

STEEL
HECTOR
& DAVIS

REGISTERED LIMITED LIABILITY PARTNERSHIP

ORIGINAL

040767-81

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Charles A. Guyton
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July 21, 2004

VIA HAND DELIVERY

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

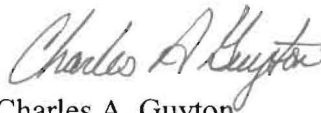
RECEIVED - FPSC
JUL 21 PM 1:53
COMMISSION
CLERK

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and fifteen (15) copies of their Petition For Approval Of An As-Available Energy Purchase Agreement Between Florida Power & Light Company and New Hope Power Partnership, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the document appears is Word.

If there are any questions regarding this transmittal, please contact me at 222.2300.

Very truly yours,



Charles A. Guyton

CAG:gcm

Enclosure

Copy to: Harold McLean, Esq.
Robert Scheffel Wright, Esq.

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RECEIVED & FILED

FPSC-BUREAU OF RECORDS

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07943 JUL 21 04

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company For Approval of an As-Available Energy Agreement With New Hope Power Partnership)
)
)
)

Docket No.
Filed: July 21, 2004

PETITION FOR APPROVAL OF AN AS-AVAILABLE ENERGY PURCHASE AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND NEW HOPE POWER PARTNERSHIP

Florida Power & Light Company (“FPL”), pursuant to Florida Administrative Code Rules 25-17.0825, 28-106.201 and 28-106.301, and Section 366.051, Florida Statutes (2003), hereby petitions the Florida Public Service Commission (“Commission”) to approve the Agreement For The Purchase Of As-Available Energy From New Hope Power Partnership By Florida Power & Light Company (“Agreement”) attached as Attachment 1. FPL further petitions the Commission to make the following findings in approving the Agreement: (a) that the Agreement is reasonable, prudent, and in the best interest of FPL’s customers, (b) that the payments under the Agreement are not reasonably projected to result in higher cost electric service to FPL’s customers or adversely affect the adequacy or reliability of electric service to FPL’s customers, and (c) FPL may recover from its customers all payments for energy purchased pursuant to this Agreement.

Introduction

1. FPL is an investor-owned public utility regulated by the Commission pursuant to Chapter 366, Florida Statutes. FPL is subject to Section 366.051, Florida Statutes (2003), as well as the Florida Energy Efficiency Conservation Act (“FEECA”), Section 366.80-85, 403.519, Florida Statutes (2003).

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

William G. Walker, III
Vice President, Regulatory Affairs
Florida Power & Light Company
215 S. Monroe Street, Suite 810
Tallahassee, FL 32301
(850) 521-3910 (voice)
(850) 521-3939 (facsimile)

Charles A. Guyton
Steel Hector & Davis LLP
Suite 601
215 S. Monroe Street
Tallahassee, FL 32301
(850) 222-2300 (voice)
(850) 222-7510 (facsimile)

Legal Background

3. Section 366.051, Florida Statutes (2003) authorizes the Commission to “establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers.” Pursuant to that and other authority, the Commission has promulgated Rules 25-17.080 through 25-17.091, Florida Administrative Code.

4. Rule 25-17.0825, Florida Administrative Code specifically addresses the guidelines for public utilities to follow in purchasing as-available energy from cogenerators and small power producers. Public utilities are required to publish a tariff rate for the purchase of as-available energy from qualifying facilities at the utility's avoided energy cost. Rule 25-17.0825(1)(a). Public utilities are also permitted to negotiate contracts for the purchase of as-available energy from a qualifying facility. Rule 25-17.0825(1)(b). Such contracts must be filed with the Commission within ten working days of their execution. Id.

5. Payments made by utilities to qualifying facilities for as-available energy purchased pursuant to a negotiated contract are to be recoverable through the Commission's periodic review of fuel and purchased power costs if (a) “the payments are not reasonably projected to result in higher cost electric service to the utility's general body of ratepayers,” and (b) if there is no adverse affect on “the adequacy or reliability of electric service to all

customers.” Rule 25-17.0825(6).

Factual Background

6. New Hope Power Partnership (“New Hope”) is a Florida partnership that owns the Okeelanta Cogeneration Plant (“Plant”), a qualifying cogeneration facility and a qualifying small power production facility with a current capacity of 74.9 MW (net output). Approximately 98-99 percent of the primary thermal input to the plant is biomass, a renewable resource. The Plant supplies process steam to the Okeelanta sugar mill during the sugar cane grinding season and to the Okeelanta sugar refinery year-round. Electricity that is not used to serve ancillary electrical loads within the Plant is sold at wholesale to retail serving utilities. The Plant consists of the handling and storage facilities for the Plant’s biomass fuel, three steam boilers, one steam turbine electric generator (“STG”), a condenser, a mechanical draft cooling tower, and a switchyard through which the generation equipment is connected to the Florida grid at the Okeelanta Substation.

7. New Hope plans the addition of a new STG to the Plant. This new STG, which is known as the Okeelanta Project (“Project”), will have a nameplate capacity of 70 MW and is expected to produce a net peak output of approximately 65 MW. The addition of the Project will increase the Plant’s net total capacity to approximately 140 MW, making the Plant no longer a small power production facility, but the Plant will continue to be a qualifying cogeneration facility.

