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June 11, 2008

080000-5

RECEIVED-FPSC
08 JUN 12 PM 1:50
COMMISSION
CLERK

Ms. Ann Cole, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee 32399

Re: Informational Filing (UNDOCKETED)

Dear Ms. Cole:

Enclosed are the original and seven (7) copies of Progress Energy Florida's 2013 Request for Proposals for Year 2013 Power Supply Resources issued on June 12, 2008 following a pre-bid meeting of potential participants on June 5, 2008. A further meeting of potential participants will be held on June 19, 2008.

Timely notification of the issuance of the RFP was provided by publishing notices in newspapers. In addition, a website, www.progress-energy.com/PEF2013_RFP, was established to enable interested parties to have ready easy access to the RFP. Staff has been provided the RFP via hand delivery.

Responses to the RFP are due by August 12, 2008.

Sincerely,

Dianne M. Triplett

DMT/jlc
Enclosure

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DOCUMENT NUMBER-DATE
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Progress Energy Florida will issue a Request for Proposals for generation beginning in 2013

5/29/2008

ST. PETERSBURG, Fla. (May 29, 2008) Progress Energy Florida today announced that on June 12, 2008 the company will issue a Request for Proposals (RFP) to supply approximately 1,200 megawatts of generating capacity beginning in 2013.

Proposals will compete with Progress Energy's self-build option consisting of a highly-efficient, combined-cycle, natural gas unit to be built on company property at its existing Suwannee plant in Suwannee County, Florida. The proposed unit will have an in-service date of June 1, 2013.

"Progress Energy Florida is committed to meeting the growing energy needs of our 1.7 million customers," said Jeff Lyash, president and chief executive officer of Progress Energy Florida. "We have a need for generating capacity in 2013 and, through this process we will be able to identify the most cost-effective, safe and reliable generation source for our customers."

The RFP, which is in accordance with Florida Public Service Commission rules, will be issued on June 12, 2008. Interested bidders must obtain the official RFP in order to participate and will be required to obtain updated RFP information regularly from the RFP Web site: www.progress-energy.com/PEF2013RFP.

An RFP pre-release meeting is planned for Thursday, June 5, 2008 and a meeting for interested bidders will be held on Thursday June 19, 2008. Both meetings will take place from 1 -- 3 p.m. each day in the Cotillion-Terrace Room at the Marriott Westshore, 1001 N. Westshore Boulevard in Tampa, Fla.

Upon completion of screenings and evaluations, a short list of proposals will be announced in October 2008. Finalists are expected to be named in November 2008 and the award announcement is planned for mid-December 2008.

Proposal must be received by 3 p.m. EDT on Tuesday, Aug. 12, 2008.

Beginning today additional information about the pre-release RFP will be available to prospective bidders on the Progress Energy RFP Web site: www.progress-energy.com/PEF2013RFP.

All inquiries or contact about the RFP, including questions of clarification, requests for additional information, and submission of proposals, must be directed in writing to:

David Dawson
Progress Energy Florida
Resource Planning
6565 38th Ave North
St. Petersburg, FL 33710
Telephone number: (727) 344-4165
Fax number: (727) 344-4184
E-mail: PEF2013RFP@pgnmail.com

Progress Energy Florida reserves the right to revise the schedule at any time, at the company's sole discretion. Depending on Progress Energy Florida's requirements to review the proposals, the company may shorten or lengthen the schedule and revise the dates associated with the schedule.

Progress Energy Florida, a subsidiary of Progress Energy (NYSE: PGN), provides electricity and related services to 1.7 million customers in Florida. The company is headquartered in St. Petersburg, Fla., and serves a territory encompassing more than 20,000 square miles including the cities of St. Petersburg and Clearwater, as well as the Central Florida area surrounding Orlando. Progress Energy Florida is pursuing a balanced approach to meeting the future energy needs of the region. That balance includes increased energy-efficiency programs, investments in renewable energy technologies and a state-of-the-art electricity system. For more information about Progress Energy, visit the company's Web site at www.progress-energy.com.

Caution Regarding Forward-Looking Information:

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This release contains forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements, by their very nature, involve assumptions, risks and uncertainties that could cause actual results or outcomes to differ materially from those expressed in the forward-looking statements. For example, the company's decision on whether to move forward with generation construction will depend on a variety of factors that are each subject to change, such as the political and regulatory environments, financing options available to fund construction and the overall cost of generation construction and associated transmission facilities. Any forward-looking statement speaks only as of the date such statement is made, and we undertake no obligation to update any forward-looking statement or statements to reflect events or circumstances after the date on which such statement is made.

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Progress Energy Florida "Pre-Releases" a RFP for Power Supply Resources

Progress Energy Florida (PEF or Company) is providing an opportunity for potential participants to submit "pre-release" comments to a Request for Proposal (RFP) that will be issued on June 12, 2008.

Progress Energy Florida is seeking proposals from potential suppliers of electric generating capacity and associated energy as described herein and will issue the RFP on June 12, 2008. In this RFP, Progress Energy Florida is soliciting proposals for alternatives to the Company's "Next Planned Generating Unit" (NPGU), which is approximately 1,159 MW (net summer rating) of capacity available for commercial delivery by June 1, 2013.

Progress Energy Florida invites all potential participants to submit bids in accordance with the terms and conditions of this RFP (PEF2013RFP). Progress Energy Florida's most recent 2008 Ten-Year Site Plan has identified a natural gas fired combined cycle resource, or Suwannee River 4, for PEFs NPGU. However, the Company will consider other resource types. Proposals received shall be evaluated in accordance with applicable rules, regulations, and statutes.

The following Pre-Release PEF2013RFP information is available:

[Pre-Release PEF2013 RFP Schedule](#)

[PEF2013RFP Official Contact Person](#)

[Pre-Release PEF2013 RFP Documents and Information \(RFP Package\)](#)

Pre-Release PEF2013 RFP Schedule

Live Meeting and Conference Call Information:

If you would like to view or listen to the June 5 RFP Pre-Release Meeting presentation or the June 19 Bidders Meeting presentation via Live Meeting and conference call, please send an email request to PEF2013RFP@pgnmail.com no later than 5:00pm EDT the day prior to the meeting. The associated live meeting "link" and conference call information will be forwarded to you from leslie.smith@pgnmail.com for your external attendance. Thank you.

A schedule for critical dates for the solicitation, evaluation, screening of proposals, and subsequent negotiations follow:

A. Solicitation

Pre-Release of RFP	May 29, 2008
Pre-Release Meeting	June 5, 2008
Pre-Release Draft Revision of RFP	June 6, 2008
Issuance of RFP	June 12, 2008
Bidders Meeting	June 19, 2008
Submission of Proposals	August 12, 2008 3:00pm

B. Evaluation and Screening of Proposals

Selection of Short List	Expected by October 13, 2008
Selection of Finalist(s)	Expected by November 12, 2008

C. Negotiations

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Initiate Negotiations	Expected by November 2008
Clarifications and Adjustments	Expected by November 2008
Award Announcement	Expected by December 12, 2008

D. Regulatory Filings

File for certification	Expected by January 21, 2009
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Progress Energy Florida reserves the right to revise the schedule. Depending on PEF's requirements to review the proposals, PEF may shorten or lengthen the schedule and revise the dates associated with the schedule.

The Pre-Release and Bidder meetings are scheduled for June 5 and June 19, respectively, at the Tampa Marriott Westshore, 1001 N Westshore Blvd, Tampa, Florida 33607 (1:00 - 3:00pm, each day in conference room Cotillion-Terrace).

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PEF2013RFP Official Contact Person

All inquiries or contact about the RFP, including questions of clarification, requests for additional information, and submission of proposals, must be directed in writing to PEF's Official Contact listed below:

David Dawson
PEF Resource Planning
6565 38th Ave North
St. Petersburg, FL 33710

Telephone number: (727) 344-4165
Fax number: (727) 344-4184
E-mail address: PEF2013RFP@pgnmail.com

Web Site: www.progress-energy.com/PEF2013RFP

Unsolicited contact with other PEF personnel or employees of PEF affiliated companies concerning the RFP is not allowed and will constitute grounds for disqualification. Progress Energy Florida reserves the right to provide written responses to all Bidders on the PEF 2013 RFP web site (www.progress-energy.com/PEF2013RFP) if it is deemed necessary to ensure that all Bidders have equal access to the same information.

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Pre-Release PEF2013 RFP Documents and Information (RFP Package)

The following Pre-Release RFP Package is available for review and comments. This Pre-Release RFP Package will be replaced on June 12, 2008 with the final PEF2013RFP documents and Information. All bid participants will need to download the final PEF2013RFP documents and obtain any updated information beginning June 12, 2008.

Pre-Release PEF2013RFP Documents:

- Pre-Release PEF 2013RFP (6-06-08).pdf
- Attachment A1 - Pre-Release Pro-Forma Tolling Agreement (5-29-08)(.doc and .pdf)
- Attachment A2 - Pre-Release Pro-Forma Non-Tolling Agreement (5-29-08)(.doc and .pdf)
- Attachment B - Pre-Release PEF 2008 Ten-Year Site Plan (TYSP) (4-01-08).pdf

- Attachment C - Pre-Release Bidders Response Package (Instructions) (5-29-08).pdf
- Attachment D - Pre-Release Bidders Response Schedules (Forms) (5-29-08)(.xls and .pdf)

Pre-Release PEF2013RFP Information:

- Pre-Release PEF 2013 Schedule (5-29-08).pdf
- PEF 2013 RFP Official Contact (5-29-08).pdf
- PEF 2013 RFP FAQ and Information (5-29-08).pdf

The Pre-Release RFP Package may be downloaded by clicking the link below. You will be required to register basic information prior to downloading. The final RFP and any updated information will need to be downloaded beginning June 12, 2008.

[Download Complete Pre-Release RFP package](#)

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Progress Energy Florida

Request for Proposals For Year 2013 Power Supply Resources

***PEF 2013 RFP
6/12/08***



DOCUMENT NUMBER-DATE

05040 JUN 12 8

FPSC-COMMISSION CLERK

PEF 2013 RFP Document

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I. INTRODUCTION

A. Overview of PEF 2013 Request for Proposals (RFP)

Progress Energy Florida (PEF or Company) is seeking proposals from potential suppliers of electric generating capacity and associated energy as described herein. In this RFP, Progress Energy Florida is soliciting proposals for alternatives to the Company's next planned generating unit ("Next Planned Generating Unit" or "NPGU"), which is approximately 1,161 MW (net summer rating) of capacity available for commercial delivery by June 1, 2013.

Progress Energy Florida invites all potential participants to submit bids in accordance with the terms and conditions of this RFP. Progress Energy Florida's most recent 2008 ten-year site plan ("Ten-Year Site Plan" or "TYSP") is provided in Attachment B and has identified a natural gas fired combined cycle resource for PEF's NPGU. However, the Company will consider other resource types. Proposals received shall be evaluated in accordance with applicable rules, regulations, and statutes.

This PEF 2013 RFP document includes the following Attachments:

- **Attachment A: Pro Forma Agreements (Tolling and Non-Tolling)**
- **Attachment B: 2008 TYSP**
- **Attachment C: Bidders Response Package (Instructions)**
- **Attachment D: Bidders Response Schedules/Forms (Excel Version)**

PEF will post the RFP documents on the web site listed below. In addition, PEF reserves the right to post written responses to questions from potential participants if PEF, in its sole discretion, deems it necessary to ensure that all potential participants have equal access to certain information.

<http://www.progress-energy.com/PEF2013RFP>

B. Objectives of the RFP

The purpose of the RFP is to solicit competitive proposals for supply-side alternatives to PEF's Next Planned Generating Unit. Progress Energy Florida's intent is to select resources that offer the maximum value, based on price and non-price attributes, to the Company and its customers in order to maintain a balanced plan of resources in order to supply PEF customers with clean, reliable and affordable power.

During its normal course of business, Progress Energy Florida continuously evaluates alternatives as resources to fulfill its need for generating plants identified in its Ten-Year Site Plan. Alternative resources that are identified and evaluated are not always the same type (i.e. peaking, intermediate, or baseload resources) as indicated in the TYSP. Depending on the type of alternative resources being evaluated, it is possible that its inclusion in the Company's resource mix will impact the timing or need for other resources identified in the TYSP, including the Next Planned Generating Unit. For this, and other possible reasons, PEF reserves the right to cancel,

modify or withdraw the RFP, to reject any or all responses, and to terminate negotiations at any time during the RFP process.

C. PEF's Year 2013 Resource Needs

Progress Energy Florida's Ten-Year Site Plan shows the Next Planned Generating Unit, which is subject to Rule 25-22.082, to be the Suwannee River 4, located in Suwannee County, Florida. This natural gas-fired combined cycle unit of approximately 1,161 MW (net summer rating) and 1,258 MW (net winter rating) is planned to be placed in commercial operation by June 1, 2013 and coincident with the retirement of the Suwannee River Steam Units 1, 2 & 3.

A detailed technical description, as well as the financial assumptions and parameters associated with the Suwannee River 4, are provided in Section IV of this RFP.

D. Schedule

A schedule for critical dates for the solicitation, evaluation, screening of proposals, and subsequent negotiations follow:

A. Solicitation

Pre-Release of RFP	5/29/08
Pre-Release Meeting	6/5/08
Pre-Release Draft Revision of RFP	6/6/08
Issuance of RFP	6/12/08
Bidders Meeting	6/19/08
Submission of Proposals	8/12/08 by 3:00 pm

B. Evaluation and Screening of Proposals

Selection of Short List	Expected by 10/13/08
Selection of Finalist(s)	Expected by 11/12/08

C. Negotiations

Initiate Negotiations	Expected November 2008
Clarifications and Adjustments	Expected November 2008
Award Announcement	Expected by 12/12/08

D. Regulatory Filings

File for certification	Expected by 01/21/09
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Progress Energy Florida reserves the right to revise the schedule at any time, at PEF's sole discretion. Depending on PEF's requirements to review the proposals, PEF may shorten or lengthen the schedule and revise the dates associated with the schedule.

The Pre-Release and Bidder meetings are scheduled for June 5 and June 19, respectively, at the Tampa Marriott Westshore, 1001 N Westshore Blvd, Tampa, Florida 33607 (1:00 – 3:00pm, each day in conference room Cotillion-Terrace).

E. Official Contact Person

All inquiries or contact regarding this RFP, including questions of clarification, requests for additional information, and submission of proposals, must be directed in writing to PEF's Official Contact listed below:

David Dawson
PEF Resource Planning
6565 38th Ave North
St. Petersburg, FL 33710

Telephone number: (727) 344-4165
Fax number: (727) 344-4184
E-mail address: PEF2013RFP@pgnmail.com

Web Site: <http://www.progress-energy.com/PEF2013RFP>

Unsolicited contact with other PEF personnel or employees of PEF affiliated companies concerning the RFP is not allowed and will constitute grounds for disqualification. Progress Energy Florida reserves the right to provide written responses to all Bidders on the PEF 2013 RFP web site (www.progress-energy.com/PEF2013RFP) if PEF, in its sole discretion, deems it necessary to ensure that all Bidders have equal access to certain information.

II. INFORMATION AND RESPONSIBILITIES FOR BIDDERS

A. General

Bidders to this RFP are required to meet all of the terms and conditions of the RFP to be eligible to compete in the solicitation process. In submitting their proposals, Bidders are required to follow all instructions contained in the RFP. Bidders must respond to all questions contained in the Response Package (Attachment C), use the provided Microsoft Excel schedules (Attachment D), organize their proposals according to the structure specified in the Response Package (*i.e.*, organized by chapter and section in the order specified by PEF), and provide supporting documentation in the format requested.

Bidders should include the Project Name, chapter and section numbers, and page number on each attachment. If a question is not applicable to the type of proposal submitted, Bidders should so indicate and specify why the requested information is not applicable to a particular proposal. This requirement is in place to assist the Bidder and PEF in assuring that no question has been overlooked and to provide all relevant information needed to evaluate the proposals. It is the Bidder's responsibility to advise PEF's Official Contact of any conflicting requirements, omissions of information, or the need for clarification before bids are due. Bidders should clearly

organize and identify all information submitted in their proposals to facilitate review and evaluation.

A Bidder's failure to provide all of the information for a proposal as requested in this solicitation process or to demonstrate that the proposal satisfies all of the Threshold Requirements and Minimum Technical Requirements identified in Section III will be grounds for disqualification.

