BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Indiantown Cogeneration L.P. for a Declaratory Statement	**Docket No.** 040863-EU **Filed: August 16, 2004**

PETITION OF INDIANTOWN COGENERATION, L.P.
FOR A DECLARATORY STATEMENT

Pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code, Indiantown Cogeneration, L.P. (ICL), through its undersigned counsel, petitions the Commission to issue the Declaratory Statement described herein, and states:

A. Name and address of Petitioner:

Indiantown Cogeneration, L.P.
13303 SW Silver Fox Lane
P.O. Box 1799
Indiantown, Florida 34956

B. Name and address of Petitioner's attorney:

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin,
Davidson, Kaufman and Arnold
117 South Gadsden Street
Tallahassee, Florida 32301

C. The statutory provision(s), agency rules(s), or agency orders(s) on which the declaratory statement is sought:

1. Section 120.565, Florida Statutes authorizes "any substantially affected person" to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances. ICL seeks a declaratory statement regarding the application, to its circumstances, of Commission Rule 25-17.0836, Florida

Administrative Code. Rule 25-17.0836, captioned "Modification to Existing Contracts; Explanation of When Approval Is Required," requires each investor-owned utility to notify the Commission's Director of the Division of Economic Regulation of all modifications to existing contracts for the purchase of firm capacity and energy within 30 days of the modification. The rule requires the utility to state within its notification to Staff whether the modification constitutes a material change.

2. Rule 25-17.0836 states, in pertinent part:

. . . .

(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 Commission Clerk and Administrative Services 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 25-22.0365, F.A.C. When a petition is filed, the petition shall serve as the notice required by subsection (1) above.

. . . .

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

(emphasis provided)

D. A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances:

3. ICL owns and operates a coal-fired cogeneration facility in Indiantown, Florida. ICL sells capacity and energy to Florida Power & Light Company (FPL) pursuant to the terms of a power purchase agreement ("the FPL-ICL PPA") that has been approved by the Commission. The calculation of the energy payments required by the FPL-ICL PPA has always included, as one component, the application, over time, of a "fuel index" specified in the agreement. The fuel index incorporated data regarding the cost of domestic Appalachian coal meeting certain specifications ("Appalachian Coal") being purchased for and delivered to St. Johns River Power Park ("SJRPP").

4. Because of changes in the mix of fuels being delivered to SJRPP, the parties entered into the Second Amendment. In anticipation of the possibility that SJRPP might stop purchasing Appalachian Coal altogether or for some shorter period of time, the parties adopted the following provision of Appendix I.6 of the PPA: "In the event of a long term interruption (more than one full quarter) in or permanent cancellation of the delivery of coal to SJRPP, as described in Section I.4 herein, the Parties shall, within one year of such interruption or cancellation, agree upon a comparable replacement index. . ."

5. FPL submitted the Second Amendment to the Commission for its Approval. In its petition for approval, FPL stated:

> Finally, the revised Appendix I, addresses the potential impact of coal delivery disruptions to SJRPP by providing for the parties to agree to a comparable replacement index and a transition computation methodology as specified in Section I.6 of the revised Appendix I.

6. In Order No. PSC-92-1345-FOF-EI, issued in Docket No. 920825-EI on November 23, 1992, the Commission approved the Second Amendment, including

Section I.6 of Appendix I. A copy of Order No. PSC-92-1345-FOF-EI and Appendix I.6 (in the form approved by this Order) are attached to this Petition as Attachments A and B.

7. During January 2003, SJRPP ceased purchasing the Appalachian Coal that was incorporated in the fuel index specified in the Second Amendment. Pursuant to the terms of Appendix I.6, as approved by the Commission, FPL and ICL have now devised a Replacement Fuel Index (the "Replacement Index"), which is contained in the "Letter Agreement" that is the subject of this Petition. The Replacement Index is comparable to the one it replaces. Specifically, the purpose of the SJRPP data was to indicate, for energy pricing purposes, the mine-mouth price of Appalachian Coal that is used at SJRPP; in the absence of any SJRPP Appalachian Coal data, the Replacement Index is based on publicly reported delivered coal cost information for utilities and municipalities in Florida that utilize Appalachian Coal. In this way, the Replacement Index is based on the same market in which SJRPP would be purchasing if it had continued to purchase Appalachian Coal. Accordingly, the Replacement Index is comparable to the one it replaces, in that it reasonably accomplishes the same goal.[1]

