70 percent of the Project's output to FPL. Energy in excess of 70
5 percent of the Project's output can be delivered either under the COG-1 tariff,
6 at FPL's full avoided energy cost, or under any bilateral arrangement
7 negotiated between the parties.

8 Beyond sales to FPL, based on historical trends and experience, New
9 Hope expects to sell the additional energy from the Project to other Florida
10 utilities. In sum, New Hope expects that during the term of the PPA, most if
11 not all of the net output of the Project will be sold to Florida utilities serving
12 retail customers.

13

14

KEY BENEFITS OF THE PROJECT TO FLORIDA

15 **Q. Please discuss the key benefits of the Project to Florida.**

16 **A.** As briefly discussed above, the Project will be cost effective to FPL
17 ratepayers. FPL's witness Steven Scroggs elaborates on this point and
18 quantifies the expected level of direct savings to FPL ratepayers. Likewise,
19 sales to other Florida utilities under bilateral agreements will be by definition
20 cost effective because the purchaser would not otherwise have an incentive
21 to make the purchase.

22

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Fossil fuels are projected to remain the predominant fuel source as well as the marginal fuel for the Florida power system for the foreseeable future. The Project will use Florida-based renewable fuels to generate its energy and will therefore necessarily displace imported fossil fuels that would otherwise be needed to generate the displaced energy. New Hope expects the Project will sell between 150,000 MWH/year and 190,000

1 MWH/year of renewable energy. Assuming an average heat rate for Florida
2 power plants of 10,000 Btu/kWh, the expected energy output of the Project
3 would displace between 240,000 and 300,000 equivalent barrels of oil per
4 year.

5 Finally, the Project will use about 250,000 tons /year of clean biomass
6 fuel. To provide perspective, this amount represents about 10 percent of the
7 wood waste annually generated in Dade, Broward, and Palm Beach counties.
8 Most if not all of this material does not have an alternative productive use
9 and, but for the Project, would be landfilled. The Project, therefore,
10 conserves landfill space and makes an important contribution to the cost
11 effective and environmentally responsible management of solid waste in
12 Florida.

13

14 **Q. Does this conclude your direct testimony?**

15 **A. Yes, it does.**

16

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FILED: JULY 21, 2004

EXHIBIT

OF

GUSTAVO R. CEPERO

ON BEHALF OF

NEW HOPE POWER PARTNERSHIP

AGREEMENT FOR THE PURCHASE OF AS-AVAILABLE
ENERGY FROM NEW HOPE POWER PARTNERSHIP
BY FLORIDA POWER & LIGHT COMPANY

THIS AGREEMENT FOR THE PURCHASE OF AS-AVAILABLE ENERGY ("Agreement") is made and entered this 19th day of July, 2004, by and between New Hope Power Partnership ("New Hope"), a Florida partnership, and FLORIDA POWER & LIGHT COMPANY ("FPL"), a private utility corporation organized and existing under the laws of the State of Florida, having its principal place of business in Juno Beach, Florida, and authorized to do business in the State of Florida. New Hope and FPL may be individually identified as a "Party" and collectively identified herein as the "Parties."

WHEREAS, New Hope owns the existing Okeelanta Cogeneration Facility (the "Facility"), a 74.9 megawatt ("MW") (net) electrical cogeneration facility located in Palm Beach County, Florida, which Facility is fueled primarily by biomass fuels; and

WHEREAS, New Hope proposes to construct and own a 65 MW (net) addition to the Facility, which will also utilize biomass fuels in a cogeneration application to produce electricity and useful thermal energy, said addition referred to hereinafter as the "Project," which is expected to deliver net electric energy on or before May 31, 2006; and

WHEREAS, The Project and the Facility (collectively, the "Expanded Facility") are to be interconnected to FPL's

transmission system through a single point of interconnection at the Okeelanta Substation ("Point of Interconnection") and will deliver electrical energy into the Florida bulk power transmission grid through this Point of Interconnection; and