Bidders should identify and clearly mark all confidential and proprietary information contained in its proposals as "Confidential". PEF will use its best efforts to protect the confidentiality of such information and only release such information on a need-to-know basis to the members of the RFP Project Team, management, agents and contractors, and, as necessary and consistent with applicable laws and regulations, to its affiliates and regulatory commissions. PEF's use of confidential information will be for the purpose of evaluating resource options for PEF. In no event shall PEF be liable to a Bidder for any damages of whatsoever kind resulting from PEF's failure to protect the confidentiality of Bidder's information. By submitting a proposal, the Bidder agrees to allow PEF to use all information provided and the results of the evaluation as evidence in any proceeding before the Florida Public Service Commission ("FPSC"). To the extent PEF wishes to use information before the FPSC that a Bidder considers confidential, PEF will request that the Commission treat such information as confidential and to limit its dissemination, but PEF cannot and will not make any assurance of the outcome of any such request.

All correspondence between potential Bidders and PEF must be through the Official Contact and all questions concerning this RFP must be submitted in writing. PEF will attempt to respond within a reasonable length of time to Bidders' requests and questions. Written responses, as determined appropriate by PEF, may be posted via the RFP web site. Potential bidders are responsible for periodically checking the PEF RFP website to see whether new questions and answers regarding the RFP have been posted.

B. Submission of Proposals

All proposals **must be received by PEF by 3:00 PM EST on August 12, 2008.** Proposals must be submitted to the PEF Official Contact. Proposals should be submitted in a sealed package and be marked with the Bidder's name and a label indicating that the package contains a proposal in response to **Progress Energy Florida's RFP for 2013 Power Supply Resources.**

For each proposal, Bidders must submit a complete bid package consisting of all of the information required as described in this RFP Document and in the Response Document of this RFP. Each proposal should include Bidder's response as follows:

Each individual bid package should consist of:

- three (3) bound copies
- and one (1) electronic version (on diskette or CD-ROM) with all text portions of the responses in Microsoft Word or Adobe Acrobat and schedules in Microsoft Excel.
- Each proposal is to be bound separately.

- Bidders must submit two (2) extra unbound copies of any document that is larger than 8 ½" x 11".
- Bidders must ensure that the proposals are delivered on time. Deliveries by services which cannot guarantee delivery by the time required are discouraged. **Failure to submit a proposal and have it received by PEF by the deadline set forth above will be grounds for disqualification.**

The Response Package in Attachment C contains directions regarding the type and form of information Bidders are required to provide.

C. Proposal Fees/ Proposal Variations

Proposals Fees

Bidders may submit as many proposals as they desire. To help defray the cost of performing the proposal evaluations, Bidders are required to submit with each proposal a proposal submittal fee of \$10,000. The fee should be in the form of a check payable to "Progress Energy Florida." **All such submitted fees shall be non-refundable.**

A proposal is defined according to a specific combination of elements: the particular site, capacity (MW), technology, fuel, and infrastructure features identified by the Bidder for a particular offer. Thus, a proposal which contains a different site, size, technology, fuel (excluding secondary fuel), or infrastructure features will be classified as a separate proposal and shall require a separate proposal submittal fee and may require additional deposits for transmission studies should the proposal reach the Short List or Final List.

Variations

Bidders are allowed to propose up to a total of two variations in project term and/or pricing at no additional cost. Variations in excess of two must be accompanied by a \$1,000 per variation fee to be considered for evaluation. **Bidders must submit a complete electronic version of the Response Package for each variation.** (The hard copy version of the primary Proposal should contain a section discussing any variations and identifying the name(s) of the file(s) in which such variation(s) are contained.)

D. Proposal Terms and Pro-Forma Agreements

As discussed above and provided within this document, PEF is seeking proposals for power supply resources to be in-service by June 1, 2013. Since the Company's NPGU is approximately 1,161 MW based on summer ratings and 1,258 MW based on winter ratings, the maximum size of the proposals should be approximately 1,258 MW.

The start date for the delivery of capacity and energy to PEF should be no later than June 1, 2013. The earliest contract end date for the delivery of capacity and energy to PEF should be September 31, 2018.

Pro Forma agreements (Tolling and Non-Tolling) are provided in Attachment A. As part of a Bidder's proposal, the Bidder shall provide comments (in electronically redlined form), to the Pro-Forma Agreement form(s) that is/are applicable to such Bidder's proposal(s).

E. Contract Flexibility Provisions

PEF is interested in creative responses that employ innovative or inventive technologies or processes that can meet the RFP requirements. Also, bidders are encouraged to offer flexibility provisions within their proposals. Possible provisions include, but are not limited to, contract term extension options in which bidders propose an initial contract term and provide PEF the option to extend the contract at predefined prices, options to terminate or buy out the contract, or options to shorten or terminate the contract in the event of any amendments to the Florida Power Plant Siting Act or the deregulation of the electric utility industry in Florida. Issues concerning the deregulation of the electric utility industry in Florida could come from, but would not necessarily be limited to, the following: New NERC Standards or revisions to existing Standards; new FRCC Standards or revisions to existing Standards; New FERC Rules or amendments to existing Rules; actions by the Florida PSC, etc. Within the context of any particular proposal, for the purpose of payment of proposal fees, as described in Section II.C, above, the offering of such flexibility provisions will not constitute another offer.

F. Generator Interconnection and Transmission System Analyses

Progress Energy Florida requires that all resources procured through the RFP process be deliverable via Firm Transmission Service to serve loads during the term of the agreement. Therefore, resources need to be either (a) located within and interconnected to PEF's transmission system, with any interconnection facilities and/or transmission upgrades necessary to allow the resource to qualify as a network resource pursuant to the PEF Open Access Transmission Tariff (OATT), or (b) located outside PEF's control area, with any interconnection facilities and/or transmission upgrades necessary to allow the resource to be deliverable to the Point of Delivery (POD) on a firm point-to-point basis and serve as a network resource from the POD to serve loads in PEF's control area.

As noted in Section II.E of the Response Package in Attachment C, Bidders who offer resources located outside of the PEF control area will be responsible for coordinating with other transmission system owners, as appropriate, for securing firm transmission service for delivery of the resource capacity and energy to the delivery point POD in the PEF control area. If Bidders desire PEF to pay for any transmission-related costs, including interconnection, wheeling and upgrade costs of other transmission systems, then Bidders must include any such transmission-related costs in Schedule 1 (or Schedule 2, as applicable) of the Response Package.

In evaluating alternative proposals, PEF will include the costs of any necessary interconnection facilities and/or transmission upgrades required on the PEF transmission system and other affected transmission system in order to integrate the proposed power plant or power transfer into the PEF transmission network. Thus, various transmission studies will be required for each proposal for the term of the proposed transaction to determine the transmission facilities needed

on the PEF system and other affected systems. PEF will coordinate such studies with other affected utility systems as appropriate. Transmission upgrade costs will be included by PEF in the economic analysis of all proposals as well as the Company's self-build alternative. The interconnection and transmission system studies will be conducted as required by FERC Orders and Rules, and consistent with a) the PEF OATT, b) NERC Standards and c) the FRCC Resource Evaluation process.

The type of studies required for any proposal will depend on whether the proposed power supply will be provided from a New Unit, Existing Unit, or System Power, and whether the proposed power supply is located inside or outside the PEF control area. New Unit Proposals interconnecting to the PEF transmission system will require Generator Interconnection Studies (Interconnection Feasibility Study, Interconnection System Impact Study, and Interconnection Facilities Study) consistent with the PEF OATT. For all other proposals (New Unit Proposals outside the PEF control area, Existing Unit Proposals inside or outside the PEF control area, and System Power Proposals), Transmission System Studies (System Feasibility, System Impact, and System Facilities) may be required, consistent with the PEF OATT, to determine necessary transmission upgrades to the PEF system for the resource to serve as a network resource.

A summary of the transmission study process is provided below. Section III contains additional information regarding the interconnection and transmission system studies to be conducted in the RFP evaluation process. For reference, the PEF OATT can be accessed via the following internet link:

http://www.progress-energy.com/aboutenergy/rates/fpc_oatt_050106.pdf

1. New Unit Proposals Inside the PEF Control Area

a. Generator Interconnection Request

- New Unit Proposals physically located inside the PEF control area will require Generator Interconnection Studies (Interconnection Feasibility Study, Interconnection System Impact Study, and Interconnection Facilities Study) to be performed to estimate transmission system upgrade costs related to each proposal.
- To accommodate such studies for all New Unit Proposals, PEF will utilize the cluster study approach set forth in Section 4.2 of the Standard Large Generator Interconnection Procedures, Attachment P of the PEF OATT. PEF will cluster all Interconnection Requests related to New Unit proposals for this RFP to allow them to be studied together instead of serially.
- Bidders of New Unit Proposals that will interconnect to PEF's control area will be required to complete all forms and processes stipulated in Schedule 7 of the Response Package forms and submit an Interconnection Request and obtain a Queue Position during the Queue Cluster Window consistent with procedures outlined in PEF's OATT.

The Queue Cluster Window will open on June 12, 2008 (the RFP issuance date) and will close on August 12, 2008 (the proposal submittal date).

- PEF's transmission organization will facilitate completion of the Interconnection Studies to conform to the RFP schedule. Upon notification by PEF that a Bidder's proposal has been selected to proceed to a subsequent step in the RFP process, Bidders will be allowed seven (7) calendar days to decide whether to continue in the RFP process, and if so, execute the required study agreements and submit the required payments for the next level of studies to be performed (reference Attachment P of the PEF OATT). **For any Bidder notified of the need for such additional studies in order to continue in the RFP, failure to execute the required study agreements and submit the required transmission study deposits within the seven (7) calendar day time period specified in this RFP will be grounds for disqualification.**

2. All Other Proposals

- All other proposals (New Unit Proposals outside the PEF control area, Existing Unit Proposals inside or outside the PEF control area, and System Power Proposals) will be required to complete all forms and processes stipulated in Schedule 7 of the Response Package forms and may require Transmission System Studies (System Feasibility Study, System Impact Study, and System Facilities Study) to be performed of the PEF transmission system to estimate transmission system upgrade costs for the PEF system and other affected systems for each proposal.

PEF will be the network serving entity and responsible for acquiring network transmission system service for any of the RFP resources that may be selected. Therefore, Bidders will not be charged for Transmission System Studies that PEF conducts to determine upgrades that are required on the PEF system and other affected systems for each proposal.

G. Credit/Security Requirements

The Pro Forma Tolling and Non-Tolling Agreements provided in Attachment A to this RFP Document contain credit and financial security provisions which require the seller under any such agreement to provide financial security to PEF to secure such seller's obligations under such agreement.

H. Permitting Responsibility

The Bidder(s) whose proposal is (are) selected will be responsible for acquiring in a timely fashion all necessary licenses, permits, certifications, and approvals required by federal, state and local government laws, regulations and policies for the design, construction, and operation of the project. In addition, the Bidder shall fully support all of PEF's regulatory requirements associated with this potential power supply arrangement. The Bidder is also completely and solely responsible for securing financing for its project. PEF shall have no responsibility in identifying or securing any licenses, permits, or regulatory approvals (other than being a co-applicant in a Determination of Need filing and a co-applicant in the Certificate of Need proceeding under the Florida Electric Power Plant Siting Act) or in securing any financing required for the construction or operation of the project.

I. Regulatory Provisions

Any negotiated contract between PEF and the Bidder will be conditioned upon approval or acceptance without substantial change by any and all regulatory authorities that have, or claim to have, jurisdiction over any or all of the subject matter of this solicitation, including, without limitation, the Florida Public Service Commission and the Federal Energy Regulatory Commission. Any such negotiated contract will be further conditioned upon favorable regulatory action without substantial condition or qualification (including but not limited to temporal or other conditions or limitations on cost recovery) by any and all regulatory authorities from which regulatory approval may be required for the contract or for the development or effectuation of the power supply project and related activities (including but not limited to a Determination of Need by the FPSC).

In accordance with Rule 25-22.082 of the Florida Administrative Code, each participant [Bidder] is required

... to publish a notice in a newspaper of general circulation in each county in which the participant proposes to build an electrical power plant. The notice shall be at least one-quarter of a page and shall be published no later than 10 days after the date that the proposals are due. The notice shall state that the participant has submitted a proposal to build an electric power plant, and shall include the name and address of the participant submitting the proposal, the name and address of the public utility that solicited proposals, and a general description of each proposed power plant and its location.

Bidders are required to forward copies of these actual published notices to the Official Contact within seven (7) days of the notice appearing in the newspaper. The copy of this notice shall clearly indicate the name of the newspaper and the date on which the notice was published.

J. Reservation of Rights

Progress Energy Florida reserves the right to reject any, all, or portions of the proposals received for failure to meet any criteria set forth in this RFP. The Company also reserves the right in its sole discretion to decline to enter into a definitive, written agreement with any Bidder, or to abandon this RFP in its entirety. PEF reserves the right to revise the capacity needs forecast at any point during the RFP process or during negotiations; any such change may reduce, eliminate, or increase the amount of power sought to be procured through this RFP.

Bidders should be aware that the following, without limitation, will be classified as non-responsive and may not be considered or evaluated if submitted:

- proposals offering non-firm capacity or energy;
- demand-side proposals;
- substantively incomplete, inaccurate, conditional, deceptive, misleading, ambiguous, exaggerated, or non-specific offers; or
- proposals that are not in conformance with the requirements and instructions contained herein.

Bidders that submit proposals do so without recourse against PEF or Progress Energy, Inc. or any of Progress Energy, Inc.'s subsidiary companies for either rejection of their proposal(s) or for failure to execute a definitive, written agreement for any reason.

III. PEF 2013 RFP PROCESS

The solicitation process is a multi-phase process consisting of four general phases and several sub-phases or steps. This Section III of the RFP describes the process in detail and outlines Bidder requirements and alternatives for each phase and step of the process.

This Section III of the RFP is organized chronologically according to the sequence of steps in PEF's solicitation process. Specifically, the areas to be discussed are the (A) Solicitation activities, (B) Evaluation and Screening process, (C) Negotiations, and (D) Regulatory Process. Discussed as part of the evaluation process are the minimum requirements that all proposals must meet as well as the evaluation criteria that will be used to identify the most attractive proposals.

A. Solicitation

The solicitation activities phase of the process includes the period from issuance of the RFP to the submission of proposals by Bidders.

1. Notice of Intent to Bid and RFP Registration

Bidders are asked to submit a courtesy Notice of Intent to Bid ("NOI Form") in order to assist PEF in preparing for the Pre-Issuance meeting, the Bidders meeting, and the RFP process. Bidders are encouraged (but not required) to submit the NOI Form by June 19, 2008. Submitting a NOI Form does not commit a prospective Bidder to submitting a proposal to PEF.

The NOI Form is provided in the "Notice of Intent to Bid" worksheet tab of Attachment D, Response Forms. A completed NOI Form should be e-mailed to the Official Contact. If desired, Bidders may submit a printed version of the NOI Form using other delivery methods such as fax, U.S. Mail, or overnight delivery.

2. Pre-Release and Bidders Meetings

Pre-Release Meeting:

Progress Energy Florida will conduct a Pre-Release Meeting for interested potential Participants on June 5, 2008 at 1:00 PM at the Tampa Marriott Westshore, 1001 N. Westshore Blvd, Tampa, Florida 33607. If this time or location changes, PEF will provide notice on the RFP website. The purpose of the Pre-Release Meeting is to allow interested potential participants the opportunity to ask questions and seek additional information or clarification about the solicitation process. **To make the meeting as productive and informative as possible, Bidders are encouraged to submit a written list of questions concerning this RFP to the Official Contact prior to June 5, 2008.**

Bidders Meetings:

Progress Energy Florida will conduct a Bidders Meeting for interested Bidders **on June 19, 2008** at 1:00 PM at the Tampa Marriott Westshore, 1001 N. Westshore Blvd, Tampa, Florida 33607. If this time or location changes, PEF will provide notice on the RFP website. The purpose of the Bidders Meeting is to allow interested Bidders the opportunity to ask questions and seek additional information or clarification about the solicitation process. **To make the meeting as productive and informative as possible, Bidders are encouraged to submit a written list of questions concerning this RFP to the Official Contact prior to June 19, 2008.**

3. Submission of Proposals

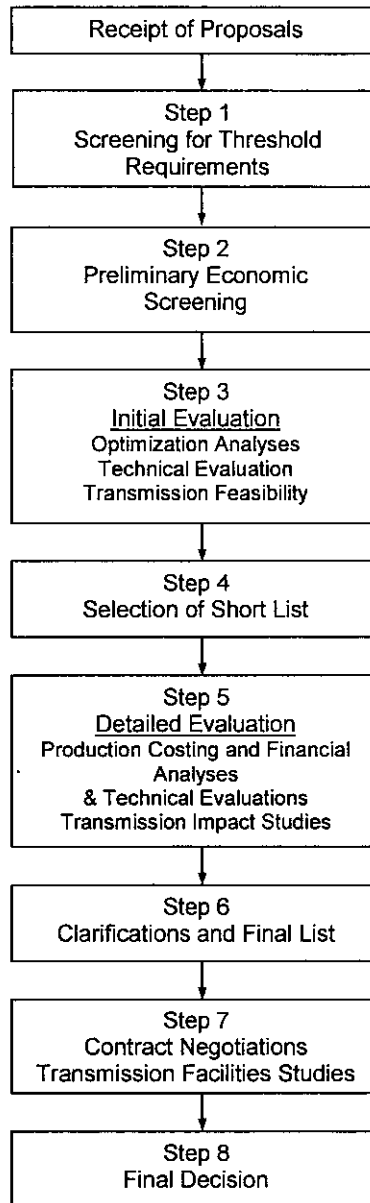
The last step during this phase of the process is the submission of proposals. As noted, all proposals **must be received by 3:00 PM EST on August 12, 2008**. Proposals must remain valid and capable of being accepted by PEF until PEF either (i) releases a proposal (by PEF informing the Bidder that its proposal was not approved to proceed to a next step in the evaluation process), (ii) accepts the proposal, or (iii) negotiates different terms during the Negotiation phase, whichever is earlier. **Failure to submit the proposal by the specified time will be grounds for disqualification.**

The self-build option related to the Next Planned Generating Unit will be submitted as a proposal in the same way that other Bidders will submit proposals for consideration in the RFP. If the specifications and cost of such self-build proposal are revised, PEF will provide participants this information, and provide the participants (limited to the then-remaining finalists) a corresponding opportunity to revise their previously-submitted proposals.