8. Pursuant to the requirements of Rule 25-17.0836, on August 6, 2004 FPL provided to Staff a copy of the Letter Agreement containing the Replacement Index, together with a description of its nature and purpose. Within the notification package, FPL asserted that the Replacement Index does not constitute a material change, for the reasons that it was explicitly contemplated by the Second Amended PPA, as approved by the Commission. *ICL concurs completely with FPL's assertion.* For ease of reference, a

[1] The Letter Agreement provides that the parties will revert to the prior SJRPP-based index if SJRPP again begins taking deliveries of Appalachian Coal that exceed a certain threshold quantity.

copy of FPL's notification to Staff, which includes the Letter Agreement, is attached as Exhibit C.

9. Rule 25-17.0836 provides that Commission approval is not required for a modification that is contemplated explicitly by the terms of the underlying agreement. In such an instance, the utility is to assert in its notification to Staff that the modification does not constitute a material change. However, the rule does not provide for a formal, affirmative acceptance by the Commission of the utility's assertion, and in the rule the Commission reserves the ability to raise the question on its own motion. The rule contains no time frames that would limit its ability to raise the issue.

10. These aspects of the rule affect ICL in its "particular circumstances." Paragraph 19.4 of the FPL-ICL PPA, which is an example of what is commonly referred to as a "regulatory out clause," places on ICL the risk of disallowance of any energy payments calculated under the FPL-ICL PPA, which calculation involves the application of the Replacement Index. To satisfy the terms of ICL's financing agreements, which require ICL to certify to entities that financed the cogeneration project ("Financing Parties") either that the Letter Agreement does not require approval by the Commission or that any needed approval has been obtained, the effectiveness of the Letter Agreement is contingent upon an order of the Commission finding that no approval of the Letter Agreement is necessary for cost recovery. The issuance of the declaratory statement sought herein will satisfy this condition and enable ICL to fulfill the requirements of its financing agreements.

11. ICL concurs completely with FPL's representations to Staff. ICL submits that, in light of the language of the Second Amendment approved in Order No. PSC-92-

1345-FOF-EI, the Replacement Index falls squarely within that portion of Rule 25-17.0836 that states an application for approval is not required if the modification was explicitly contemplated by the terms of the contract.

12. ICL believes strongly that there should be no controversy regarding the position of FPL and ICL that the Replacement Index does not require formal approval by the Commission. However, in light of the "open-ended" nature of Rule 25-17.0836, as it affects Paragraph 19.4 of the FPL-ICL PPA and ICL's obligations to its Financing Parties, in the absence of a formal ruling ICL's interests would be negatively affected by the rule even if Staff and the Commission agree with the assertion that the Replacement Index does not trigger the need for formal approval. ICL asks the Commission to declare that the Letter Agreement containing the Replacement Index devised by FPL and ICL to implement the provisions of Appendix I is not subject to the requirement of formal approval to assure cost recovery.

13. ICL is authorized to represent that FPL supports this Petition for Declaratory Statement.

WHEREFORE, ICL respectfully requests the Commission to grant this Petition for Declaratory Statement, and issue an order declaring that, because the Replacement Index devised by the parties and incorporated in the attached Letter Agreement was explicitly contemplated by the Second Amended Agreement approved in Order No. PSC-92-1345-FOF-EI, FPL is not required to submit a separate application for approval of the Replacement Index for purposes of cost recovery, and no Commission approval of the Letter Agreement is required under the Commission's rules to permit cost recovery by FPL of the costs associated with the Replacement Index.