WHEREAS, subject to the terms and conditions of this Agreement, and consistent with the applicable provisions of Florida Administrative Code Rules 25-17.080 through 25-17.091, New Hope desires to sell and deliver, and FPL desires to purchase and accept, seventy percent (70%) of the net electrical energy generated by the Project per year commencing on January 1, 2007 and continuing for the term of this Agreement; and

WHEREAS, the Florida Public Service Commission ("FPSC") must approve the need for the Project and the sale and purchase of electrical energy herein;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants set forth in this Agreement, and for other mutual, good, and valuable consideration, the Parties agree as follows:

1.0 Facility's Qualifying Status

1.1 New Hope owns the Facility and proposes to construct and own the Project as part of the Expanded Facility. The Expanded Facility will have a net output capability of approximately 140 MW, 65 MW of which is the net output capability of the Project.

1.2 The Facility is a "qualifying facility" pursuant to

the regulations of the Federal Energy Regulatory Commission (the "FERC") and the FPSC. New Hope will file a notice of self-certification which certifies the Qualifying Status of the Expanded Facility pursuant to the rules and regulations of the FERC. New Hope shall maintain the "qualifying" status of the Expanded Facility throughout the term of this Agreement.

2.0 Term of this Agreement

2.1 Term. The term of this Agreement shall begin immediately upon its execution by the Parties and shall end at 11:59 p.m. on December 31, 2011, unless otherwise extended (a) by the written mutual consent of the Parties or (b) by the operation of true up adjustments pursuant to Section 3.5. Upon the written mutual consent of the Parties at least thirty (30) days prior to the expiration of this Agreement, the term of this Agreement may be extended for up to three (3) additional five (5) year periods.

2.2 Conditions Precedent. The enforceability of the Parties' obligations to deliver, sell, and purchase electrical energy under this Agreement is subject to the following conditions precedent:

(a) The FPSC must approve this Agreement, without change or condition, including FPSC findings

that: (i) this Agreement is reasonable, prudent, and in the best interest of FPL's customers; and (ii) FPL may recover from its customers all payments for energy purchased pursuant to this Agreement. FPL shall promptly submit this Agreement to the FPSC with a request that it review and approve the same, and New Hope shall exercise all reasonable efforts to support FPL's request for such FPSC approval.

- (b) The FPSC must approve the need for the Project, as currently required by the Power Plant Siting Act and Section 403.519, Florida Statutes. New Hope and FPL as co-applicants shall promptly submit a mutually acceptable determination of need petition to the FPSC for such approval. FPL and New Hope shall exercise all reasonable efforts to support the joint petition. The Parties further agree that this Agreement shall be submitted to the FPSC as an exhibit to the joint petition.

3.0 Terms of Purchase and Sale

- 3.1 This Agreement shall apply to the purchase of energy only from the Project and does not apply to the purchase of energy from the Facility. New Hope shall sell and deliver from the Project to the Point of Interconnection and FPL shall purchase, receive and

accept, seventy percent (70%) of the net megawatt-hours ("MWH") per year generated by the Project (the "Committed Energy") for each calendar year beginning with January 1, 2007 and concluding with the calendar year ending December 31, 2011, or the last year of the last contract renewal period (the "Delivery Period"). As set forth in Section 3.5, the Delivery Period may be extended due to the operation of the true up adjustments. The net MWH generated by the Project and the net electrical energy or output of the Project is defined as (a) the electrical output of the new generator which is added as part of the project minus (b) the auxiliary load associated with such generator, measured over a period of time.

3.2 Except as provided in this Agreement, including without limitation Section 4.1 below, the Committed Energy shall be delivered and purchased in accordance with the terms and conditions of FPL's Rate Schedule COG-1 ("COG-1"), which the parties acknowledge may be amended from time to time and which is incorporated herein by reference. In the event of any conflict between COG-1 and this Agreement, the provisions of this Agreement shall govern. This Agreement shall be subject to and consistent with the applicable Rules 25-17.080 through 25-17.091, Florida Administrative Code, and any changes thereto during the term of this

Agreement, and in the event of any conflict between those Rules and this Agreement, the Rules shall govern.