B. Evaluation and Screening Process

PEF will use an eight-step evaluation and screening process to review proposals and to select the best alternative. Figure III-1 illustrates the evaluation process, starting with the receipt of proposals to the final decision. The evaluation process is described more fully below.

**FIGURE III-1
Evaluation Process**



1. Step 1: Screening for Threshold Requirements

Subsequent to the receipt of the Bidders' proposals, PEF will thoroughly review and assess each proposal to ensure that it meets the Threshold Requirements listed in the RFP. Threshold Requirements represent the minimum requirements that all proposals are required to meet and with which a Bidder's compliance can be easily assessed. PEF may, at its discretion, seek clarification and/or modification of a Bidder's proposal at this stage of the evaluation process. Each Bidder should ensure that a contact person is available to PEF throughout the Evaluation Process.

PEF views Threshold Requirements to be an important aspect of the evaluation process. The Bidder should ensure that its proposal satisfies the Threshold Requirements listed in FIGURE III-2 to be eligible for further consideration in the evaluation process. Bidders should also review and provide comments to the Pro-Forma Agreements set forth in Attachment A, because they are the terms and conditions that will be used to evaluate the Bidder's conformance with certain Threshold Requirements. The information Bidders are required to provide to demonstrate their compliance with the Threshold Requirements is specified in greater detail in the Response Package.

Bidders must ensure that their proposals contain sufficient documentation to demonstrate that they meet all Threshold Requirements. **Failure to conform to the Threshold Requirements will be grounds for disqualification.** Proposals that are disqualified will not be evaluated further.

FIGURE III-2 Threshold Requirements

- A. General Requirements**
- The proposal is received on time.
 - The offer is reasonable and bona fide.
 - Complete and credible answers are provided to all questions.
 - The proposal submittal fee is received by PEF.
 - The pricing schedules are properly specified and the proper price indices are used.
 - Power must be available for delivery under the contract by June, 2013.
 - The proposed contract end date is no earlier than September 31, 2018.
 - For New Unit Proposals located in Florida, the output of the unit(s) is sufficiently committed to Progress Energy Florida (or other utilities serving retail customers).
- B. Operating Performance Thresholds**
- If the project is located in PEF's control area, the Bidder's proposal will be required to meet the following operational criteria:
 - to operate the project to conform with PEF's *Voltage Control* requirements.
 - to operate the project to conform with PEF's *Frequency Control* requirements.
 - to be *Fully Dispatchable* and install *Automatic Generator Control* that is tied into PEF's Energy Control Center [New and Existing Unit Proposals].
 - If the project is located outside of PEF's control area, New and Existing Unit Proposals must be *Fully Dispatchable* and provide *Dynamic* or a combination of *Dynamic/Block* scheduling that is tied into PEF's Energy Control Center.
 - The Bidder must be willing to *coordinate the project's maintenance scheduling* with PEF.
 - Proposals should have a project size less than or equal to approximately 1,258 MW.
 - System Power Proposals must be *Fully Schedulable* (i.e., operate according to a day-ahead schedule but with schedule changes subject to normal utility practices). System Power Proposals must also provide *Dynamic* or a combination of *Dynamic/Block* scheduling that is tied into PEF's Energy Control Center.
- C. Contractual Thresholds**
- Bidders must agree to each of the Pro Forma Agreements identified in Attachment A.
 - OR -
 - If Bidder has any objections to the Pro Forma Agreements, the Bidder must:
 - Identify the language which is objectionable;
 - Provide revised language.
- D. Site Control Thresholds [New and Existing Unit Proposals]**
- Identification of the site location on a USGS map.
 - At a minimum, a Letter of Intent to negotiate a lease for the full contract term or term necessary for financing (whichever is greater), or to purchase the site [New Unit Proposals]. A copy of the title (or long term lease) and legal description of the property is required for Existing Unit Proposals.
- E. Transmission Threshold**
- If the proposal is for resources located outside of PEF's control area, the Bidder must provide a transmission plan that exclusively utilizes firm transmission service from the host control area to the PEF control area. Bidders must provide evidence that the host control area is willing to grant PEF the right to dispatch the output of New and Existing Unit Proposals or the right to schedule power from System Power Proposals. Bidders must provide the results of a feasibility study performed by the host control area.
 - The Transmission Information Schedule (Schedule 7 of the Response Package) is properly completed for All Proposals.

2. Step 2: Preliminary Economic Screening

In the preliminary economic screening evaluation, PEF will evaluate each proposal based on its proposed prices. PEF's pricing parameters for New and Existing Unit Proposals are identified and described in FIGURE III-3 and are specified in greater detail in the Response Package. The requirements for pricing bids for System Power Proposals are also specified in the Response Package.

In the preliminary economic screening, PEF will use a spreadsheet model to compare the costs of each proposal to the other proposals at an appropriate capacity factor (e.g., 10% for combustion turbines, 50% for combined cycles, and 80% for coal units).

PEF reserves the right to use the preliminary economic screening to eliminate proposals with high costs (relative to other proposals) from consideration without performing further analyses.

**FIGURE III-3
New and Existing Unit Proposal Pricing Parameters**

Fixed Payment	<ul style="list-style-type: none"> • The monthly fixed payment to Bidders will be based on the product of the Seasonal Contract Capacity, one-twelfth (1/12) of the Bidder-specified annual charges (the possible components of which are detailed below), and adjustments based on operating performance (reference Pro Forma Agreements). • Bidders must complete the applicable Pricing Schedules in the Response Package • If Bidders desire, they may propose alternative methods of distributing annual payments on a monthly basis.
	<ul style="list-style-type: none"> • Bidders must specify a generation capital charge for each year of the proposal.
Transmission Component	<ul style="list-style-type: none"> • Bidders must specify a transmission charge for each year of the proposal. • This charge must include all interconnection and, if applicable, wheeling costs, and upgrade costs of other transmission systems required for delivery of Firm Power to the PEF system. • During the Initial Evaluation (Step 3) and the Detailed Evaluation of proposals (Step 5), PEF will estimate transmission system upgrade costs for the PEF system and other affected systems needed to integrate the proposed power into the PEF transmission network.. • The Bidders' transmission charge and PEF's estimate of any additional transmission system upgrade costs will be included in PEF's economic evaluation.
Fixed O&M Component	<ul style="list-style-type: none"> • Bidders must specify annual fixed O&M charges for each year of the proposal.
Fixed Pipeline Demand / Reservation Component	<ul style="list-style-type: none"> • Bidders must specify a fixed pipeline demand/reservation charge (if appropriate to the technology being proposed). Bidders must specify a charge for each year of the proposal. • Bidders may propose a fuel transportation tariff as the price. • PEF reserves the right to negotiate fuel transportation provisions with the Bidder if benefits can be derived for PEF and its customers.
Variable Payment	<ul style="list-style-type: none"> • The variable payment to Bidders will be based on the following components: fuel price and variable O&M price components. • Bidders must complete the applicable Pricing Schedules in the Response Package.
Fuel Price Component	<p>Bidders must specify commodity prices and variable transportation prices for the primary (and, if appropriate, secondary) fuels. Bidders have three options for proposing fuel prices:</p> <ol style="list-style-type: none"> 1. the Bidder may specify a series of firm prices or a price that escalates at a Bidder-specified rate. These prices will be used for evaluation and payment purposes. 2. the Bidder may propose to use a price index or propose a formula based on an index. 3. the Bidder may propose to use a fuel tolling arrangement whereby PEF will supply fuel tolling services to the project. If the Bidder selects this option, PEF will determine the appropriate price to use for the evaluation. <ul style="list-style-type: none"> • Formulas and escalation rates, if used, must be specified by the Bidder • PEF will not allow Bidders to merely state that fuel is a pass-through. PEF may allow a pass-through as a result of the negotiation process and, as a condition for this, would reserve the right to participate in the management of the project's fuel supply, but reserves the right to accept the base price and index or fixed escalation rate specified by the Bidder. • Bidders must specify the months in which the primary (and, if appropriate, secondary) fuels will be expected to be used and be prepared to be evaluated and paid on that basis.
Variable O&M Component	<ul style="list-style-type: none"> • Bidders should specify in Schedule 1 annual variable O&M prices for each year of the proposal. Variable O&M may be stated in \$/MWh, \$/hour, or both.
Start Payment Component	<ul style="list-style-type: none"> • Bidders should specify annual start prices for each year of the proposal. Start payments will be paid only for those starts actually exercised by PEF. The cost to start the Facility for test starts, following a forced outage, or after unplanned maintenance will not be included in PEF's payments to the Bidder.

3. Step 3: Initial Evaluation

The next phase of the evaluation process is the Initial Evaluation of proposals. The Initial Evaluation will consist of several analyses conducted in parallel:

- a. Optimization Analyses,
- b. Technical Evaluation
- c. and Transmission Feasibility Analyses

The Initial Evaluation will be used to identify and compare elements of the proposals that will enable PEF to select proposals for the Short List.

a. Optimization Analyses

In the Optimization Analyses, PEF will analyze each proposal's value by developing an optimal resource plan around each proposal and determining the cumulative present value of revenue requirements (CPVRR) of the plan developed around the particular proposal. The Strategist optimization model will be used to develop the optimal plans and PEF will assess the impacts of each proposal on system costs over PEF's planning horizon. Generic combustion turbine and combined cycle plants will be available technologies from which the optimization model can select. Depending on the proposals received, PEF may also examine combinations of proposals in the development of optimal resource plans.

b. Technical Evaluation

Proposals will be evaluated on a technical basis to assess the feasibility and viability of each proposal. As part of this Technical Evaluation, proposals will be reviewed to ensure that they conform to the Minimum Technical Requirements and will also be evaluated on the basis of the Technical Criteria described below.

i. Minimum Technical Requirements

Progress Energy Florida will apply Minimum Technical Requirements as a step in the technical evaluation process. These Minimum Technical Requirements, identified in Table III-4, are the technical "must have" elements of a proposal. The information Bidders are required to provide to demonstrate their compliance with these Minimum Technical Requirements is specified in greater detail in the Response Package. Each Minimum Technical Requirement will be evaluated on a "Pass/Fail" or "Go/No Go" basis.

Bidders must ensure that their proposals contain sufficient documentation to demonstrate that they meet all the Minimum Technical Requirements. **Failure to demonstrate conformance to these Minimum Technical Requirements will be grounds for disqualification.**

FIGURE III-4

Minimum Technical Requirements

A. Environmental

- Preliminary environmental analysis performed and submitted to PEF [New Unit Proposals].
- Reasonable schedule for securing permits presented with evidence provided that it is reasonable to expect that permits can be secured in a timely fashion [New Unit Proposals].

B. Engineering and Design

- The project technology is capable of achieving the operating targets specified by the Bidder [New Unit and Existing Unit Proposals].
- Operation and Maintenance Plan provided that indicates the project will be operated and maintained in a manner adequate to allow the project to satisfy its contractual commitments [New Unit and Existing Unit Proposals].

C. Fuel Supply and Transportation Plan

- Preliminary fuel supply plan provided which describes the Bidder's plan for securing fuel supply and transportation for delivery to the project. The plan shall provide a description of the fuel delivery system to the site, the terms and conditions of any existing or proposed fuel supply and transportation arrangements, and the status of such arrangements [New Unit and Existing Unit Proposals].

D. Project Financial Viability

- For New Unit Proposals, evidence provided that it is reasonable to expect that the project is financially viable (assuming a power purchase agreement is in place with PEF) [New Unit Proposals].
- Demonstration that the Bidder has sufficient credit standing and financial resources to satisfy its contractual commitments [All Proposals].

E. Project Management Plan

- For a New Unit Proposal, critical path diagram and schedule for the project provided which specify the items on the critical path and demonstrate the project would achieve commercial operation by June 1, 2013 [New Unit Proposals].

ii. Technical Criteria

Technical Criteria are characteristics (non-price attributes) PEF desires that will increase the relative attractiveness of proposals that otherwise meet the Minimum Technical Requirements. PEF will use three major attributes to evaluate proposals' Technical Criteria: (1) expected operational quality; (2) expected development and commercial feasibility; and (3) estimated project value (non-price). Each of the evaluation criteria that are contained within these evaluation attributes are identified in FIGURE III-5 and discussed below. Proposals will be ranked relative to each other for each of the Technical Criteria.

Bidders will need to include information in their proposals that will support the Bidder's statements with respect to these technical criteria. Further, Bidders should assume that there will be provisions in any definitive, written agreement that PEF signs that reinforce the representations made by the Bidder with respect to these Technical Criteria. **Inability of a Bidder to adequately substantiate the basis for any representation will be grounds for a downward revision of its proposal's ranking or, in the event of misrepresentation, disqualification from this bidding process.**

**FIGURE III-5
Technical Criteria**

Operational Quality	Development and Commercial Feasibility	Project Value (non-price)
◆ Minimum Load (N, E)	◆ Permitting Certainty (N)	● Acceptance of Key Terms and Conditions (N,E,S)
◆ Start Time (N, E)	◆ Financial Viability of the Project (N)	◆ Fuel Supply and Transportation Plans (N,E,S)
◆ Ramp Rate (N, E)	● Credit Quality of Bidder (N,E,S)	● Generation Reliability Impact (N,E,S)
◆ Maximum Allowable Starts per Year (N, E)	● Commercial Operation Date Certainty (N)	◆ Flexibility Provisions (N,E,S)
● Minimum Run-Time Constraint (N, E)	● Bidder Experience (N,E,S)	
◆ Minimum Down-Time Constraint (N, E)		
◆ Annual Operating Hour Limit (N, E)		

N = New Unit Proposals, E = Existing Unit Proposals, S = System Power Proposals

Operational Quality

There are seven evaluation criteria that are considered as part of the operational quality attribute: (1) minimum load; (2) start time; (3) ramp rate; (4) maximum allowable starts per year; (5) minimum run-time constraint; (6) minimum down-time constraint, and (7) annual operating hour limit. PEF will expect that any definitive, written agreement for New and Existing Unit Proposals will include provisions requiring tests to be conducted periodically during the contract term to ensure that the Bidder's project conforms to the start time and ramp rate operating parameters claimed in its proposal. Failure to conform to these operating parameters will subject Bidders to performance penalties under any definitive, written agreement with PEF entered into as a result of this RFP.

The minimum load is the lowest capacity level at which the project may be continuously operated. Progress Energy Florida prefers projects that show flexibility by allowing operation at less than full load. The minimum loading level while on AGC should also be provided if different from plant local operation.

Start time assesses the amount of notice required to bring the unit, under normal operations, from a cold start to minimum synchronized load. PEF prefers proposals that have short start times.

Ramp rate assesses the megawatt (MW) increase per minute that can be provided by the project once the unit is at or above the minimum loading level. PEF prefers proposals that offer a high ramp rate. The ramp rate while on AGC should also be provided if different from plant local operation.

A maximum start per year assesses the maximum number of times that PEF will be allowed to start the Bidder's project. Test starts, starts after a forced outage, and starts after unplanned maintenance will not be included when determining the number of starts requested by PEF. PEF prefers proposals in which there is no limit on the number of times that PEF can start a project.

Minimum run-time constraint assesses the number of hours that the project is required to be operated at or above its minimum operating level once it has been dispatched on line. PEF prefers proposals that have no minimum run-time constraints.