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Kaufman, & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Tel: (850) 222-2525
Fax: (850) 222-5606

Attorney for Indiantown Cogeneration, L.P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition of Indiantown Cogeneration, L.P. for a Declaratory Statement has been furnished by (*) hand delivery, and U.S. Mail this 16th day of August 2004, to the following:

(*) David Smith
Office of General Counsel
Room 370 Gunter Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

R. Wade Litchfield
Senior Attorney
Florida Authorized House Counsel
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408-0420

Joseph A. McGlothlin

Exhibit A
Order No. PSC-92-1345-FOF-EI

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of Amendment No. 2 to agreement for purchase of firm capacity and energy between Indiantown Cogeneration, L.P. and Florida Power and Light Company.	DOCKET NO. 920825-EI ORDER NO. PSC-92-1345-FOF-EI ISSUED: 11/23/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING AMENDMENT TO POWER SALES AGREEMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In Order No. 24269-A, issued April 5, 1991, the Commission approved the power sales agreement between Florida Power and Light (FPL) and Indiantown Cogeneration, L.P. (ICL). On August 14, 1992, FPL filed a Petition for Approval of Amendment No. 2 of this agreement. On September 18, both FPL and ICL filed Memoranda of Law supporting the revisions to the contract.

In its Petition, FPL has requested four modifications. The first revision is a limit to the time ICL and its suppliers must maintain records concerning fuel, transportation and ash disposal. The proposed revision changes the retention requirement from up to 32 years to 7 years of historic records. This seems to be a realistic reduction of retention requirements.

Section 21.2 of the Agreement has also been amended to allow ICL to obtain direct pay letter(s) of credit in lieu of cash deposits to a reserve fund in order to maintain Qualifying Facility (QF) status. This is a common practice in power sales agreements.

The third revision is to the Unit Energy Cost calculation contained in Appendix I. This Appendix has been replaced in its entirety to change the methodology used to escalate the Unit Energy Cost. Originally, the energy payments to ICL were to be based on the weighted average price in $/Ton of Domestic Spot coal delivered

to St. Johns River Power Park (SJRPP), provided that the total quantity of domestic spot purchases accounted for at least 20 % of the total quantity of coal delivered to SJRPP. Beginning with the fourth quarter of 1990, the level of domestic spot purchases at SJRPP have continued to remain below the 20% minimum threshold. This prompted the parties to amend the methodology in an effort to circumvent future administrative difficulties. The proposed amendment uses a "bidders list" for domestic spot coal delivered to SJRPP as a proxy to achieve the 20% threshold. For example, if SJRPP had 15% domestic spot deliveries, the "bidders list" would be employed to develop a price for the remaining 5% which would then be used to calculate a weighted average cost for the entire 20%.

Finally, Sections 3.5.2 and 3.5.8 of the Agreement have been revised to acknowledge that a market price index will be used to require ICL to obtain price reopeners in its fuel contracts.

We find that Amendment No. 2 to the FPL/ICL Power Sales Agreement is appropriate.

It is therefore

ORDERED that Amendment No. 2 to the Power Sales Agreement between Florida Power and Light Company and Indiantown Cogeneration, L.P., as filed August 17, 1992, is hereby approved. It is further

ORDERED that this Order shall become final and the docket closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 23rd day of November, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MAP:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22 029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 14, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Exhibit B
Appendix I.6 of the FPL-ICL PPA
As Approved by Order No. PSC-92-6345-FOF-EI

I.6 In the event of a long term interruption (more than one full quarter) in or permanent cancellation of the delivery of coal to SJRPP, as described in Section I.4 herein, the Parties shall, within one year of such interruption or cancellation, agree upon a comparable replacement index. Until such "replacement index" becomes effective, the Unit Energy Cost will continue to be calculated as described in this Appendix I, but with the following assumptions and adjustments:

(a) The quantities of coal assumed to be taken from each of the then current long term domestic contract(s) will be the same as they were during the quarter prior to the interruption.

(b) The F.O.B. coal price will be escalated according to the indices in the SJRPP long term domestic Appalachian coal contracts which had been in effect until the interruption in deliveries.

(c) The remaining components will continue to escalate according to Section I.3(ii).

Exhibit C
FPL's Notification to Staff

August 6, 2004

VIA HAND DELIVERY

Mr. Timothy Devlin, Director
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Modification to Power Purchase Agreement ("FPL-ICL PPA") between Florida Power & Light Company ("FPL") and Indiantown Cogeneration, L.P. ("ICL")

Dear Mr. Devlin:

Pursuant to Rule 25.17.0836, Florida Administrative Code ("F.A.C."), this letter serves to inform the Division of Economic Regulation that, as explicitly contemplated by and consistent with Section I.6 of Appendix I to Amendment No. 2 to the existing power purchase agreement between FPL and ICL (the "FPL-ICL PPA") previously approved by the Commission, the Unit Energy Cost calculation ("UEC") index has been replaced with a new index (the "Replacement Index") by letter agreement, dated July 29, 2004 ("Letter Agreement"), a copy of which is enclosed. A copy of the FPL-ICL PPA also is enclosed for reference.