3.3 The Parties understand and agree that, during any calendar year within the Delivery Period, the Project may sell to FPL more than the Committed Energy. In each calendar year of the Delivery Period, seventy percent (70%) of the net electrical energy generated by the Project, after true up adjustments for prior years per Section 3.5, shall constitute the Committed Energy in accord with this Agreement and shall be delivered to and purchased by FPL pursuant hereto. During the term of this Agreement, New Hope may sell electrical energy above the amount of the Committed Energy to FPL pursuant to COG-1 or pursuant to such other agreement that the Parties may negotiate for the sale and purchase of such energy.

3.4 The Parties understand that, during any given hour of the Delivery Period, there may be simultaneous deliveries of energy to FPL from the Project and from the existing Facility and that there may be simultaneous deliveries of energy to FPL and other entities from the Project and the existing Facility.

(a) In hours when there are no deliveries of energy to entities other than FPL, no energy generated

by the existing Facility and delivered to FPL shall be counted as Committed Energy and all the energy generated by the Project and delivered to FPL shall be counted as Committed Energy.

4 (b) In hours when there are deliveries of energy to entities other than FPL, the lesser of the following shall be counted as Committed Energy: (i) the net energy generated by the Project; or (ii) the total energy delivered to FPL from the Expanded Facility (i.e. the existing Facility plus the Project).

3.5 At the close of each calendar year during the Delivery Period, the total net MWH generation of the Project for the year shall be compared to the MWH of energy counted as Committed Energy during the year. To the extent that the MWH of energy counted as Committed Energy is less than seventy percent of the total net MWH generation of the Project, there shall be a true up adjustment in the amount of the deficiency, and the true up adjustment shall be an additional commitment by New Hope to deliver energy to FPL pursuant to this Agreement. For years when there is a true up adjustment, New Hope shall be obligated to provide to FPL in the following years until the true adjustment is satisfied the first MWH generated by the Project equal to the true up adjustment. In such years, these

true up adjustment MWH shall not be counted as either Committed Energy or total net generation from the Project for that year.

3.6[#] Nothing herein shall be construed as prohibiting FPL from exercising its rights under Rule 25-17.086, Florida Administrative Code.

3.7 Subject to the Committed Energy and associated delivery obligations set forth herein and the interconnection terms set forth in Section 5.2 below, nothing in this Agreement shall be construed as limiting in any way the right of New Hope to sell energy from the Project or from the Expanded Facility to any third party.

4.0 Energy Purchase Price

4.1 FPL shall pay New Hope for the Committed Energy and any true up adjustment energy an amount equal to ninety-nine percent (99.0%) of the applicable COG-1 hourly energy rate.

4.2 **Environmental Attributes.** New Hope retains title and full rights and interests over any environmental credits, benefits or attributes related to the Committed Energy and any true-up energy.

5.0 Operating Conditions

5.1 During the term of this Agreement, New Hope shall operate the Expanded Facility in accordance with the (a) applicable Interconnection Agreement referred to in Section 5.2, (b) this Agreement, and c) applicable state and federal law and regulations.

5.2 The Parties shall negotiate an Interconnection Agreement to interconnect the Project to the FPL transmission system consistent with FERC policy and any other applicable laws and regulations. FPL shall propose, and New Hope agrees to consider in good faith, a single interconnection agreement for the Expanded Facility consistent with the single point of interconnection. Further, the parties agree to negotiate in good faith in such interconnection agreement, provisions which address generation balancing service arrangements. Should New Hope decline to execute a single interconnection agreement for the Expanded Facility, or should the parties be unable to reach an agreement on an Interconnection Agreement, FPL may, consistent with FERC policy, file an unexecuted Interconnection Agreement with the FERC. In such event, New Hope reserves the right to protest such filing. Upon acceptance by FERC, the Interconnection Agreement would govern interconnection of the Project or the Expanded Facility with the FPL

transmission system. Notwithstanding any other provision in this Agreement, FPL shall have no obligation to purchase the Committed Energy, and New Hope shall have no rights to deliver or sell any energy or capacity to FPL or any other entity from the Project prior to (a) the effective date of an Interconnection Agreement as contemplated in this paragraph and (b) the construction and testing of the interconnection facilities, including synchronizing the Project to the FPL grid consistent with the Interconnection Agreement and good utility practice.