The minimum down-time constraint assesses the number of hours that the project is required to remain out of service once it has been taken off-line for economic dispatch, maintenance outage, or forced outage. PEF prefers proposals that have no minimum down time constraints.

The annual operating hour limit assesses the number of hours during a year that PEF would be allowed to operate the Facility. PEF prefers proposals that have no operating hour limits.

Development and Commercial Feasibility

There are five evaluation criteria that are considered as part of the development and commercial feasibility attribute: (1) permitting certainty; (2) financial viability of the project; (3) Bidder credit quality; (4) commercial operation date certainty; and (5) Bidder experience. All five of these evaluation criteria will be considered for New Unit Proposals. Existing Unit and System Power Proposals will be evaluated based on two criteria: the Bidder's credit quality and Bidder experience.

The permitting certainty evaluation criterion assesses the degree to which the Bidder is able to demonstrate that it has identified and can secure all of the required major permits, approvals, certificates, and licenses within the period indicated on the project's critical path schedule. Relative to other proposals, PEF prefers proposals that provide well-conceived plans for securing all required permits, approvals, etc., demonstrate a thorough understanding of the permitting process, have realistic permitting and approval schedules and have made greater progress in securing permits and approvals.

The project financial viability evaluation criterion assesses the financial viability of the Bidder's proposal, while Bidder's credit quality assesses the financial capability and credit of the Bidder. For New Unit proposals for which the Bidder is proposing to obtain project financing for its proposal, PEF's evaluation will focus on the financial viability of the proposal, and will evaluate project pro-forma financial statements based on the assumptions and capital structure in the proposal. To show financial viability, the Bidder needs to demonstrate that the project is, or eventually becomes, free cash flow positive (not every year must show positive free cash flows but, in general, the project should be positive more than it is negative). There is no specific cash flow hurdle. If the Bidder indicates that it will be providing equity to the project or will self-finance the project, PEF will also assess the Bidder's ability to provide the required equity or financing through the credit review. For New Unit Proposals, PEF prefers proposals for which the Bidder is able to demonstrate that there is a high likelihood of the project securing financing. For System Power and Existing Unit Proposals, PEF's evaluation will focus on the financial resources and credit quality of the Bidder.

For the Bidder's credit quality associated with all types of proposals, PEF will also evaluate the Bidder's ability to financially guarantee its contractual commitments to PEF over the term of the contract. For the demonstration of creditworthiness, credit reviews will be performed based on bond ratings from two nationally recognized bond rating agencies and PEF's internal credit scoring model.

For any projects that are not rated by S&P or Moody's or for which there is a rating by these agencies but the company has no outstanding unsecured debt, PEF will conduct a credit analysis based on PEF's internal credit scoring model. This credit analysis is performed to determine a credit score and rating. Utilizing financial statements, PEF's analysis based on PEF's internal credit scoring model depicted below utilizes eleven leading indicators and corresponding weightings to determine a company's aggregate credit score.

Each measure's score is calculated according to the formula provided below:
 $(\text{Credit Score} / \text{Total Available Points}) * \text{Weighting} * 100$

Aggregate credit scores are calculated according to the formula provided below. The maximum points available are 100.

$$\Sigma(\text{Credit Score} / \text{Total Available Points}) * \text{Weighting} * 100$$

PEF's In-House Credit Scoring System to be used for proposals from Bidders who are either (a) not rated by S&P or Moody's, or (b) have such a rating but have no outstanding unsecured debt								
Measure	Weight	Credit Score						
		-1	0	1	2	3	4	5
Debt/Capital	0.25		≥ .75	.74-.71	.70-.65	.64-.60	.59-.55	≤ .55
Tot Debt/FFO	0.05		≥ 5	5-4	4-3	3-2	2-1	≤ 1
FFO/Interest Expense	0.23		≤ 1.25	1.25-2	2-2.5	2.5-3	3-4	≥ 4
Fixed Assets/Total Assets	0.10		≤ .1	.1-.2	.2-.3	.3-.4	.4-.5	≥ .5
Fixed Assets/Equity	0.02		≤ 1	1-1.5	1.5-2	2-2.5	2.5-3	≥ 3
Net Worth (in Millions)	0.17		≤ 11	11-50	50-200	200-500	500-1,000	> 1,000
Financial Statements	0.02		Qualified or Outdated	Unaudited	Compiled	Statutory Filing	Unqualified (Not Big 4)	Unqualified (Big 4)
Income Trend	0.10		Downward			Mixed		Upward
Years in Business	0.02		Less than 2	2-3	3-4	5-6	7-8	Over 8
Type of Business	0.02		Merchant Generator	Small Marketer	Large Marketer	Co-Op	Utility	Municipality
Ratings Outlook	0.02	Negative		Stable	Positive			

Company rating and credit score results are converted into Progress equivalent ratings according to the table listed below.

Rated Companies Lesser of		Unrated Companies Credit Score	Progress Equivalent
S&P Rating	Moody's Rating		
AAA to AA-	Aaa to Aa3	100 - 93	PGN 1
A+ to A-	A1 to A3	92 - 85	PGN 2
BBB+	Baa1	84 - 77	PGN 3
BBB	Baa2	76 - 69	PGN 4
BBB-	Baa3	68 - 61	PGN 5
BB+ to BB-	Ba1 to Ba3	60 - 51	PGN 6
B+ to B-	B1 to B3	50 - 41	PGN 7
CCC+ to CCC-	Caa1 to Caa3	40 - 31	PGN 8

If a company is rated by both S&P and Moody's, the lesser of the two ratings is used to determine a Progress equivalent rating.

Commercial operation date certainty assesses the degree to which the Bidder is able to demonstrate that it will be able to bring the project to commercial operation by June 1, 2013. For New Unit Proposals, PEF will evaluate the reasonableness of the following aspects of the Bidder's proposed schedule: permitting and approvals, fuel supply and transportation arrangements, engineering design, project financing, equipment procurement, project construction, and start-up and testing. PEF's evaluation will consider the evidence presented by the Bidder that the proposed schedule for each of these project elements is achievable. PEF prefers proposals for which the Bidder is able to demonstrate that there is a reasonable likelihood that the project will be able to achieve the commercial operation date requirement. PEF will expect that any definitive, written agreement it signs for a proposal resulting from this RFP will include penalty provisions for delays in the commercial operating date.

Bidder experience assesses the relative experience of the Bidder in developing and operating projects that are of an equivalent size and technology as the Bidder proposes in response to this RFP. For a New Unit Proposal, PEF will evaluate the Bidder's relevant experience in six areas: permitting and approvals, engineering, financing, fuel procurement, project construction, and operations and maintenance, including environmental compliance. Progress Energy Florida prefers Bidders that have a history of successfully developing comparable projects. For proposals that rely on project teams composed of more than one firm to develop the projects, PEF prefers project teams that have a history of working together to successfully complete projects. For a Bidder that proposes to supply PEF's capacity requirements from existing capacity, PEF will only evaluate the Bidder's fuel procurement and operations and maintenance experience. PEF will also examine the litigation history of all Bidders.

Project Value (Non-Price)

The project value (non-price) attribute considers the following four evaluation criteria: (1) the Bidder's degree of acceptance of terms and conditions of the applicable Pro-Forma Agreement; (2) the reliability of the Bidder's fuel supply and transportation plan; (3) impact of the proposed project on PEF's generation system reliability; (4) any flexibility provisions proposed by the Bidder.

Attachment A to this Solicitation Document contains Pro-Forma Agreements (Tolling and Non-Tolling forms), which will be used as the basis for negotiations of any final definitive, written agreement between PEF and one or more Bidders. The Pro Forma Agreements were developed assuming the resources are in the PEF control area. For System Power Proposals, or for proposals relating to resources that are located outside of the PEF control area, some definitions, terms, and conditions may not apply or may need to be revised as appropriate to reflect the location of the resource. PEF will evaluate the Bidder's acceptance of the Pro Forma Agreements by assessing the degree to which exceptions identified by the Bidder shift risk from the Bidder to PEF or its customers, relative to the balance of risks reflected in the Pro Forma Agreements. PEF prefers Bidders which request no changes to the Pro Forma Agreements or which request only minor changes that have no material effect on the allocation of risk within any contract ultimately executed.

PEF will evaluate the reliability of the Bidder's fuel supply and transportation plans by assessing the status of its fuel supply and transportation arrangements, the strength of the proposed fuel supplier (and fuel transportation options), and the relative risk of (or flexibility among) the Bidder's proposed fuel supply and transportation arrangements. PEF prefers proposals that have well developed fuel supply and transportation arrangements, rely on a major fuel supplier that offers a diverse mix of potential fuel supplies and access to a number of different transportation alternatives, and have minimal fuel supply and transportation risks.

PEF will evaluate the impact on generation system reliability of the project proposed by Bidders, primarily through an examination of outage rate information provided by the Bidder. Depending on the proposals received, additional analyses may be required. PEF prefers bids that provide high levels of reliability – defined in terms of level of availability (tied to planned and unplanned outage rates). It is expected that unit-contingent proposals will have availability rates less than 100%. However, Bidders of System Power Proposals must guarantee 100% availability for the capacity and energy offered to PEF. Should curtailments be necessary for System Power Proposals, PEF prefers proposals that curtail delivery only on a pro-rata basis simultaneously and proportionately along with the Bidder's other firm sales, including primary public service obligations.

PEF reserves the right to take into consideration any unique flexibility provisions offered by a Bidder that are not considered elsewhere, such as in the economic evaluation. PEF favors bids which provide flexibility for meeting its projected requirements.

c. Generator Interconnection and Transmission Feasibility Studies

PEF will incorporate the results of Interconnection and Transmission System Feasibility Studies to assess in a preliminary way the feasibility of the proposals to provide power to the PEF transmission system. As part of their submissions in response to this RFP, Bidders must complete the Transmission Information Schedule (Schedule 7 of the Response Package) to provide the data and information needed for PEF to conduct the analyses.

For New and Existing Unit Proposals inside the PEF control area, the feasibility study will consist of a power flow analysis and may include a short circuit analysis of proposals. For System Proposals and proposals in which the project is not interconnected with the PEF transmission system, preliminary transfer analyses will be performed to examine the impact on the PEF transmission system of a transfer from the host control area of the project to the PEF control area.

The feasibility analyses will assess the impacts to the PEF transmission system and will result in a list of transmission facilities, an estimate of the cost of the facilities, and an estimate of the time to construct the required facilities for each proposal. PEF will utilize existing studies to the extent practicable. Bidders of New and Existing Unit Proposals outside the PEF control area must provide the results of a feasibility study performed by the host control area (the control area to which the project is interconnected) as part of the proposal submitted to PEF.

4. Step 4: Selection of Short List

PEF's objective is to select a Short List of proposals which includes a mix of proposals. In this step, the estimated costs from the transmission feasibility analyses will be converted to revenue requirements and combined with the cumulative present value of revenue requirements from the optimization analyses to develop the total revenue requirements of each proposal. Those proposals which are substantially inferior to other proposals, based on cost and technical merits, will be eliminated from further consideration. PEF anticipates selecting more than one proposal for the Short List in order to create more opportunities for comparison, but PEF reserves the right to select as many proposals for the Short List as PEF deems appropriate, in its sole discretion. PEF will notify all short-listed Bidders that they have been selected for the Short List.

Following announcement of the Short List, Bidders of New Unit Proposals inside the PEF control area that are on the Short List will be allowed no more than seven (7) calendar days to decide whether to continue in the RFP process and execute the required transmission study agreement and submit the required Generator Interconnection Impact Study deposit as specified in the PEF OATT. The Generator Interconnection Impact Study will be performed to refine transmission system upgrade costs associated with a proposal. Short Listed bidders with proposed projects outside of PEF's control area will be required to provide a completed Transmission System Impact Study report (or equivalent, as agreed to by PEF) from the host control area utility within seven (7) calendar days after the announcement of the Short List. PEF will use existing studies to the extent practicable in performing the impact studies.

5. Step 5: Detailed Evaluation

Proposals that are included on the Short List will be subjected to a more detailed assessment and will be compared to PEF's self-build alternative.

PEF plans to use the Prosym production costing model and a detailed financial model spreadsheet to compare the short-listed proposals to PEF's self-build alternative. Using the optimal plans for the short-listed proposals developed in the economic analysis performed in Step 3, the detailed evaluation will assess the impact of each alternative on the CPVRR over the planning horizon compared to a Base Case plan.

In order to treat all alternatives the same in the economic analysis, all cases will be compared to a Base Case optimal plan, which will consist of existing, committed, and generic future units. The results of the Prosym production costing analyses will be incorporated into the detailed financial analysis of each alternative. In addition to the direct costs associated with each alternative (that is, the energy charges of the proposals and the operating costs of the self-build alternative), the change in system production costs compared to the Base Case will also be a part of the financial analysis. The fixed costs associated with each alternative (the fixed charges of the proposals and the construction costs and fixed O&M of the self-build alternative) will be included in the analysis as an add-on to the production costs. The cost impacts of the changes in the resource plan will be reflected in the financial analysis by way of an economic carrying charge, which is the same concept as the Value of Deferral. Each alternative will receive a credit for fixed cost savings equal to the economic carrying charge of the planned unit(s) being deferred in the Base Case.

PEF will apply the cost of imputed debt to Bidders' proposals to assure that the total costs of proposals include the marginal impact of the fixed future commitment on PEF's capital structure. The annual additional equity cost of imputed debt on a revenue requirements basis is calculated as:

$$\begin{aligned} \text{Annual Additional Equity Cost} = & \\ & \text{Risk Factor} * \text{Present Value of Future Fixed Payments} \\ & * (\text{Cost of Equity Rate} - \text{After Tax Cost of Debt Rate}) \\ & * \text{Equity Ratio} / (1 - \text{Tax Rate}) \end{aligned}$$

where the Risk Factor and Present Value of Future Fixed Payments are calculated consistent with the S&P Standard Methodology.

This additional cost is the direct result of having the transaction cause PEF to incur fixed future payment obligations. Rating agencies make these adjustments to a utility's balance sheet to reflect the existence of debt-like commitments. The Risk Factor is the percentage of the future fixed payments to be added to balance sheet debt and depends on a number of factors, including the conditions of a purchased power proposal, counterparty risk, and regulatory cost recovery risk. The biggest factor in selecting a risk factor is the degree of certainty and timeliness of regulatory recovery by the utility. According to Standard & Poor's, "For utilities in supportive regulatory jurisdictions with a precedent for timely and full cost recovery of fuel and purchased-power costs, a risk factor as low as 30% could be used."

PEF will finalize the Technical Evaluation of the short-listed proposals, after seeking clarification on any outstanding issues that resulted from the Technical Evaluation in the Initial Evaluation.

In the detailed evaluation phase, PEF will incorporate results of Interconnection and Transmission System Impact Studies in the evaluation of individual proposals to capture the refined estimates of transmission cost impacts. These studies include power flow, stability, and short circuit analyses and are necessary to determine the impacts on the transmission system of building the proposed power plants at the proposed sites. In the analyses to be performed by PEF, each proposed plant will be placed into the transmission system (the Next Planned Generating Unit will not be part of the system configuration) and the reliability of the system with and without the proposed plant will be compared. If overload situations are encountered in the simulations, determinations will be made as to what corrective actions would be required to integrate the proposed plant into the PEF transmission system. The system impact studies will provide a list of facilities that are required, a cost estimate for the facilities, and an estimated time to construct. The cost of these corrective actions will be included in the economic analysis of each proposal.

For System Power Proposals and Unit Proposals in which the project is not interconnected with the PEF transmission system, power flow and, if needed, short circuit studies will be performed by PEF that examine the impact of the reliability of the system with and without the proposed transfer. If overload situations are encountered in the simulations, determinations will be made as

to what corrective actions would be required to integrate the proposed transfer into the PEF transmission system. The load flow and short circuit studies will provide a list of facilities that are required, a cost estimate for the facilities, and an estimated time to construct. The cost of these corrective actions will be included in the economic analysis of each proposal.

PEF will coordinate the Interconnection and Transmission System Impact studies with other affected systems as appropriate. PEF will use existing studies to the extent practicable in performing the system impact studies.

Consistent with Florida PSC rules, PEF encourages participants to formulate creative responses to the RFP. Without knowing the details of the proposals that may be submitted, PEF is not able to identify or describe all the analyses that may be needed to determine which alternative is the most cost-effective alternative. Based on the Company's review of the proposals submitted, the Company may deem it appropriate to perform scenario analyses (e.g., to examine flexibility options proposed by a Bidder), sensitivity analyses of key cost and performance characteristics (such as, but not limited to, heat rate, outage rate, construction cost, O&M costs, and energy costs), and/or any other type of analysis that PEF deems appropriate.

PEF may elect to schedule meetings or conference calls with each short-listed Bidder to review and clarify its proposal. PEF reserves the right to seek clarification or additional information from each Bidder regarding its proposal and develop appropriate adjustment in order to thoroughly evaluate a proposal.