The original FPL-ICL PPA was signed on May 21, 1990, and was first amended on December 5, 1990. The original and amended agreements were approved by the Commission in Order No. 24269-A, issued on April 5, 1991, in Docket No. 900731-EQ. A second contract amendment was approved by the Commission in Order No. PSC-92-1345-FOF-EQ, issued on November 23, 1992, in Docket No. 920825-EI. A power purchase agreement comprising the original agreement and two subsequent amendments was approved by the Commission in Order No. PSC-01-1614-PAA-EQ, issued August 8, 2001, in Docket No. 010821-EQ.

Because the Replacement Index is explicitly contemplated by the terms of the FPL-ICL PPA, the Letter Agreement detailing the revised methodology and associated provisions is submitted pursuant to Rule 25.17.0836(3), F.A.C. The FPL-ICL PPA provides in relevant part that "[i]n the event of a long term interruption (more than one full quarter) in or permanent cancellation of the delivery of coal to SJRPP (Saint Johns River Power Park), as described in Section I.4 herein, the Parties shall, within one year of such interruption or cancellation, agree upon a comparable replacement index." Section I.4 utilizes the change in price to SJRPP of Appalachian spot and contract coal in the index. The last delivery of Appalachian Coal used to

calculate the index occurred on January 3, 2003. At present, further deliveries of such Appalachian Coal to SJRPP are not expected.

The Replacement Index will be used in place of Appalachian Coal purchased for SJRPP to calculate the F.O.B. mine coal cost component of the UEC. The original index is based on the cost of Appalachian Coal delivered by rail to SJRPP; the Replacement Index is based on the weighted-average price of Appalachian Coal delivered by rail to Florida utilities. The data used to calculate the Replacement Index will be based on the delivered cost of Appalachian Coal to power production facilities in Florida as reported to the FPSC and/or FERC in Form 423. The Replacement Index will comprise data meeting the same coal specifications as the SJRPP coal data used in the original index (e.g., specifications such as BTU content, ash content, location--limited to Appalachian Coal, etc.).

The Letter Agreement provides for reversion to the original index should qualified coal deliveries resume to SJRPP in sufficient quantities as specified in the Letter Agreement. Further, the Letter Agreement provides a window of time within which either party may reopen the methodology used to calculate the transportation rate if such party believes an alternate methodology would provide a better approximation of transportation costs.

The Letter Agreement has been executed strictly for the purpose of instituting the Replacement Index, and does not contain any concession regarding "price, performance, or other matter." Accordingly, the Letter Agreement presents no issue of contract viability. The Letter Agreement simply reflects the fulfillment of the parties' mutual obligation to develop a "comparable replacement index." There is no effect on the project's in-service date. For these reasons, the Letter Agreement containing the Replacement Index does not constitute a material change to the FPL-ICL PPA.

The Replacement Index will enable the parties, in the absence of deliveries of Appalachian Coal to SJRPP, to continue to incorporate a comparable measurement of the market price of Appalachian Coal into the energy pricing formula of the FPL-ICL PPA.

If you have questions or would like to discuss this, please contact me at (305) 552-4159.

Sincerely,

John A. Hepokoski

Enclosures
cc: ICL (with enclosures)

July 29, 2004

Florida Power & Light Company
P.O. Box 029100
Miami, Florida 331022-9100
Attention: Ms. Delia Perez-Alonso

Re: Indiantown Cogeneration Limited Partnership
Unit Energy Cost Calculation Replacement Index

Dear Ms. Perez-Alonso:

This letter agreement ("Agreement"), dated as of July 29, 2004, is entered into by Florida Power & Light Company ("FPL") and Indiantown Cogeneration, L.P. ("ICL"). Unless otherwise defined herein, all capitalized terms have the meaning set forth in the Agreement for the Purchase of Firm Capacity and Energy Between Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated March 31, 1990 ("PPA"), as amended. This Agreement pertains to the Unit Energy Cost Calculation ("UEC") as set forth in Appendix I, UNIT ENERGY COST CALCULATION ("Appendix I"), to Amendment No. 2 to the PPA, effective July 15, 1992 ("Amendment No. 2"). Section L6 of Appendix I provides that "[i]n the event of a long term interruption (more than one full quarter) in or permanent cancellation of the delivery of coal to SJRPP, as described in Section I.4 herein, the Parties shall, within one year of such interruption or cancellation, agree upon a comparable replacement index." Section L6 has been triggered as a consequence of a long-term interruption in delivery of coal to Saint John's River Power Park ("SJRPP"). The last delivery of coal, excluding deliveries from DTE Clover, as described in Section L6 was on January 3, 2003. This Agreement satisfies the obligation to develop "a comparable replacement index" and is not intended as an amendment to the PPA or any amendments thereto or any waiver of rights thereunder. In consideration of the promises made herein and other good and valuable consideration, ICL and FPL hereby agree as follows:

1. The UEC replacement index as described herein ("Replacement Index") will be used to calculate the F.O.B. mine coal component of the UEC beginning with the first calendar quarter of 2004 and each calendar quarter thereafter except as provided in Paragraph 5 below. The Replacement Index shall be comprised of the F.O.B. mine coal component referenced in Appendix I, Section I.4, Subsection (i), multiplied by

the weighted average percent change from the last quarter of Phase-1 through the quarter for which the F.O.B. mine coal component of the UEC is being calculated in Phase-2.

The following is a sample F.O.B. mine coal component calculation for the first quarter of 2004:

Assumptions (Phase-2):

UEC in the 1Q-93 - $23.01/MWh

F.O.B. mine component of UEC in the 1Q-93 (51.695% based on the 2002 Fuel Audit) - $10.95/MWh

Calculation:

Average cost of all Appalachian coal (F.O.B. Mine) 1Q-93 - $1.09/MMBtu
Average cost of Replacement Index coal (F.O.B. Mine) 1Q-04 - $1.322/MMBtu

F.O.B. mine component :

($10.95) x ($1.322/$1.09) = $13.28/MWh

2. The Replacement Index will be comprised solely of data on all contract and spot purchases of Appalachian coal meeting the specifications for low/medium sulfur (0.60 to 2.00%), medium/high Btu (11,000 Btu/lb to 13,500 Btu/lb) as set forth in Appendix I, Section L3, for delivery exclusively by rail to power production facilities located in Florida, reported on Federal Energy Regulatory Commission ("FERC") Form 423 or comparable successor forms, Monthly Report of Cost and Quality of Fuels for Electric Plants, and/or FPSC Form 423-2 or comparable successor forms, and adjusted only as prescribed in Paragraph 6. (The FERC Form 423 and the FPSC Form 423-2 are referred to hereafter individually as "423 Form" and collectively "423 Forms".) Data reported to the FERC and/or the FPSC which meets all of the requirements of the sentence preceding the parenthetical, as such data may be adjusted pursuant to Paragraph 6, is hereafter referred to as "Qualified Data". If either or both of the 423 Forms are modified, suspended, or terminated, but if substantially comparable data is otherwise reported to the FERC and/or FPSC and publicly available, the parties will treat such comparable data as Qualified Data. If Qualified Data becomes unavailable and no comparable published data is available, the parties will, within one year of such Qualified Data becoming unavailable, agree upon an alternative index. Until such alternative index becomes effective, the parties will mutually agree upon the use of

substitute data consistent with the type of coal data set forth in Appendix I, Section I.3, Subsection (i) in lieu of Qualified Data.

3. Each quarterly calculation under the Replacement Index will use only the Qualified Data covering deliveries received in the calendar quarter which is three calendar quarters prior to the calendar quarter in which such quarterly calculation is made that was reported on 423 Forms actually published by FERC and/or the FPSC on their websites or actually made available to the public in hardcopy format. ICL will provide the quarterly calculation to FPL approximately eight (8) business days after the beginning of the calendar quarter in which the quarterly calculation is to be performed based on 423 Forms referenced in the first sentence of this Paragraph 3 that are available to ICL as close in time as reasonably possible to the date of such quarterly calculation.