5.3 New Hope agrees to separately meter the net output (net of auxiliaries) of the Project so that the output of the Project may be distinguished from the net output of the Facility and the Expanded Facility. New Hope shall be responsible for such metering costs. New Hope agrees to compensate the meter readings to reflect any and all losses from the point of metering to the Point of Interconnection.

6.0 Default and Termination

6.1 Default

Each of the following shall constitute an Event of Default:

- (a) New Hope fails to obtain and maintain the "qualifying" status of the Expanded Facility

pursuant to applicable state and federal laws or regulations.

- (b) A Party materially fails to perform as specified under this Agreement; however, such failure shall not constitute an Event of Default if the defaulting Party, within thirty (30) days after receiving notice from the non-defaulting Party describing in reasonable detail the nature of such failure, has remedied (cured) such failure, or has demonstrated that such failure does not exist.

6.2 Default Remedy

Subject to the above notice and cure provisions, if either Party is in default under Section 6.1, the non-defaulting Party shall have the right to terminate the Agreement. This remedy is not exclusive of damages or other remedies at law or in equity.

6.3 Agreement Survival after Default

Unless and until the Agreement is terminated as provided in Section 6.2 above or in Section 6.4 below, neither Party shall be relieved of performing its other obligations under this Agreement.

6.4 Termination

At any time between the execution of this Agreement

and July 1, 2005, New Hope, upon satisfying the conditions precedent set forth in the next sentence, may terminate this Agreement without any further obligation or liability under this Agreement. New Hope must meet the following conditions precedent to exercise its right of termination: (a) submission to FPL at least thirty days prior to termination of a written notice of New Hope's decision not to construct the Project as contemplated in this Agreement; and (b) submission to FPL of (i) copies of formal withdrawals filed with the applicable agencies of any pending petition for a determination of need for the Project and any pending application for certification of the Project under the Florida Electrical Power Plant Siting Act and/or (ii) copies of formal notices of abandonment filed with the granting agencies of any determination of need or Florida Electrical Power Plant certification granted for the Project, as applicable.

The above notices of termination and withdrawal apply to the Agreement and the Project as defined in the Agreement. New Hope retains the right to construct a future addition to the Facility similar to the Project or expand the Facility in any way deemed appropriate by New Hope, provided that New Hope secures any required regulatory approvals, including, if

necessary, a new determination of need from the FPSC.

7.0 Governing Law; Submission to Jurisdiction

7.1 Governing Law

^s THIS AGREEMENT AND THE RIGHTS AND THE OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.

7.2 Venue

ANY LITIGATION BETWEEN THE PARTIES RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT SHALL BE CONDUCTED IN THE COURTS OF THE STATE OF FLORIDA OR IN FEDERAL COURTS SITUATED IN FLORIDA AND ANY TRIAL OR OTHER INITIAL PROCEEDINGS SHALL TAKE PLACE IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SITTING IN PALM BEACH COUNTY FLORIDA. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS; PROVIDED, THAT IF A FLORIDA COURT OR FEDERAL COURT SITUATED IN PALM BEACH COUNTY, FLORIDA, SHALL HAVE DETERMINED THAT IT CANNOT ACCEPT JURISDICTION OVER ANY SUCH ACTION BECAUSE OF THE FAILURE TO JOIN AN INDISPENSABLE PARTY, THEN ANY PARTY HERETO MAY BRING AN ACTION IN ANY OTHER STATE OR FEDERAL COURT OF COMPETENT JURISDICTION.