6. Step 6: Selection of Final List

PEF will develop a Final List based on the detailed evaluation of the short-listed proposals. This Final List will not necessarily be composed of the lowest cost proposals since the combination of price and non-price terms may provide greater value to consumers associated with another or other proposals. PEF will exercise sound professional judgment in performing the analyses and in making the final selection of the RFP process. PEF's objective is to select resources that offer the maximum value, based on price and non-price attributes, to the Company and its customers. The final-listed Bidders will be those Bidders with which PEF will begin contract negotiations.

PEF will not necessarily put any proposals on the Bidders on the Final List. In the event PEF's self-build alternative is superior to the short-listed proposals, a Final List will not be selected and an appropriate announcement will be made.

The evaluation of proposals on the Final List may, in PEF's judgment, require Interconnection and Transmission Facilities Studies if transmission costs are determined by PEF to be a decisive factor in the overall economic analysis. Should a transmission facilities study be required by PEF, Bidder(s) of New Unit Proposals inside the PEF control area will be allowed no more than seven (7) calendar days after notification by PEF to decide whether to continue in the RFP process and execute the required study agreement and submit the required study deposit as specified in the PEF OATT.

7. Step 7: Negotiations and Transmission Facilities Studies

Immediately after the Final List announcement, PEF will begin negotiations with Bidders on the Final List. As previously noted, PEF has included Pro Forma Agreements (Tolling and Non-Tolling) in the RFP to allow Bidders to identify their exceptions, thereby expediting negotiations and allowing PEF to assess the significance of the changes requested by Bidders. Inclusion of a proposal in the Final List does not indicate PEF's acceptance of the exceptions identified by the Bidder. PEF reserves the right to negotiate any terms and conditions which provide value to PEF and its customers. Also, if in PEF's view the negotiations are not proceeding on a reasonable schedule to ensure achievement of the in-service date requirement, PEF has the right to terminate negotiations with that Bidder.

As discussed above, proposals included on the Final List may require Interconnection and Transmission Facilities Studies to be conducted. The facilities study will refine the cost estimate of the equipment, engineering, procurement and construction work needed to implement the conclusions of the transmission impact study to physically and electrically connect the project to the transmission system, and an estimate of the time required to complete the construction and installation of such facilities. PEF will coordinate the facilities study with any other affected systems. PEF will use existing studies to the extent practicable in performing the facilities study.

8. Step 8: Final Decision

PEF will make its final decision related to this RFP once all definitive, written agreements have been fully negotiated and are ready to be executed by the parties, and any required Interconnection and Transmission Facilities Studies have been completed. For a winning Bidder whose proposal is for a New Unit in the PEF control area, the results of the respective facilities study will be incorporated into a Large Generator Interconnection Agreement to be executed between the winning Bidder and PEF.

C. Regulatory Filings

Determination of Need and/or Cost Recovery Filings with the Florida Public Service Commission may be required of selected proposals. Proposals that require an application for certification by the Florida Siting Board under the Florida Electrical Power Plant Siting Act will require a Determination of Need by the Florida Public Service Commission. In that event, PEF will be the applicant, and the Bidder will be the co-applicant in proceedings before the Florida Public Service Commission (which will determine the need for the project), the Florida Department of Environmental Protection (which will make a recommendation to the Florida Siting Board concerning site certification), and the Florida Siting Board. Cost Recovery Filings are annual filings associated with the fuel and purchased power clauses and are made after the execution of the applicable written agreement and will be required for all selected proposals. In the case of a proposal that does not require a need determination, pre-approval of such written agreement, as determined by PEF, may be required. The expected regulatory filing date of January 21, 2009 in the RFP schedule presented on page 2 is for the Determination of Need Filing, if required, or the written agreement pre-approval filing, if desired. PEF will also require that an application for site certification be filed on or before the PSC need filing date for any project that will require site certification by the Florida Siting Board.

IV. PROGRESS ENERGY FLORIDA'S "NEXT PLANNED GENERATING UNIT"

The following data represent preliminary cost and performance estimates for Progress Energy Florida's next planned generating unit and are provided for information purposes only. The final actual cost of the project could be greater or smaller than that shown. Parties responding to this RFP should rely on their own independent evaluations and estimates of project costs in formulating their proposals.

1. Combined cycle generating unit to be located on PEF's existing Suwannee River site in Suwannee County, Florida.
2. Approximately 1,258 MW (winter) and 1,161 MW (summer).
3. Commercial Operation of the facility is proposed to be June 1, 2013.
4. The primary fuel is natural gas. Distillate fuel oil will be used as a backup fuel source.
5. The estimated total direct cost excluding AFUDC is \$ 1,228 million (2013\$). This estimate includes plant interconnection costs (See Item 11) but does not include transmission system integration upgrade costs.
6. The estimated annual levelized capital revenue requirement with AFUDC, excluding transmission system integration related capital costs, is \$ 141 million over 25 years.
7. The estimated annual value of deferral of this unit is \$135/kw-yr (2013\$) based on summer capacity, which includes plant generation and interconnection construction costs and fixed O&M.
8. The estimated annual fixed O&M is \$6.34/kW-yr (2008\$). The estimated variable O&M is \$1.80/MWh (2008\$).
9. The Henry Hub estimated natural gas commodity cost is \$8.01/mmBtu (2013\$).
10. The following are planning estimates for:

Planned outage rate	6.9%
Forced outage rate	4.6%
Minimum load	145 MW
Ramp Rate	45 MW/minute (from minimum to full load)
Summer Fired Capacity	1,161 MW
Summer Unfired Capacity	1,116 MW
Summer Fired Heat Rate	7,134 Btu/kWh (HHV)
Summer Unfired Heat Rate	7,095 Btu/kWh (HHV)
Capacity Factor (average)	65%
Summer Conditions	90°F, 60% R.H.
Winter Conditions	45°F, 60% R.H.

11. The estimated plant transmission interconnection cost for this unit is \$19 million (2013\$), excluding AFUDC. The cost associated with gas laterals is based on an estimated \$1.15 Dth/day firm transportation rate.
12. A Site Certification as well as an Air Construction/PSD Permit will be required for this unit. It is PEF's plan to comply with all environmental standards of Local, Regional, State and Federal governments.

13. The major financial assumptions in the development of these numbers were:

General Inflation:	2.5 % per year (2009-2011)
	2.25% per year long-term
Capital structure:	45% debt @ 7.3%
	55% equity @ 11.75%
Discount rate:	8.48%

V. PROGRESS ENERGY FLORIDA'S SYSTEM SPECIFIC CONDITIONS

PEF prefers generators located within its service territory and requires that all generating requirements, transmission requirements and load serving requirements be reviewed prior to selecting a balanced resource plan for PEF. Selection of preferred generation sites requires extensive reviews of transmission, environmental, fuel, system, generation needs and public review requirements in order to provide a balanced resource plan that provides reliable cost effective energy to our customers.

Generation located in areas based on the following "General Transmission Preferences" appears to be less likely to cause severe system impacts and necessitate extensive transmission network upgrades:

General Transmission Preferences:

- 230 kV stations or lines are more favorable than 115 kV or 500 kV.
- Areas in proximity of nuclear generation may be more sensitive to stability issues.
- 230 k V lines are typically rated between 400 MVA to 1000 MVA.
- 115 kV lines are typically rated between 70 MVA and 200 MVA.
- Stations are more favorable than lines.

It must be emphasized that the full extent of the impact of a particular generation facility on the Bulk Electric System and any needed transmission system improvements cannot be determined absent a specific study associated with the generation facility as provided for in PEF's Generator Interconnection Procedures and pursuant to Federal Energy Regulatory Commission (FERC) requirements in PEF's Open Access Transmission Tariff (OATT), which can be found through the PEF and Interconnection Docs links on the PEF OASIS (<http://www.oatioasis.com>). It should be noted that although said studies may be conducted as part of this RFP, the ultimate disposition of transmission requirements associated with a generator's site may also impact/dictate transmission system improvements. To that end, it should be noted that PEF's stated General Transmission Preferences for site location reflects only the perspectives of optimal transmission interconnection points and optimization of interconnection with regard to proximity to customer load centers, and does not consider other issues that may be relevant, such as fuel supply, water supply or environmental concerns.

PEF does not make, and expressly disclaims, any representation regarding the suitability of the sites for locating new generation. PEF is not offering to purchase the output of any generation that may be constructed at such sites, nor does PEF warrant or otherwise guarantee the availability of transmission service from these sites.

Generation interconnection and transmission service requests can change frequently and this may affect results at a particular site. Accordingly, reference should be made to the PEF OASIS (<http://www.oatioasis.com>) for information relating to existing requests including generator interconnection requests at or near a particular site.

**ATTACHMENT
A1
TOLLING FORM**

**GAS TOLLING AGREEMENT FOR THE PURCHASE OF
ENERGY CONVERSION SERVICES AND FIRM CAPACITY**

between

and

PROGRESS ENERGY FLORIDA, INC.

dated as of

_____, ____

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THIS AGREEMENT is made and entered as of the ___ the day of _____, _____, by and between _____ ("Seller"), a _____ organized and existing under the laws of the State of _____, having its principal place of business in _____, _____, and PROGRESS ENERGY FLORIDA, INC. ("PEF"), a corporation organized and existing under the laws of the State of Florida, having its principal place of business in St. Petersburg, Florida. Seller and PEF shall collectively herein be called the "Parties" and each may be individually identified herein from time to time as a "Party".

WITNESSETH:

WHEREAS, Seller will construct and be the owner and operator of an independent power production facility; and

WHEREAS, Seller desires to sell, and PEF desires to purchase, services to convert fossil fuels to electricity by such facility;

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

1.0 DEFINITIONS; RULES OF CONSTRUCTION

1.1. **Definitions:** When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following defined meanings; however, such defined terms shall not apply except as otherwise specified therein to Appendix D.

"Actual Heat Rate" – the amount of Fuel (measured at the Gas Delivery Point for natural gas) consumed per unit of Energy delivered, expressed in Btu's per net kWh (Btu/kWh).

"After-Tax Basis" – shall mean, with respect to any payment to be received by any Party, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Party so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all Federal, state and local Taxes required to be paid by such Party in respect of the receipt or accrual of the base payment and the additional payment (taking into account the net present value of any reduction in such Taxes resulting from Tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state and local Tax rates applicable to the corporation for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local Taxes for Federal income tax purposes.

"Agreement" – this Agreement for the Purchase of Firm Capacity and Energy, and all Appendices hereto.

"Agreement Term" – has the meaning given thereto in Section 2.4.

"Agreement Year" – the twelve Monthly Billing Periods preceding each anniversary of the first day of the first full Monthly Billing Period following the Capacity Delivery Date.

"Ancillary Services" – all commercial products produced by or related to the Facility, including spinning reserves, operating reserves, black start capability, black stop capability, balancing energy, reactive power, regulation service, emissions credits (including NO_x, SO₂, and CO₂ credits), renewable energy credits, any other environmental or regulatory credits or allowance resulting from operation of the Facility or any similar benefit PEF otherwise would have realized from or related to the Facility if PEF rather than Seller had constructed, owned or operated the Facility.

"Annual Capacity Factor" or "ACF" – the arithmetic average of the last twelve Monthly Capacity Factors, expressed as a percentage. Until the first twelve months of Monthly Capacity Factors of the Agreement Term have been calculated, the arithmetic average of the Monthly Capacity Factors to date shall be used as the Annual Capacity Factor.

"Annual Peak Capacity Factor" or "APCF" – the sum of the last twelve Monthly Weighted Peak Capacity Factors, expressed as a percentage. Until the first twelve months of Monthly Peak Capacity Factors of the Agreement Term have been calculated, the arithmetic average of the Monthly Peak Capacity Factors to date shall be used as the Annual Peak Capacity Factor.

"Applicable Laws" – any and all federal, state, regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, Governmental Approvals, codes, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any governmental authority, that apply to the facilities, services or obligations of either Party under this Agreement, whether now or hereafter in effect.

"Assignment of Firm TSA" – the Assignment of Firm TSA, to be entered into by and between Seller [*Seller's third-party transmission provider,*] and PEF in a form substantially the same as that set out in Appendix N.

"Associated Facility" – as defined in Section 403.503 (12), Florida Statutes.

"Automatic Generation Control" or "AGC" – procedures and equipment which automatically adjust a control area's generation to maintain its net interchange schedule plus frequency bias.

"Available Capacity" or "AC" – the Continuous Capability less all Unscheduled Outages and Scheduled Reductions, expressed in the nearest

whole megawatt ("MW") quantities, which shall be reported by Seller pursuant to Section 13.9. Available Capacity shall never be greater than Committed Capacity.

"Back-up Fuel" – *[No. 2 low-sulfur fuel oil].*

"Base Operation Mode" – the mode of operation which, under normal circumstances, achieves net generation levels in a range from minimum hourly net generation to maximum hourly net generation which can be obtained from the Facility while under PEF control. Base Operation Mode generation levels can be maintained for sustained periods without operating difficulties taking into account reference conditions (i.e., summer conditions). The maximum hourly net generation for the Base Operation Mode corresponds to the high generation limit set into the AGC by Seller under normal conditions. The minimum hourly net generation for the Base Operation Mode corresponds to the low generation limit set into the AGC by Seller under normal conditions.

"Business Day" – any Day on which Federal Reserve Member Banks in Tampa, Florida are open for business. A Business Day shall begin at 8:00 A.M. EPT and end at 5:00 P.M. EPT.

"Capacity" – net electrical power, in MW, generated by the Facility and delivered to or available for PEF's system at the Receipt Point.

"Capacity Billing Factor" or "CBF" – the product of the Annual Capacity Factor and 0.4 plus the product of the Annual Peak Capacity Factor and 0.6 (i.e., $CBF = (0.4 * ACF) + (0.6 * APCF)$). For purposes of determining the Capacity Billing Factor, neither the Annual Capacity Factor nor the Annual Peak Capacity Factor shall be greater than one hundred percent (100%).

"Capacity Delivery Date" – the date on which the Facility begins delivering Available Capacity hereunder, which shall be the later of (a) the Scheduled Capacity Delivery Date, (b) the calendar day immediately following the date of successful completion of the Initial Test in accordance with Section 9.0 as demonstrated by written test results and reports certified by a responsible officer of Seller and confirmed by PEF, or (c) the date on which the other conditions set forth in Section 9.1 shall have been satisfied.

"Capacity Test" – the Initial Test and each other test as described in Section 9.0 that is performed by Seller to determine the Continuous Capability and the incremental Capacity associated with each applicable mode of operation above the Base Operation Mode included in Appendix A of this Agreement. *[Insert other modes of operation from Proposer's submission.]*

"Commencement Date" – the date on which both Parties shall have executed and delivered this Agreement.

"Commit" or "Commitment" – to initiate (or the initiation of) the start-up sequence of the Facility at PEF's request.

"Committed Capacity" or "CC" – the firm Capacity of the Facility associated with the Base Operation Mode at Reference Conditions using the correction curves provided in the Test Protocol, equal to ___MW. *[Insert Guaranteed Firm Capacity associated with Base Operation at Reference Conditions from Proposer's submission.]*

"Completion Security" – the security provided by or on behalf of Seller for the benefit of PEF pursuant to Section 4.1.

"Completion Security Amount" – the aggregate amount of Completion Security, equal to [_____ Dollars (\$_____)] *[Insert amount equal to the product of the Committed Capacity (in kW) multiplied by Two Hundred Seventy-Five Dollars (\$275.00) per kW.][Seller acknowledges that additional security will be required to cover costs that may arise from any firm transportation agreement entered into by PEF to support the project in the event of a Seller's default].*

"Completion Security Liquid Amount" – the amount of Completion Security required to be satisfied through Liquid Security, equal to (i) the Completion Security Amount, minus (ii) the Seller Credit Limit, provided however, that the Completion Security Liquid amount shall be, at a minimum, ten percent (10%) of the Completion Security Amount if the entity providing credit support has a Credit Rating of BBB/Baa2 or lower. The Completion Security Liquid Amount shall be adjusted, if necessary, quarterly, within five (5) Days of the issuance of quarterly financial statements of Seller or Seller's Guarantor and within five (5) Days of a change in the Seller's or Seller's Guarantor's, as applicable, Credit Rating, in any such case to reflect any adjustment in the Seller's Credit Limit.

"Continuous Capability" – the highest sustained net Capacity associated with the maximum hourly net generation Base Operation Mode at which the Facility can operate consistent with Environmental Requirements without exceeding the design operating conditions, temperatures, pressures, etc. defined by the applicable manufacturer(s), as determined by a Capacity Test pursuant to Section 9.0.