Example: Assume that ICL calculates the UEC on or about January 11, 2005 for the first quarter of 2005. The calculation will include Qualified Data for all deliveries in the second calendar quarter (April, May and June) of 2004 and reported on 423 Forms actually published by FERC or the FPSC on their websites or actually made available to the public that are available to ICL prior to the time it commences the calculation

4. All averages used in the calculation of the Replacement Index will be weighted averages, with the exception of the $/ton-mile rail rate (defined in Paragraph 6), which is an arithmetic average.

5. The calculation of the UEC will revert on the Reversion Date (as defined below) to that set forth in Amendment No. 2 if at least 20% by weight in tons of the total tons of Solid Fuel (as defined below) delivered to SJRPP in each of the four consecutive quarters immediately preceding the quarter in which FPL provides written notice under this Paragraph 5 is Appalachian Coal meeting the specifications as per Paragraph 2 above and as set forth in Appendix I, Section I.3 ("Appalachian Coal"). "Solid Fuel" as used herein means all fuels, including synfuels ("Synfuels"), but does not include gaseous or liquid fuels. "Synfuels" as defined herein means solid fuels that meet the definition of "qualified fuels" under Section 29(c)(1)(C) of the Internal Revenue Code. FPL shall provide to ICL each month (including each month following the Reversion Date) a copy of Form 423 for SJRPP including a summary report with a calculation of the total tons of Solid Fuel delivered to SJRPP and the total tons of Appalachian Coal delivered to SJRPP meeting the specifications as per Paragraph 2 above for the months which comprise the immediately preceding four consecutive quarters. The report will include a calculation of the ratio of the total tons of Appalachian Coal delivered to SJRPP to the total tons of Solid Fuel delivered to

SJRPP for each quarter of the immediately preceding four quarters. The "Reversion Date" means the beginning of the calendar quarter in which FPL provides to ICL written notice, accompanied by documentation reasonably supporting such notice, that the condition in the first sentence of this paragraph has been met. The F.O.B. mine coal component of the UEC calculation will be adjusted by the percent change in the price of SJRPP's Appalachian Coal purchases, contract and spot, as reported on the 423 Forms beginning on the Reversion Date and for each subsequent quarter, provided that deliveries of Appalachian Coal to SJRPP continue to be no less than twenty (20) percent by weight of the total Solid Fuel deliveries to SJRPP during each subsequent calendar quarter. After the Reversion Date, ICL shall provide written notice to FPL if the condition in the preceding sentence is not being met. The calculation of the UEC shall be performed using the Replacement Index beginning with the calendar quarter in which ICL provides such written notice to FPL.

6. With respect to the calculation of the Replacement Index:

A. With respect to the quarterly calculation specified in Paragraph 3., ICL will provide to FPL a complete set of calculations and supporting documentation, as specified in Appendix A to this Agreement, including an electronic version of the spreadsheet specified in paragraph B below. In addition, ICL will provide to FPL, at the time it provides the quarterly calculation, copies of any and all revisions to Appendix A to the Coal Transportation Agreement between ICL and CSXT effective as of September 11, 2003 ("Coal Transportation Agreement") applicable to the calendar quarter which is three calendar quarters prior to the calendar quarter in which the quarterly calculation is made. In the event that ICL does not provide FPL a complete set of calculations and supporting documentation approximately eight (8) business days from the beginning of the calendar quarter in which the quarterly calculation is to be performed, then the previous calendar quarter's Qualified Data will be used in the calculation of the Replacement Index.

B. Qualified Data for each applicable coal purchase will be entered in a spreadsheet in the format shown in Appendix A. Data entered will include: month of delivery; reporting company; plant receiving the coal; coal supplier; mine location; tons received; quality data (Btu/lb and sulfur percent) as set forth in Paragraph 2 above and Amendment No. 2; and actual delivery cost in dollars per ton ($/ton) and/or in cents per million Btu (¢/MMBtu). Any conversions that are necessary to arrive at these parameters or costs shall be performed if the data is not provided in the appropriate format. Only data meeting the quality specifications as noted above will be utilized in the quarterly calculation. Data shall be entered into the spreadsheet exactly as

reported. Data shall not be modified in any way. To the extent ICL has reason to believe Qualified Data has been incorrectly reported it shall exclude such data from the calculation of the index and shall separately report such excluded data. ICL shall provide FPL a summary report of any data that is excluded from the calculation of the index for any reason other than not meeting the quality specifications noted above.