7.3 Waiver of Jury Trial

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER,

8.0 Communications

Any notice, request, consent, payment or other communication required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered or mailed, postage prepaid, to the representative of said other Party designated in this Section 8.0. Any such notice, request, consent, payment, or other communication so delivered or mailed shall be deemed to be given when so delivered or mailed. Routine communications during Facility operations shall be exempt from this Section 8.0.

Notices and other communications by FPL to New Hope shall be addressed to:

New Hope Power Partnership
Attn: Florida Crystals Corporation
General Counsel
1 N. Clematis St, Suite 200
West Palm Beach, FL 33401
Telephone 561-366-5123
Facsimile 561-659-3206

Notices and other communications by New Hope to FPL shall

be addressed to:

Director of Resource Planning
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174
Telephone 305-552-3622
Facsimile 305-552-2905

Either Party may change its representative by written notice to the other Party. The Parties' representatives designated above shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. However, they shall not have the authority to amend, modify or waive any provision of this Agreement.

9.0 Disclaimer

In executing this Agreement, FPL 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, New Hope or any assignee of this Agreement, nor does this Agreement create any third party beneficiary rights.

10.0 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, New Hope and FPL and their respective successors by operation of law, but shall not be assignable

by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

11.0 Severability

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

12.0 Complete Agreement and Amendments

This Agreement is entered into pursuant to and consistent with the applicable portions of Rules 25-17.080 through 25-17.091, Florida Administrative Code, and to the extent that any term of this Agreement conflicts with those rules, as they currently exist or may be amended during the term of this Agreement, those rules control. Except as set forth in the preceding sentence, the terms and provisions contained in (a) this Agreement, and (b) FPL's Rate Schedule COG-1, as modified by this Agreement and which is incorporated into this Agreement by reference, constitute the entire agreement between New Hope and FPL with regard to the purchase of Committed Energy as described above, and shall supersede all previous communications,

representations or agreements, either verbal or written, between New Hope and FPL with respect to this Agreement and the contemplated purchase of Committed Energy. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by the Parties with the same formality as this Agreement.

13.0 Responsibility and Indemnification

FPL and New Hope shall each be responsible for its own facilities, and for the protection of its own generating system. FPL and New Hope, to the extent permitted by applicable law, shall each indemnify and save the other, the other's parent, subsidiaries and each of their respective officers, directors, employees, agents and contractors (hereinafter called, respectively, "FPL Entities" and "New Hope Entities") harmless from any and all claims, demands, costs or expenses (including court costs and attorneys' fees related to any claim, administrative proceeding, pretrial, trial or appellate proceeding), for loss, damage or injury to persons or property of the other caused by, arising out of, or resulting from:

13.1 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 Project or the operation thereof in connection with the other Party's system;

13.2 Any defect in, failure of, or fault related to, a Party's generation system or Project and associated facilities;

13.3 The negligence of a Party or negligence of that Party's Entities; or any other event or act that is the result of, or proximately caused by, that Party's Entities.

14.0 Exclusion of Incidental and Consequential Damages

Neither Party shall be liable to the other for incidental, consequential, or indirect damages, whether arising in contract, tort or otherwise.

15.0 Permits

New Hope hereby agrees to obtain and maintain any and all governmental permits, certificates or similar authority which New Hope is required to obtain and maintain to engage in the activities covered by this Agreement.

16.0 Waivers

The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights

under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, but the same shall continue and remain in full force and effect, except with respect to the particular instance or instances.

17.0 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

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

ATTEST:

Vivian Floyd
Name: *Vivian Floyd*

FPL:

Authorized Representative

W.G. Walker, III
Name: *W.G. WALKER, III*
Title: *VICE PRESIDENT*
Date: *7/19/2008*

ATTEST:

Isabel M. Rice
Name: *Isabel M. Rice*

NEW HOPE POWER PARTNERSHIP:

Authorized Representative

Gustavo R. Cepero
Name: *GUSTAVO R. CEPERO*
Title: *Authorized Representative*
Date: _____