"CPM Schedule" – the detailed, integrated schedule for the development, permitting, design, engineering, procurement, construction, testing and completion of the Facility, using the "critical path management" method, attached hereto as Appendix O, as revised from time to time as provided herein.

"Credit Limit" – the amount of unsecured credit in United States dollars that PEF assigns to Seller or Seller's Guarantor, as applicable, as determined from time to time. PEF will make a good faith calculation of such Credit Limit employing the credit risk methodology utilized on a day-to-day basis in the operation of its business.

"Credit Rating" – the credit rating assigned to an entity's unsecured debt (or the issuer rating if an unsecured rating is not available) by Standard & Poor's ("S&P"), a division of The McGraw-Hill Companies, Inc. or the equivalent rating assigned by Moody's Investors Service ("Moody's). In the event an entity is assigned a rating by both S&P and Moody's and one rating is lower than the other, the lower rating will be considered the "Credit Rating" of such entity.

"Custody Transfer Point" – shall mean the point where the ownership of the Primary Fuel is transferred from the supplier/transporter to the Facility.

"Decommit", "Decommitting" or "Decommitment" – to initiate (or the initiation of) the shutdown sequence of the Facility at PEF's request.

"Deferred Governmental Approvals" – those Governmental Approvals, including Environmental Licenses, which are required under Applicable Law for Seller to own, operate, or maintain the Facility, but which cannot be obtained under Applicable Law prior to the Capacity Delivery Date, all of which Governmental Approvals are listed on Appendix B.

"Determination of Need" – a determination made by the FPSC under Section 403.519, Florida Statutes, that there is a need for the Facility.

"Direct Claim" means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

"Dispatch and Control Rights" – the absolute and sole right of PEF in any manner, for any reason it deems appropriate, or for no reason at all, in PEF's unfettered discretion, solely in PEF's own interest, without regard to Seller's interest, and without any liability or obligation in connection therewith, (a) to Commit and Decommit the Facility and (b) through supervisory equipment (e.g., AGC) or otherwise, to control the Capacity and Energy output of the Facility pursuant to this Agreement, subject only to the Facility Operating Capabilities. These rights also extend to control of the reactive power output of the Facility, voltage, frequency and other characteristics of such Energy output, including all Ancillary Services.

"Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

"Energy" – electrical energy in MWh generated by the Facility and delivered to PEF at the Receipt Point.

"Energy Conversion Services" – operation of the Facilities by Seller to combust Fuel in order to generate and deliver energy at the Receipt Point.

"Environmental License/Licensing" – any and all Governmental Approvals applicable to the Facility, the Facility Site, or Associated Facility relating to environmental protection, natural resource protection, land use or zoning.

"Environmental Requirements" – any and all requirements applicable to the Facility, the Facility Site, or Associated Facility under any Environmental License or any Applicable Laws relating to environmental protection, natural resource protection, land use or zoning.

"Event of Default" – for Seller, any of those occurrences specified in Section 19.1 and, for PEF, any of those occurrences specified in Section 19.2.

"Facility" – *[Insert description of Proposer's facility.] Note that all equipment and facilities installed on Seller's side of the Gas Delivery Point shall be considered to be part of the Facility.*

"Facility Operating Capabilities" – certain operating capabilities of the Facility which shall be available to PEF pursuant to this Agreement as set forth in Appendix F. *[To include, among other things, types of information in Proposer's submission.]*

"Facility Site" – the real property on which the Facility will be located, as more particularly described in Appendix K.

"FERC" – the Federal Energy Regulatory Commission and any successor thereto.

"Final Capacity Delivery Date" – [] months after the Scheduled Capacity Delivery Date.

"Firm TSA" – has the meaning given thereto in Section 10.3.1.

"Force Majeure" means an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including Governmental Authority); acts of God; war, terrorism, riot or insurrection; blockades; embargoes; sabotage; epidemics; explosions and fires not originating in the Facility or caused by its operation; hurricanes; floods; national or regional general strikes, lockouts or other labor disputes or difficulties affecting the electric power industry or the State of Florida generally. Force Majeure shall not include (i) normal climatic conditions (including normal inclement weather) affecting construction, testing, start-up, operation or maintenance of the Facility or related facilities, (ii)

equipment breakdown (or inability to use equipment) caused by its design, engineering, construction, operation, or maintenance, or otherwise caused by an event originating at the Facility, (iii) strikes, lockouts or other labor disputes or difficulties, including collective bargaining disputes, affecting Seller or its affiliates or Seller's vendors, suppliers or contractors that are not part of a national or regional strike, lockout or labor dispute; (iv) late delivery of equipment or materials (except to the extent caused by an event that would otherwise constitute Force Majeure hereunder), (v) failure of performance of any third party, including any third party providing electric transmission service, natural gas transportation or supplying any Fuel, except to the extent that such failure was caused by an event that would otherwise constitute Force Majeure hereunder, (vi) the inability of Seller, for any reason to obtain or maintain adequate transmission service, or (vii) inability of Seller or the Facility to meet the requirements of Applicable Law, to obtain required environmental allowances, offsets or credits, or to obtain, maintain, or comply with all Governmental Approvals required under Applicable Law, including Environmental Requirements and Environmental Licenses (whether such Applicable Law is in effect on the Commencement Date or is subsequently amended, modified, enacted, or promulgated).

"Force Majeure Aggregate Allowance" – has the meaning given thereto in Section 19.3.

"FPSC" – the Florida Public Service Commission and any successor thereto.

"FRCC" – the Florida Reliability Coordinating Council and any successor thereto.

"Fuel" – Primary Fuel or Back-up Fuel, as applicable.

"GAAP" – generally accepted accounting principles in the United States.

"Gas Delivery Point" – the natural gas custody transfer point between the facilities of Florida Gas Transmission Company or Gulfstream Natural Gas System, L.L.C. and the Gas receipt facilities of the Facility.

"Gas Interconnection Meters" – all gas delivered to the Gas Delivery Point will be measured by Florida Gas Transmission Company or Gulfstream Natural Gas System, L.L.C.'s gas yard meter station facilities in accordance with the gas interconnection agreement.

"Guaranteed Heat Rate" - means the targeted quantity of Fuel, in Btu's, needed to generate one kWh of electricity on a higher heating value basis over a period not less than four (4) consecutive hours expressed in Btu's per kWh. Such Guaranteed Heat Rates shall be as set forth in the following Tables:

[Insert from Proposer's submission for each Operating Mode submitted and type of fuel]

"Good Engineering and Operating Practices" – generally accepted and sound electric utility generation industry practices, methods and acts applicable to similarly situated regulated electric utility owned generation facilities in the United States which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, *taking reasonable steps to ensure that:*

- (a) Adequate materials, equipment redundancy, spare parts, resources and supplies, including Fuel in sufficient reliable volumes and quality, are available to meet the Facility's needs under normal conditions and reasonably anticipated abnormal conditions;
- (b) Sufficient qualified operating, maintenance and supervisory personnel are available and adequately experienced and trained to operate, maintain and supervise the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions;
- (c) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;
- (d) Appropriate monitoring and testing are done periodically to ensure that equipment and systems are functioning as designed and to provide assurance that equipment and systems will function properly under normal conditions and emergency conditions; and
- (e) Equipment and systems are operated in a safe manner and in a manner safe to workers, the general public and the environment and with regard to design and operating limitations such as steam pressure, temperature and moisture content, chemical content and quality of make-up water, operating voltage range, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.

"Governmental Approval" – any and all licenses, permits, franchises, agreements, approvals, authorizations, consents, waivers, rights, exemptions, releases, variances, exceptions, or order of or issued by, or filings with, or notice to, any Governmental Authority under Applicable Laws.

"Governmental Authority" – any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a party at law.

"Guaranty" – shall mean credit support in the form of a guaranty agreement from Seller's Guarantor in a form substantially the same as that set out in Appendix C.

"Heat Rate Adjustment Payment" – has the meaning given such term in Section 7.5.

"Heat Rate Curves" – Operating curves of Heat Rate vs. Capability (BTU/kWh vs. MW) based on test points specified in Appendix P hereto and adjusted for actual ambient operating conditions.

"Heat Rate Test" – The Initial Test and each other Test as described in Section 9.0 that is performed by Seller to determine the heat rate of the Facility under test conditions associated with the operation of the Facility. *[For each Operating Mode in Proposer's submission.]*

"Hourly Capacity Factor" or "HCF" – (a) during any hour that the Facility is not undergoing a Scheduled Reduction, a figure (expressed as a percentage) calculated by (i) dividing the Available Capacity in such hour by the Committed Capacity, and (ii) multiplying by 100 (provided that for purposes of this definition the Available Capacity of the Facility shall be subject to reduction pursuant to Section 13.11); or (b) during any hour during which the Facility is undergoing a Scheduled Reduction or is Decommited by PEF, the Hourly Capacity Factor shall be equal to the ACF of the preceding Monthly Billing Period. *[Note: This definition would be later modified to reflect the modes of operation of the facility submitted by the Proposer.]*

"Hourly Peak Capacity Factor" or "HPCF" – (a) in any Peak Hour that the Facility is not undergoing a Scheduled Reduction, a figure (expressed as a percentage) calculated by (i) dividing the Available Capacity in such hour by the Committed Capacity, and (ii) multiplying by 100 (provided that for purposes of this definition the Available Capacity of the Facility shall be subject to reduction pursuant to Section 13.11); or (b) during any Peak Hour during which the Facility is undergoing a Scheduled Reduction or is Decommited by PEF, the Hourly Peak Capacity Factor shall be equal to the APCF of the preceding Monthly Billing Period. *[Note: This definition would be later modified to reflect the modes of operation of the facility submitted by the Proposer.]*

"Indemnifiable Loss" means any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal,

accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands (by any person or entity, including any Governmental Authority), assessments, judgments, settlements and compromises.

"Indemnitee" – Either Party when acting the capacity of an indemnitee as described in Section 20.1.

"Indemnitor" – Either Party when acting in the capacity of an indemnitor as described in Section 20.1.

"Initial Synchronization Date" – the first date upon which (a) Energy is generated by the Facility, and (b) such Energy is delivered to PEF and metered by the PEF-owned or PEF-approved metering equipment, all pursuant to Section 12.6.

"Initial Test" – the first Capacity Test of the Facility completed successfully as described in Section 9.0.

"Interconnection Agreement" – the Agreement between PEF's Transmission function and Seller which principally delineates and governs (a) the interconnection of PEF's electrical system and the Facility, (b) Seller's responsibility for the costs of installing, operating, maintaining, repairing, upgrading and removing the interconnection facilities and related equipment necessary to safely and effectively connect the Facility to PEF's electrical system, and (c) the Parties' respective ownership rights and other obligations with respect to the interconnection.

"Investment Grade Credit Rating" – means (a) with respect to a corporation, limited liability company, partnership, or other entity other than a financial institution, a Credit Rating of BBB- or above from S&P or Baa3 or above from Moody's with, in the case of a rating of BBB-/Baa3, a "stable" outlook, and (b) with respect to a financial institution, a Credit Rating of A- or above from S&P or A3 or above from Moody's.

"Lenders" – any entity or group of entities (including, upon prior notice to PEF, any and all successors pursuant to refinancing but excluding Seller or any affiliate thereof) providing all or substantially all of the debt financing, in any form (including lease financing), for the development, construction or improvement of the Facility.

"Level 1 Available Capacity" or "L1AC" – Level 1 Capability less all Level 1 Unscheduled Outages and Scheduled Reductions, expressed in the nearest whole MW quantities, which shall be reported by Seller pursuant to Section 13.9. Level 1 Available Committed Capacity shall never be greater than Level 1 Committed Capacity.

"Level 1 Capability" or "LIC" – the highest sustained Capacity associated with the Level 1 Mode of Operation at which the Facility can operate consistent with Environmental requirements without exceeding the

design operating conditions, temperatures, pressures etc. for Level 1 Mode of Operation defined by the applicable manufacturer(s), as determined by the Capacity Test pursuant to Section 9.0.

"Level 1 Committed Capacity" – the incremental maximum Capacity for Level 1 Mode of Operation equal to _____MW at Reference Conditions using applicable manufacturers' correction curves. *[Insert incremental capacity, at Reference Conditions, for Level 1 Mode of Operations, from Proposer's submission.]*

"Level 1 Mode of Operation" – *[Insert description, from Proposer's submission, of Level 1 Mode of Operation, which must be capable of being placed under PEF's Automatic Generation Control and must not have additional operating limitations.]*

"Level 1 Unscheduled Outage" – a whole or partial interruption or reduction of the Facility's Capacity to a level below the Level 1 Committed Capacity, whether the Facility is on-line or off-line, expressed in the nearest whole MW, that does not qualify as a Scheduled Reduction.

"Liquid Security" – security in the form of one or more of the following: (a) a cash deposit in United States dollars, or (b) an unconditional, irrevocable, stand-by letter of credit issued by an issuer acceptable to PEF capable of issuing letters of credit and having an Investment Grade Credit Rating, in form and substance acceptable to PEF (including, in the case of a letter of credit, provisions (i) for partial draws, and (ii) permitting PEF to draw upon such letter of credit in full, if such letter of credit is not renewed or replaced at least twenty (20) Business Days prior to its expiry date (or as otherwise required by Section 4.0), without further notice to or action by any party).

"Maintenance Outage" – has the meaning given thereto in Section 13.12.

"Major Equipment" – the *[combustion turbine generator set, heat recovery steam generator, and steam turbine]*. *[Insert additional major equipment from Proposer's submission.]*

"Major Milestone" – a Milestone specified as a Major Milestone in Part A of Appendix M.

"Market Rules" – has the meaning given thereto in Section 13.20.

"Maximum Sustained Rate" – the maximum safe and continuous load-following capability of the Facility, expressed in MW per minute, to which the Facility can be raised or lowered to meet PEF's dispatch instructions.

"Milestone" – has the meaning given thereto in Section 3.1.

"Milestone Date" – has the meaning given thereto in Section 3.1.

"Minimum Capacity" – a Capacity equal to [MW] which is equal to ninety-five percent (95%) of the Committed Capacity.

"Minimum Load" – the minimum MW level below which PEF shall not dispatch the Facility without Decommitting the Facility, which minimum shall be equal to MW net of internal electrical requirements of the Facility. *[Insert number of MW from Proposer's submission.]*

"Monthly Billing Period" – the period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 A.M. EPT on the Initial Synchronization Date and ending with the last calendar day of such month at 11:59 P.M. EPT.

"Monthly Billing Statement" – a monthly summary prepared by Seller in accordance with Section 8.1.

"Monthly Capacity Factor" or "MCF" – in any month, the arithmetic average of the Hourly Capacity Factors for the Monthly Billing Period, expressed as a percentage.

"Monthly Capacity Payment" or "MCP" – monthly payments for Committed Capacity calculated in accordance with Appendix A.

"Monthly Energy Payment" or "MEP" – monthly payments for Energy calculated in accordance with Appendix A.

"Monthly Peak Capacity Factor" or "MPCF" – in any month, the arithmetic average of the Hourly Peak Capacity Factors for the Monthly Billing Period, expressed as a percentage.

"Monthly Weighted Peak Capacity Factor" or "MWPCF" – the product of the Monthly Peak Capacity Factor and a monthly weight factor, where the monthly weight factor is equal to 0.1 for the Peak Months and 0.06 for the Non-Peak Months.

"NERC" – North American Electric Reliability Council, including any successor thereto and subdivisions thereof.

"Net Energy Output" or "NEO" – in any Monthly Billing Period, the Energy in such Monthly Billing Period.

"Non-Peak Months" – those months which are not Peak Months.

"Notice of Claim" has the meaning given such term in Section 20.3.1.

"Operating Representatives" – the Parties' representatives designated pursuant to Section 11.0, who act in matters pertaining to detailed

operating arrangements for the delivery of Capacity and Energy provided under this Agreement.

"Other Operating Mode" – *[Insert description of each other operating mode included in Proposer's submission.]*

"Payment Due Date" has the meaning given such term in Section 8.1.

"Peak Hour" – those hours occurring April 1 through October 31, from 12:00 P.M. EPT to 9:00 P.M. EPT, and November 1 through March 31, from 6:00 A.M. EPT to 10:00 A.M. EPT and 6:00 P.M. EPT to 10:00 P.M. EPT. PEF shall have the right to change such Peak Hours by providing Seller a minimum ninety (90) calendar days notice. The total number of Peak Hours shall not exceed thirty eight percent (38.0%) of the total hours during a calendar year.

"Peak Months" – the months of January, February, June, July, August, September and December, as such Peak Months may be modified in accordance with Section 13.12.

"Peaking Capability" – the maximum Capacity the Facility can achieve for a period of at least [_____] continuous hours and at least [_____] hours per year, without exceeding the design pressures and temperatures recommended by the Major Equipment manufacturers. *[To include limitations from Proposer's submission.]*

"PEF Control" – PEF's Dispatch and Control Rights with respect to Committing and Deccommitting the Facility and controlling the Capacity and Energy output of the Facility.