C. A routed rail mileage for each purchase will be calculated from each supplier's mine/load-out to the plant receiving the coal by using PC-Rail, a commercially available software program, or other software program(s) or method mutually agreed to and approved by ICL and FPL.

D. To the extent that the transportation rate for any purchase is not expressly reported on any 423 Form, the transportation rate for the purchase reflected on that 423 Form will be estimated by using the routed rail mileage from the mine/load-out to the plant receiving the coal times an arithmetic average $/ton-mile rate. The arithmetic average $/ton-mile rate for the quarter under consideration is derived by calculating the arithmetic average of the ICL actual CSXT rail rate ("ICL Actual CSXT Rail Rate") and the Gulf Power Scholz Plant CSXT rail rate ("Scholz Rail Rate"). If the data required to calculate the Scholz Rail Rate becomes unavailable and no other rail transportation rate is expressly reported on any 423 Form to be used in the calculation of an arithmetic average $/ton-mile rate, the parties shall within one year agree upon a source of data to replace the Scholz data. Until such replacement data is agreed upon, for the months that do not include reported rail transportation rates for any of the power production facilities located in Florida, the Scholz Rail Rate will be calculated using the Gulf Power Scholz Plant CSXT rail rate data from the quarter immediately preceding the quarter in which that data became unavailable, modified by the change in the ICL Actual CSXT Rail Rate for each subsequent quarter. The arithmetic average of the ICL Actual CSXT Rail Rate and the Scholz Rail Rate shall be referred to hereafter as the "ICL Rail Rate." The ICL Actual CSXT Rail Rate component is to be updated only as a result of an update to Appendix A to the Coal Transportation Agreement which is presently in effect and has a term that expires on December 31, 2025 and/or an amendment to the Coal Transportation Agreement. In addition, the calculation of the arithmetic average $/ton-mile rate described above is to be revised by including additional transportation cost data (limited by coal quality, *i.e.*, Btu/lb, sulfur percent and ash percent) for any and all power production facilities located in Florida as officially published on the 423 Forms. If there is a change, amendment or modification to the ICL Rail Rate, ICL will promptly notify FPL. In the event the Coal

Transportation Agreement is terminated, the Parties will negotiate a suitable replacement to the ICL Actual CSXT Rail Rate. Pending negotiation of a suitable replacement, the Parties will use the ICL Actual CSXT Rail Rate in effect immediately prior to the termination of the Coal Transportation Agreement, escalated in each subsequent quarter by the change in the price indices specified in Article XIII of the Coal Transportation Agreement from the date immediately prior to such termination.

E. The actual or estimated transportation rate in $/ton will be subtracted from the actual reported delivered price in $/ton to yield a coal F.O.B. mine price for the purchases of CSXT-delivered Appalachian Coal delivered to power production facilities located in Florida referred to in Paragraph 3 of this Agreement.

F. The coal F.O.B. mine price calculated under subparagraph 6.E. for each delivery will then be multiplied by the number of tons for that delivery to determine the cost of coal for that delivery. The average cost of coal per MMBtu for the quarter reflected in Qualified Data on the officially published 423 Forms for deliveries received in that quarter will be determined by dividing the total aggregate cost of coal delivered in the quarter by the total aggregate MMBtu's for the quarter, extended to three decimal places. This calculated cost per MMBtu will be used in the same manner as the current calculation of the quarterly UEC pursuant to Amendment No. 2.

G. After this index procedure has been in effect for an initial period of at least four (4) quarters but no more than sixteen (16) quarters, either party may, by written notice to the other party, request that the methodology for calculation of the average $/ton-mile transportation rate be revised to yield a reasonable calculation method that more closely approximates the actual verifiable transportation costs of comparable power production facilities in Florida. Such notice shall include a proposed alternative methodology, including information explaining why the alternative methodology would, if utilized, produce a more accurate average cost per $/ton-mile for the quarter than the methodology specified in Paragraph 6. If any negotiations take place pursuant to this subparagraph 6.G., they shall be conducted in good faith and the parties shall attempt to reach agreement within ninety (90) days of the date of the written notice. In the event the parties have not reached agreement within seventy-five (75) days of the date of the written notice, within the next ten (10) business days a meeting will be conducted with senior management representatives from both parties to conclude and finalize the good faith negotiations. The parties agree that no additional weight or evidentiary value should be attributed

to the transportation rate calculation methodology set out herein vis-a-vis any proposed alternative methodology.