8. New Hope projects that the Project will produce between 150,000 MWH and 190,000 MWH of net electrical energy per year. Most of the energy will be produced during the summer months (approximately April through September) when the sugar mill is not processing sugar cane; however, some energy will be produced during the winter months.

9. On July 19, 2004, FPL and New Hope Power Partnership (“New Hope”) executed a negotiated as-available energy contract (“Agreement”) for the purchase and sale of seventy percent of the annual energy output of the Project. This Agreement has a term of five years beginning January 1, 2007 and may be renewed for three additional five-year terms upon the mutual consent of both parties.

10. Under the Agreement, New Hope will sell and FPL will purchase seventy percent of the Project’s energy output at a one percent discount from FPL’s as-available energy rate. FPL’s as-available energy rate, which is calculated consistent with Rule 25-17.0825(2), Florida Administrative Code and is posted in FPL’s as-available tariff sheet, reflects FPL’s avoided cost for as-available energy.

Requested Findings

11. One of the conditions precedent for the Agreement to become effective is that the Commission must approve the Agreement, without change or modification, and make two specific findings: (a) that the Agreement “is reasonable, prudent, and in the best interest of FPL’s customers,” and (b) that “FPL may recover from its customers all payments for energy purchased pursuant to this Agreement.” Under Rule 25-17/0825(6), Florida Administrative Code, payments for as-available energy under a negotiated contract are recoverable through the Commission’s periodic fuel and purchased power clause review “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.”

12. Therefore, FPL is requesting Commission approval of the Agreement in an order. FPL is further requesting that in the order approving the contract that the Commission make the following findings: (a) that the Agreement is reasonable, prudent, and in the best interest

of FPL's customers, (b) that the payments under the Agreement are not reasonably projected to result in higher cost electric service to FPL's customers or adversely affect the adequacy or reliability of electric service to FPL's customers, and (c) that FPL may recover from its customers all payments for energy purchased pursuant to this Agreement.

13. Because FPL's as-available energy rate reflects FPL's avoided cost for as-available energy, this Agreement providing for the purchase of energy at a discount to that approved rate is cost-effective to FPL's customers and will necessarily result in a lower cost electric service to FPL's customers. FPL forecasts that the purchase of discounted as-available energy pursuant to this Agreement will save FPL customers approximately \$200,000 over the initial five-year term of the Agreement. In addition, the purchase of as-available energy from the Project, while it will not increase FPL's reliability from a system planning perspective, it certainly will not adversely affect the adequacy or reliability of electric service to FPL's customers. Moreover, the purchase of energy from this renewable resource fulfills the mandate of FEECA to encourage renewable energy sources. Section 366. 81, Florida Statutes. Therefore, this Agreement is reasonable, prudent and in the best interest of FPL's customers.

Disputed Issues of Material Facts

14. FPL is not aware of any disputed issues of material facts. The factual issues to be determined in this proceeding include: (a) whether the Agreement is reasonable, prudent, and in the best interests of FPL's customers; (b) whether the payments pursuant to the Agreement are projected to result in higher-cost electric service to FPL's customers; and (c) whether the provision of electrical energy pursuant to the Agreement, or the payments made thereunder, will adversely affect the adequacy or reliability of electric service to FPL's customers. There

has not been any prior agency action in this proceeding; therefore, FPL cannot allege “when and how the petitioner received notice of the agency decision.” Since there is no agency action for which FPL is seeking reversal or modification, there are no statutes or rules FPL contends require reversal or modification of Commission action.

Statutes and Rules Entitling Relief

15. The statutes and rules entitling FPL to the relief requested are Section 366.051, Florida Statutes and Rule 25-17.0825, Florida Administrative Code.

Ultimate Facts Alleged

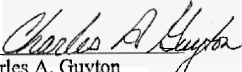
16. The Agreement should be approved and the specific findings requested by FPL should be made by the Commission. The following ultimate facts entitle FPL to the relief requested herein. The Agreement is cost-effective to FPL’s customers and will necessarily result in a lower-cost electric service to FPL’s customers, saving them approximately \$200,000 (net present value) over the initial five-year term of the Agreement. In addition, the purchase of as-available energy from the Project will not adversely affect the adequacy or reliability of electric service to FPL’s customers. Therefore, the Agreement is reasonable, prudent, and in the best interests of FPL’s customers.

WHEREFORE, FPL respectfully petitions the Commission to approve the Agreement attached as Attachment 1 and in doing so make the following findings: (a) that the Agreement is reasonable, prudent, and in the best interests of FPL’s customers, (b) that the payments under the Agreement are not reasonably projected to result in higher cost electric service to FPL’s customers or adversely affect the adequacy or reliability of electric service to FPL’s customers, and (c) FPL may recover from its customers all payments for energy purchased pursuant to the Agreement.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
215 S. Monroe Street, Suite 601
Tallahassee, Florida 32301-1804

Attorneys for Florida Power
& Light Company

By: 
Charles A. Guyton
Florida Bar No. 398039

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition For Approval Of An As-Available Energy Purchase Agreement Between Florida Power & Light Company And New Hope Power Partnership was served upon the following person by first class United States Mail this 21st day of July, 2004:

Harold McLean, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

By: *Charles A. Guyton*
Charles A. Guyton
Florida Bar No. 0398039

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ATTACHMENT 1

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 19~~th~~ 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.

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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.

(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.

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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 ~~4~~Governing Law

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.

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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.

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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: _____