"PEF Entities" – PEF, its parent, present and future subsidiaries and affiliated entities and any other entity which directly or indirectly controls, is controlled by or under common control with any of the foregoing, and each of their respective officers, directors, employees, and agents.

"PEF's Avoided Cost" – the payment rate described in the "Methodology of Calculating Avoided Energy Costs" in Appendix C of PEF's COG-1 Tariff and as calculated each hour for the Power Production Pricing Area corresponding to the Receipt Point.

"PEF's Cost of Cover" – has the meaning given thereto in Section 19.6.

"PEF's Marginal Gas Cost" – shall be deemed to be the cost of the next increment of gas which could be procured by PEF's Regulated Fuels Department on any given day including any costs and fees associated with delivery of the gas to the Facility. For illustrative purposes, this cost for gas will include commodity gas purchases, incremental transportation, compression losses, variable transportation costs, etc.

"Performance Security" – the security provided by or on behalf of Seller for the benefit of PEF pursuant to Section 4.2.

"Performance Security Amount" – the aggregate amount of Performance Security, equal to [Dollars (\$)] *[Insert amount equal to the product of the Committed Capacity (in kW) multiplied by One Hundred Eighty Dollars (\$180.00) per kW.] [Seller acknowledges that additional security will be required to cover costs that may arise from any firm transportation agreement entered into by PEF to support the project in the event of a Seller's default]*

"Performance Security Liquid Amount" – the amount of Performance Security required to be satisfied through Liquid Security, equal to (i) the Performance Security Amount, minus (ii) Seller's Credit Limit, provided however, that the Performance Security Liquid Amount shall be, at a minimum ten percent (10%) of the Performance Security Amount if the entity providing credit support has a Credit Rating of BBB/Baa2 or lower. The Performance Security Liquid Amount shall be adjusted, if necessary, quarterly, within five (5) days of the issuance of quarterly financial statements of Seller or Seller's Guarantor and within five (5) days of a change in Seller's or Seller's Guarantor's, as applicable, Credit Rating, in any such case to reflect any adjustment in the Seller's Credit Limit.

"Plant RTU" – has the meaning given thereto in Section 14.1.

"Primary Fuel" – natural gas which conforms to the tariff quality specifications of the pipeline through which the natural gas is shipped.

"Ready for Control" – a point in time, which will generally (but not necessarily), start at the top of the hour, when the Facility is turned over to PEF's system control center for Automatic Generation Control or manual control.

"Receipt Point" – (a) if the Facility is directly interconnected with the PEF system, the point where the Facility interconnects with the PEF transmission system, or (b) if the Facility is not directly interconnected with the PEF transmission system, the location where the transmission system of the transmission provider under the Firm TSA interconnects with PEF's transmission system; in either case, as further described in Appendix H.

"Reference Conditions" – the ambient dry-bulb temperature, ambient relative humidity, and ambient atmospheric pressure set forth on Appendix L.

"Records" – has the meaning given thereto in Section 15.1.

"RTO or ISO or a similar organization" – an independent entity authorized by FERC to operate the PEF transmission system or the

transmission system of the third party to which the Facility is directly interconnected.

"RTU" – has the meaning given thereto in Section 14.1.

"Scheduled Capacity Delivery Date" – [] as such date may be extended pursuant to Section 3.3. *[Insert date from Proposer's submission.]*

"Scheduled Outages" – has the meaning given thereto in Section 13.12.

"Scheduled Reduction" – any reduction in generating capability of the Facility, expressed in the nearest whole MW, as a result of a Scheduled Outage or a Maintenance Outage.

"Security Account" – has the meaning given thereto in Section 4.3.

"Seller Entities" means Seller, its parent, present and future subsidiaries and affiliated entities and any other entity which directly or indirectly controls, is controlled by or is under common control with any of the foregoing, and each of their respective officers, directors, employees, and agents.

"Seller's Cost of Cover" – has the meaning given thereto in Section 19.4.

"Seller's Guarantor" – shall mean an affiliate of Seller or other entity providing credit support having an Investment Grade Credit Rating.

"Start-up Cost" – a one-time payment, payable once per Successful Start-up, in the applicable amount set forth in Appendix E.

"Start-up Time" – the time it takes from the moment the Facility is Committed until it is on-line and Ready for Control.

"Step-In Rights" – has the meaning given thereto in Section 5.1.1.

"Successful Start-up" – a start-up of the Facility pursuant to an PEF Commitment of the Facility, which start-up (a) is not undertaken in connection with a Capacity Test (whether or not such Capacity Test is requested by PEF), (b) follows a shutdown of the Facility pursuant to an PEF-initiated Decommitment of the Facility, (c) results in the Facility achieving Ready for Control status, and (d) results in the Facility reaching the level of dispatch and/or commitment requested by PEF.

"Summer Period" – the seven (7) month period beginning immediately after 12:00 A.M. EPT on March 31 and ending at 12:00 A.M. EPT on the following October 31st.

"Tax" – any or all ad valorem, property, net income, gross receipts, net worth, franchise, occupational, severance, emissions, generation, first use, conservation, energy, transmission, utility, privilege, sales, use, excise and

other taxes, governmental charges, licenses, fees, permits and assessments. Tax is meant to include any other similar taxes or charges levied by a Governmental Authority. Tax also includes any penalties and interest that may be imposed for underreporting, failure to report or late filing of returns or reports for any Tax.

"**Test Protocol**" – has the meaning given thereto in Appendix I.

"**Third Party**" means a person or entity that is not a member of PEF Entities or Seller Entities.

"**Third Party Claim**" means a claim, suit or similar demand by a Third Party.

"**Unscheduled Outage**" – a whole or partial interruption or reduction of the Facility's Capacity to a level below Committed Capacity, whether the Facility is on-line or off-line, expressed in the nearest whole MW, that does not qualify as a Scheduled Reduction.

"**Variable O&M Payment**" – monthly payments for variable operations and maintenance, calculated in accordance with Appendix A.

"**Winter Period**" – the five (5) month period beginning immediately after 12:00 A.M. EPT on October 31 and ending at 12:00 A.M. EPT on the following March 31.

- 1.2. **Rules of Construction:** In this Agreement: (a) words denoting any gender include each other gender; (b) the singular includes the plural and the plural includes the singular; (c) the word "or" is not exclusive; (d) a reference to an Applicable Law includes any amendment or modification to such Applicable Law, and all regulations, rulings and other Applicable Laws promulgated under such Applicable Law; (e) a reference to a person or entity includes its successors and permitted assigns; (f) the words "include", "includes" and "including" are not limiting; (g) exhibits, schedules, annexes or appendices to any document shall be deemed incorporated by reference in such document; (h) references to any document, instrument or agreement (1) shall include all exhibits, schedules and other attachments thereto, (2) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (3) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time; (i) the term "day" shall mean any calendar day commencing at 12:01 A.M. EPT and ending at 12:00 A.M. EPT; (j) the term "month" shall mean a calendar month; and (k) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision, unless otherwise indicated.

2.0 CONDITIONS PRECEDENT; AGREEMENT TERM

- 2.1 **Condition Precedent to Purchase and Sale:** The obligations of Seller to generate, deliver and sell, and of PEF to accept delivery of and purchase, Capacity and Energy Conversion Services hereunder shall be subject to the satisfaction of the conditions precedent that: (a) the FPSC shall have issued a final Determination of Need for the Facility, which order is not subject to appeal, (b) the FPSC shall have issued a final order approving this Agreement, and finding that PEF is entitled to recover from its customers all payments for Energy Conversion Services and Capacity, which order is no longer subject to appeal, (c) if applicable, the FERC shall have issued a final order authorizing Seller to make the sales of electrical energy and capacity contemplated by this Agreement, which order is no longer subject to appeal, (d) each other Governmental Authority having jurisdiction over this Agreement shall have issued a final order approving this Agreement or otherwise authorizing sales of electrical energy and capacity under this Agreement, as applicable, which orders are no longer subject to appeal, and (e) PEF shall have obtained, on terms satisfactory to PEF, additional gas pipeline transportation capacity for the Agreement Term in excess of PEF's internal requirements for gas pipeline capacity and that such pipeline capacity shall be sufficient to meet the Primary Fuel requirements of Seller under this Agreement. PEF and Seller shall be co-petitioners on the application for such Determination of Need, and each Party shall cooperate in making such application (and each other application for a Governmental Approval under this Section 2.1) promptly after execution of this Agreement, and shall prosecute such application diligently and in good faith; provided, that nothing in this Section 2.1 shall be construed to require PEF to consent to any modification of this Agreement or any other condition or requirement imposed on PEF relating to such application, which modifications, conditions or requirements may be rejected by PEF in its sole and absolute discretion.
- 2.2 **Completion Security:** All obligations and liabilities of PEF hereunder, and all rights of Seller hereunder, shall be subject to the satisfaction of the condition precedent that Seller shall have delivered the Completion Security to PEF not later than the Commencement Date.
- 2.3 **Failure of Conditions Precedent:**
- 2.3.1 If the condition precedent set forth in Section 2.1 shall not have been satisfied on or prior to the first anniversary of the Commencement Date, (a) PEF by thirty (30) days notice to Seller may terminate this Agreement without penalty or further liability, and (b) PEF shall return any undrawn Completion Security to Seller within thirty (30) days of the effective date of such termination.
- 2.3.2 If the condition precedent set forth in Section 2.2 shall not have been satisfied on or prior to the Commencement Date, PEF by

notice to Seller may terminate this Agreement without penalty or further liability for PEF.

- 2.4 **Agreement Term:** The term of this Agreement (the "Agreement Term") shall commence on the Commencement Date and shall expire on _____ 20__, unless sooner terminated in accordance with Section 3.0 or Section 19.0 hereof.

3.0 AGREEMENT MILESTONES

- 3.1 **Agreement Milestones:** Seller shall achieve each of the milestones set forth in Parts A and B of Appendix M in connection with its ownership, development and construction of the Facility (a "Milestone") on or (except in the case of Capacity Delivery Date) prior to the milestone date set forth on Appendix M corresponding to such Milestone (a "Milestone Date"). Time is of the essence of this Agreement with respect to Seller's obligation to meet each Milestone (including each Major Milestone).

3.2 **Failure to Achieve Milestone(s):**

- 3.2.1 If Seller fails to achieve any Milestone (including any Major Milestone) by the corresponding Milestone Date, then (a) Seller shall give PEF notice of such failure as provided in Section 12.2, and (b) PEF shall have the right, but not the obligation, to exercise Step-In Rights as provided in Section 5.0.
- 3.2.2 If Seller fails to achieve any Major Milestone by the corresponding Milestone Date (including failure to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date) or upon any other Seller Event of Default prior to the Capacity Delivery Date, then, except as provided in Section 3.3 (and provided that PEF is not then exercising Step-In Rights with respect to such failure and that Seller is not paying delay liquidated damages as provided in Section 3.2.3), PEF shall be entitled to terminate this Agreement by notice to Seller as provided in Section 19.0. Upon such termination, Seller shall pay to PEF, on demand, in immediately available funds (or if not so paid, PEF shall be entitled to draw upon the Completion Security), liquidated damages at the rate set forth on Appendix M with respect to such Major Milestone (or, in the case of an Event of Default other than failure to achieve a Major Milestone by the corresponding Milestone Date, at the rate set forth therein with respect to the next unmet Major Milestone).
- 3.2.3 Notwithstanding the provisions of Section 3.2.2, if Seller fails to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date, then, except as provided in Section 3.3, and provided that PEF is not then exercising Step-In Rights with respect to such failure, Seller may extend the Scheduled Completion Date day-for-day to a date not later than the Final

Capacity Delivery Date by paying to PEF delay liquidated damages at a rate equal to [_____ Dollars (\$_____)] [Insert amount equal to product of Committed Capacity (in kW) multiplied by \$[_____] per kW] per day. PEF shall not be entitled to terminate this Agreement with respect to such failure unless Seller shall have failed to pay such liquidated damages, shall have failed to comply with the security requirements set forth in Section 4.0, or shall have failed to achieve the Capacity Delivery Date by the Final Capacity Delivery Date, whereupon PEF shall be entitled to terminate this Agreement as provided in Section 19.0. Upon such termination, Seller shall pay to PEF, on demand, in immediately available funds (or if not so paid, PEF shall be entitled to draw upon the Completion Security), liquidated damages at the rate set forth on Appendix M with respect to such failure.

3.3 Effect of Force Majeure; Final Capacity Delivery Date:

3.3.1 The Milestone Dates (including, for avoidance of doubt, the Scheduled Capacity Delivery Date) may be extended upon the occurrence of an event of Force Majeure as and to the extent provided in Section 18.0; provided, that in no event shall the total number of days of all the extensions made pursuant to this Section 3.3 and Section 18.0 as a result of Force Majeure exceed one hundred eighty (180) days in the aggregate; provided, further, that if Seller shall fail to achieve the Capacity Delivery Date on or prior to the Final Capacity Delivery Date, then regardless of the extent to which such failure is excused for Force Majeure as provided in Section 18.0, such failure shall be deemed an Event of Default by Seller, and in addition to PEF's right to terminate this Agreement as provided in Section 19.3 and in addition to any delay liquidated damages paid or owed by Seller to PEF. Seller shall also pay PEF the sum of _____ (\$_____) as liquidated damages for failure to achieve the Final Capacity Delivery Date

3.3.2 The Final Capacity Delivery Date shall not be extended for any reason, including payment of liquidated damages, renewal or replenishment of Completion Security, or Force Majeure.

4.0 COMPLETION SECURITY; PERFORMANCE SECURITY

4.1 **Completion Security:** Not later than the Commencement Date, and as a condition thereto, Seller shall provide PEF security for completion of the Facility when and as required hereunder, and for performance of all of Seller's obligations hereunder to be performed on or prior to the Capacity Delivery Date (the "Completion Security"). Such Completion Security shall be in an amount equal to the Completion Security Amount, and may be provided in the form of one or both of a Guaranty or Liquid Security;

provided, that the amount of Liquid Security provided by Seller with respect thereto shall not at any time be less than the Completion Security Liquid Amount at such time.

4.2 **Security for Performance:** Not later than Capacity Delivery Date, and as a condition thereto, Seller shall provide PEF security for performance of all of Seller's obligations hereunder to be performed after the Capacity Delivery Date (the "Performance Security"). Such Performance Security shall be in an amount equal to the Performance Security Amount, and may be provided in the form of one or both of a Guaranty or Liquid Security; provided, that the amount of Liquid Security provided by Seller with respect thereto shall not at any time be less than the Performance Security Liquid Amount at such time.

4.3 **Security Account:** All cash deposits or other Liquid Security shall be held in an account designated by PEF (the "Security Account") for the benefit of PEF, free and clear of all liens (including the liens of the Lenders) of any person or entity other than PEF. Any Security Account shall be established and maintained at the expense of Seller and held by a depository bank or securities intermediary acceptable to PEF pursuant to a control agreement in form and substance acceptable to PEF. Prior to the establishment of any Security Account, or to the entering into or refinancing of any loan, credit, or reimbursement agreement, indenture, other debt or security arrangement with any Lender, Seller shall obtain the express written waiver of the Lenders (in form and substance satisfactory to PEF) which are entitled to liens at that time, to any and all rights in and to the Completion Security or Performance Security, as applicable, and the proceeds therefrom.

4.4 **Replacement of Security:**

4.4.1 Seller shall maintain the applicable security required under this Agreement as set forth herein at all times during the Agreement Term. Seller shall give PEF notice thirty (30) days prior to the date, if any, on which any Completion Security or Performance Security is due to expire, advising PEF of the scheduled expiration of such security. Seller shall replace any such security not later than ten (10) Business Days prior to such expiration with security meeting the requirements of this Agreement. Seller shall replenish any amount drawn by PEF against the Completion Security or the Performance Security within five (5) Business Days of such draw.

4.4.2 PEF shall have the right to monitor the financial condition of Seller and of the issuer of any Guaranty or letter of credit, and Seller shall notify PEF within three (3) Business Days of becoming aware that any such entity's Credit Rating has been downgraded or its outlook changed. In addition, Seller shall provide to PEF, no later than the Commencement Date and at the beginning of each calendar quarter

thereafter until the Capacity Delivery Date, and again on the Capacity Delivery Date and at the beginning of each calendar quarter thereafter, evidence satisfactory to PEF sufficient to establish that Seller is in compliance with the security requirements set forth in this Section 4.0, including such evidence sufficient to establish that Seller, any Seller's Guarantor, or any issuer of a letter of credit as set forth herein has the required Credit Rating, as applicable, and sufficient to establish the Credit Limit of Seller and any Seller's Guarantor, as applicable.