7. A. Within thirty (30) days of the execution of this Agreement, as required by Rule 25-17.0836, Florida Administrative Code, FPL shall notify the Director of the Division of Economic Regulation of the FPSC of this modification to the PPA. The information submitted shall include the information specified in Rule 25-17.0836, Section (1). Although the Parties believe that FPSC approval of the Agreement, for cost recovery purposes, is not required because Rule 25-17.0836 excludes from the requirement of approval modifications explicitly contemplated by the terms of the PPA, in order to satisfy certain obligations which ICL has under its financing agreements, ICL will file with the FPSC a request for a declaratory statement that this Agreement (i) was explicitly contemplated by the terms of the PPA, as approved by the FPSC, and (ii) therefore does not require approval of the FPSC pursuant to Rule 25-17.0836. Accordingly, the effectiveness of Paragraphs 1 through 6 of this Agreement are contingent upon the FPSC issuing an order, in form and substance acceptable to ICL in its sole discretion, as to which no appeal is pending and which is no longer appealable, to the effect that this Agreement does not require approval of the FPSC for purposes of cost recovery by FPL.

B. Within ten (10) business days after the FPSC order referenced in subparagraph 7.A. is issued, ICL will notify FPL as to whether the order is acceptable or unacceptable to ICL (assuming no motion for reconsideration and/or judicial appeal is filed). If a motion for reconsideration and/or judicial appeal is filed, within ten (10) business days from the date a final and non-appealable order is issued, ICL will notify FPL as to whether such order is acceptable or unacceptable to ICL.

C. If ICL notifies FPL pursuant to subparagraph 7.B. that the order is unacceptable to ICL, then this Agreement shall immediately terminate. In the event of termination of this Agreement, the Unit Energy Cost will continue to be calculated in accordance with Section I.6 of Appendix I to the Second Amendment, and the Parties shall, within one year commencing upon the date of termination of this Agreement, agree upon a comparable replacement index.

D. Nothing in this Agreement shall require ICL to submit a motion for reconsideration of the FPSC's order referenced in Paragraph 7 or to appeal such order to the Florida Supreme Court or any other judicial forum.

8. All notifications required to be given under this Agreement shall be given in writing.

9. This Agreement is binding on and shall inure to the benefit of the parties and the licensees, representatives, transferees, affiliates, subsidiaries, direct and indirect owners, successors, heirs and/or assigns of the parties hereto. This Agreement, together with the PPA, as amended, contains the entire agreement between the parties hereto with respect to the subject matters herein, supersedes any and all prior oral and written agreements relating hereto, and may not be modified, amended, or amplified except by a written document executed by the Parties hereto. This Agreement in no way supersedes, modifies, or amends the PPA, as amended.

10. This Agreement shall be governed by the laws of the State of Florida applicable to agreements made or to be performed in Florida, without regard to the conflicts of law principles thereof. The parties hereto consent to the personal jurisdiction and venue of the federal and state courts in the State of Florida, and agree that all disputes or litigation regarding this Agreement shall be submitted to, and determined by, said courts.

11. Each party hereto expressly warrants and represents that it has the requisite corporate or partnership approval, as the case may be, to execute and deliver this Agreement and that each of the persons executing this Agreement has the necessary and appropriate authority to do so; that there are no pending agreements, transactions, or negotiations to which it is a party that would render this Agreement or any part thereof void, voidable, or unenforceable; that no authorization, consent or approval of any governmental entity is required to make this Agreement valid and binding upon it, and that this Agreement constitutes its legal, valid and binding obligation.

12. This Agreement may be executed by the parties in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement and a facsimile signature shall be deemed to have the same effect as an original signature. One fully executed original shall be distributed to each party.

Very truly yours,

Indiantown Cogeneration, L.P.

By: _____
Signature

F. JOSEPH FLEET
Printed Name

VICE PRESIDENT
Title

By my signature, on behalf of
Florida Power & Light Company,
I agree to each and all of the provisions
Of this Agreement.

Florida Power & Light Company

By: _____
Signature

RENÉ SILVA
Printed Name

DIRECTOR, RESOURCE PLANNING
Title