4.4.3 In the event that the financial condition of any such entity has deteriorated to a level below Investment Grade Credit Rating or its Credit Limit has been reduced, such that the amount of Liquid Security provided by Seller to or for the benefit of PEF is less than the Completion Security Liquid Amount or the Performance Security Liquid Amount, as applicable, Seller shall replace such Completion Security or Performance Security, or shall provide additional Liquid Security, such that the aggregate amount of Liquid Security is not less than the Completion Security Liquid Amount or the Performance Security Liquid Amount, as applicable, which replacement security shall be issued by an entity with an Investment Grade Credit Rating, as applicable, and otherwise shall meet the requirements of this Section 4.0, within five (5) Business Days following the date Seller becomes aware of such failure to maintain an Investment Grade Credit Rating or reduction in Credit Limit or the date of any public announcement of such failure or reduction in Credit Limit.

4.5 **Achievement of Capacity Delivery Date:** If the Capacity Delivery Date occurs on the Scheduled Capacity Delivery Date (as extended pursuant to Section 3.0) and Seller has provided the Performance Security as provided herein, then Seller shall be entitled to require PEF to terminate and refund or release to Seller any undrawn portion of the Completion Security. Any refund of Completion Security pursuant to this Section 4.5 shall be made within thirty (30) calendar days after Seller's application for such release is received and accepted by PEF.

5.0 STEP-IN RIGHTS

5.1 **Operation by PEF Following Missed Milestone or Event of Default by Seller:**

5.1.1 Upon the occurrence of (a) the failure of Seller to meet any Milestone by the corresponding Milestone Date, or (b) any Event of Default by Seller (whether before or after the Capacity Delivery Date) and the failure of Seller to cure such Event of Default within the applicable cure period, PEF or its designee shall have the right, but not the obligation, to enter upon and complete the licensing,

permitting, construction, start-up, testing and commissioning of, or operate and maintain, the Facility as agent for Seller ("Step-In Rights"), until the earliest of (x) the date upon which Seller shall provide to PEF a certificate of an independent engineer reasonably acceptable to PEF or otherwise demonstrate to PEF's reasonable satisfaction that the circumstance which gave rise to Seller's failure to meet a Milestone or such Event of Default no longer exists, (y) the date PEF in its sole discretion elects by notice to Seller to cease exercising Step-In Rights, or (z) the expiration or earlier termination of this Agreement.

5.1.2 Subject to Section 5.2, during any period of exercise of Step-In Rights by PEF, PEF (a) shall use commercially reasonable efforts to complete the licensing, permitting, construction, start-up, testing and commissioning of the Facility as provided herein, or operate and maintain the Facility in accordance with Seller's obligations hereunder, and in accordance with all existing agreements to which Seller is a party and all applicable Governmental Approvals, and (b) shall continue to pay Monthly Capacity Payments and Monthly Energy Payments to the extent otherwise required to be paid hereunder.

5.2 **Reimbursement of PEF's Costs.** Seller shall reimburse, indemnify and hold harmless PEF, within fifteen (15) days of submission of a reimbursement request by PEF, for the reasonable and necessary costs and expenses incurred by PEF or its designee in exercising Step-In Rights, including costs and expenses incurred in completing the licensing, permitting, construction, start-up, testing and commissioning of the Facility, or in the operation and maintenance of the Facility, on behalf of Seller, costs and expenses (including reasonable fees and expenses of counsel) in enforcing its Step-In Rights, and the cost of funds with respect to all such costs and expenses at PEF's overall cost of capital, in each case supported by reasonable documentation. PEF shall provide ten (10) days notice in reasonable detail to Seller of the need for any capital expenses, or any other extraordinary expenses in excess of Five Hundred Thousand Dollars (\$500,000.00) not approved by the Operating Representatives, and shall obtain the consent of Seller for such capital expenses or other extraordinary expenses, such consent not unreasonably to be withheld or delayed. Without limiting any other right or remedy of PEF with respect thereto, PEF shall be entitled to draw amounts to which it is entitled to be reimbursed for or indemnified or held harmless against under this Section 5.1 from the Completion Security or the Performance Security, as applicable, or by set-off of amounts due to Seller hereunder; provided, that any amounts due to Seller hereunder after payment of such amounts and Seller's debt service to the Lenders shall be remitted to Seller.

5.3 **Access upon Exercise of Step-In Rights.** In connection with the exercise of Step-In Rights, PEF and its employees and representatives designated

in writing to Seller shall be entitled to access Seller's agreements, books and records, operating manuals, and other documents relating to the Facility and the Facility Site, and shall have access to the Facility and the Facility Site, for the purpose of exercising Step-In Rights, subject to reasonable safety and confidentiality requirements. PEF shall notify Seller of any documents or actions by Seller reasonably necessary for PEF to exercise its Step-In Rights, which shall be subject to the consent of Seller, such consent not unreasonably to be withheld or delayed.

- 5.4 **Title.** During any period that PEF or its designee is in possession of the Facility and the Facility Site upon exercise of Step-In Rights, Seller shall retain legal title to and ownership and risk of loss of the Facility and the Facility Site, and PEF or its designee shall complete the licensing, permitting, construction, start-up, testing and commissioning of, or operate and maintain, the Facility as an agent of Seller in accordance with this Agreement. Upon the termination of PEF's exercise of its Step-In Rights pursuant to Section 5.1.1, PEF or its designee shall relinquish the Facility and the Facility Site to Seller.
- 5.5 **No Termination.** PEF's exercise of its Step-In Rights shall not be deemed a termination of this Agreement or an assumption, release, or waiver by PEF of any liability of Seller to third parties or of any obligation or liability of Seller to PEF or (except as expressly provided in Section 3.2 or Section 19.5) any right or remedy of PEF with respect thereto; provided, that this Section 5.5 shall not excuse any liability of PEF expressly assumed in writing or incurred by PEF in its own right and not in its capacity as Seller's agent or attorney-in-fact in acting in Seller's stead and on Seller's behalf in connection with the exercise of its Step-In Rights.
- 5.6 **PEF as Attorney-in-Fact.** Seller hereby constitutes and appoints PEF or its designee its agent and true and lawful attorney-in-fact to exercise Step-In Rights, and to act thereafter in Seller's stead and on Seller's behalf, as provided in this Section 5.0. This power is a power coupled with an interest and is irrevocable for the Agreement Term.
- 5.7 **Permits and Agreements:** Seller shall (a) use all reasonable efforts to ensure that all Governmental Approvals and environmental emission allowances, credit or approvals required for the construction and operation of the Facility and powers of attorney related to such Governmental Approvals and environmental emission allowances, credits or approvals are transferable to PEF or its designee or exercisable by PEF or its designee upon exercise of Step-In Rights, (b) shall ensure that such Step-In Rights are recognized by Seller's Lenders, vendors, suppliers and subcontractors and are recognized in any employment or labor agreement respecting the Facility's work force, and that PEF's exercise thereof will not cause a breach, default, or lien under, or permit the termination of, any material agreement relating to the Facility or the Facility Site, and (c) shall use its best efforts to effect the transfer of such Governmental Approvals,

emissions allowances, credits, or approvals, powers of attorney, and agreements to PEF or its designee upon such exercise to the extent requested by PEF.

6.0 SALE OF ENERGY CONVERSION SERVICES AND CAPACITY

- 6.1 **Test Energy:** Commencing on the Initial Synchronization Date and until the Capacity Delivery Date, Seller shall sell to PEF, and PEF shall purchase from Seller, all Energy, but no Capacity, in excess of Seller's internal consumption of electric energy in accordance with Section 7.0, except to the extent that PEF is not obligated to purchase such Energy under the terms of this Agreement other than Section 6.3; provided, that PEF shall not be required to accept delivery of or purchase such Energy to the extent PEF would be required to back down its own baseload generation or baseload generation under firm agreement to accommodate such deliveries, and Seller shall schedule all tests accordingly.
- 6.2 **Energy Conversion Services and Capacity:** Commencing on the Capacity Delivery Date, Seller shall sell to PEF and PEF shall purchase from Seller all Energy Conversion Services and Capacity in excess of Seller's internal consumption of energy and capacity, in accordance with Section 7.0, except to the extent that PEF is not obligated to purchase such Energy Conversion Services and Capacity under the terms of this Agreement.
- 6.3 **Purchase Obligation Excused:**
- 6.3.1 PEF shall not be obligated to purchase, and may require interrupted or reduced deliveries of, Energy for any reason, or for no reason at all, whenever PEF deems it appropriate, in its sole and absolute discretion.
- 6.3.2 PEF shall not be obligated to purchase any Capacity in excess of the Committed Capacity for any reason.
- 6.3.3 PEF in the exercise of its Dispatch and Control Rights shall not be obligated to accept delivery of any Energy or Capacity not dispatched by PEF pursuant thereto or to pay for such Energy if delivered.
- 6.4 **Exclusivity; Specific Performance:**
- 6.4.1 Except to the limited extent of unintentional sales of imbalance energy upon formation of an RTO or ISO or similar organization as contemplated by Section 13.20, or upon an Event of Default by PEF under Section 19.2, Seller shall have no right to sell electrical Energy or Capacity or Ancillary Services or perform Energy Conversion Services from the Facility to anyone other than PEF. Seller expressly agrees that it shall have no right to sell electrical Energy or Capacity, Ancillary Services or perform Energy

Conversion Services from the Facility to anyone other than PEF, except in the limited circumstances provided in this Section 6.4.1, notwithstanding any default by PEF, any event of Force Majeure, or any other circumstances whatsoever.

6.4.2 Seller acknowledges that, throughout the term of this Agreement, PEF will have a need for the Capacity, Energy, Ancillary Services and Energy Conversion Services required to be provided by Seller hereunder, will be relying on the Facility to meet those needs and, notwithstanding the provisions of Section 4.0, would have no adequate remedy at law in the event Seller were to supply such Capacity, Energy, Ancillary services or Energy Conversion Services to any person or entity other than PEF in breach of this Agreement; and Seller therefore agrees that, in such event, PEF would be entitled to specific performance of Seller's obligations to supply Capacity, Energy, Ancillary Services and Energy Conversion Services to PEF as provided herein.

7.0 PAYMENT BY PEF

7.1 **Test Energy:** Prior to the Capacity Delivery Date, subject to Section 6.1, PEF shall pay Seller for each MWh of Energy delivered by the Facility at the Receipt Point and agreed to be accepted by PEF at a rate equal to ninety percent (90%) of PEF's Avoided Cost. Seller shall reimburse PEF for all natural gas and transportation costs for such test energy.

7.2 **Test Fuel:** After Capacity Delivery Date, PEF shall provide to Seller Primary Fuel in the quantities requested from time to time by Seller for the purpose of conducting Capacity and Heat Rate tests under this Agreement but not to exceed the quantities actually required for such dependable Capacity Tests. Seller shall be responsible for reimbursing PEF for all costs associated with the supply of Primary Fuel to Seller for Capacity Tests except in those cases where PEF requests a Capacity Test and such test proves that the Capacity represented by Seller is as good as or better than Seller's representation.

7.3 Payments for Capacity:

7.3.1 Beginning on the Capacity Delivery Date, and thereafter for the Agreement Term, PEF shall pay to Seller the Monthly Capacity Payments for the Committed Capacity at rates set forth in Appendix A; provided, that (i) PEF shall have no obligation to make any Monthly Capacity Payments for the period(s), if any, in which an Event of Default by Seller has occurred and is continuing, and (ii) the Monthly Capacity Payment may be adjusted as a result of an event of Force Majeure affecting Seller, as provided in Section 18.4. Monthly Capacity Payments when applicable shall be prorated for the Monthly Billing period.

- 7.3.2 For the Monthly Billing Period in which the Capacity Delivery Date occurs, the Monthly Capacity Payment shall be prorated by multiplying (a) the Monthly Capacity Payment calculated as set forth in Appendix A, times (b) the ratio calculated by dividing the number of hours from the commencement of the day after the Capacity Delivery Date through the end of the month by the total number of hours in the month.
- 7.4 **Variable O&M Payment:** For amounts of Energy scheduled and received by PEF hereunder, PEF shall pay to Seller a variable charge for each month during the operating period in an amount equal to the Variable O&M Payment.
- 7.5 **Heat Rate Adjustment Payment:** Subject to the terms and conditions of this Agreement, during any month after the Scheduled Capacity Delivery of the Facility, Seller shall pay to PEF, or PEF shall pay to Seller as applicable the Heat Rate Adjustment Payment. The Heat Rate Adjustment Payment shall be calculated in accordance with the methodology prescribed in Appendix A.
- 7.6 **Start-up Costs:** PEF shall pay Seller the Start-up Costs for each Successful Start-up in a Monthly Billing period. *[Insert start-up costs from Proposer's submission]*
- 7.7 **Start-up Fuel Cost Adjustment:** In the event that the quantity of natural gas consumed to complete a Successful Start-up exceeds the amount specified in respect of such start-up in Appendix E hereto, Seller shall pay PEF an amount equal to the Start-Up Fuel Cost Adjustment calculated in accordance with Appendix A.
- 7.8 **Ancillary Services:** The Energy Conversion Services and Capacity purchased by PEF hereunder pursuant to Section 6.0 shall include all Ancillary Services produced or capable of being produced by or related to the Facility, and Seller shall be entitled to no separate payment with respect thereto. All financial or other benefits relating to such Ancillary Services shall accrue to and be the property of PEF.
- 7.9 **Transmission:** *[PEF shall pay Seller for transmission costs incurred under the Firm TSA, as provided in Section 10.3.]*
- 7.10 **Back-up Fuel Payment:** PEF shall pay Seller for Back-up Fuel consumed for Energy Conversion Services as well as the carrying cost of such Back-up Fuel stored at the site procured competitively. Back-up Fuel shall remain the property of the Seller until consumed. Back-up Fuel Payment shall be calculated in accordance with Appendix A.
- 7.11 **Payment by PEF:** The payment with regard to the sale and purchase of Capacity and Energy, Energy Conversion Services and Ancillary Services by PEF pursuant to this Agreement shall be computed based upon the

components listed in Sections 7.1 through Section 7.10. Notwithstanding the itemization of these components, payment from PEF represents a combined charge solely for the sale and purchase of Capacity, Energy Conversion Services and Ancillary Services.

8.0 BILLING AND PAYMENT

- 8.1 **Timing and Method of Payment:** On or before the tenth (10th) Day after each Monthly Billing Period, Seller shall provide to PEF a detailed written invoice, on paper and by electronic media (in the original software file format with all formulas and calculations intact) of the amounts owed by PEF pursuant to this Agreement (and, if applicable, the amounts owed by Seller pursuant to this Agreement). PEF shall pay such Monthly Billing Statement on the later of the twentieth (20th) day of each month, or the tenth (10th) day after the day on which PEF receives such invoice (the "Payment Due Date"). Such invoice shall detail the amount and calculation of the following: (a) the Capacity Payment payable by PEF for the preceding month; (b) the Variable Payment payable by PEF for the preceding month; (c) the Heat Rate Penalty Payment or Heat Rate Bonus Payment, if any, payable by PEF or Seller under Section 7.5 for the preceding month; (d) the number of Successful Start-ups occurring and the amount of Successful Start-up Costs, if any, payable by PEF for the preceding month; (e) the start-up adjustment payable by Seller if any under Section 7.7 for the preceding month (f) the Back-up Fuel charges if any, payable by PEF under Section 7.10 for the Monthly Billing Period. Payment shall be made on or before the Payment Due Date to Seller in accordance with the invoice in immediately available funds through wire transfer, or other mutually agreeable method. If the Payment Due Date falls on a day that is not a Business Day, the Payment Due Date shall be the next Business Day.
- 8.2 **Late Payments:** If either Party is late in making any payment due under this Agreement, and the reason for such delay is solely and exclusively within the control of such Party, such payment shall accrue interest at a per annum rate equal to the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by applicable law. Interest shall be charged from and including the due date to but excluding the date the delinquent amount is paid in full.
- 8.3 **Disputed Billings:** In the event that either Party has a bona fide dispute with any invoice submitted hereunder, such Party shall inform the other Party in writing of its grounds for disputing such invoice. In the event of a disputed invoiced amount(s), the Party receiving the invoice shall be entitled to withhold the disputed amount if such Party first provides the invoicing Party with a detailed explanation of the basis for the dispute,

including calculations demonstrating the disputing Party's position regarding the correct amount that should have been invoiced. Upon resolution of the dispute, any overpayment or underpayment shall be refunded or paid (as appropriate) with interest as calculated pursuant to Section 8.2 accruing from and after the date such overpayment or underpayment was made until the date on which such refund or payment is made.

8.4 **Adjustments:** If any overcharge or undercharge in any form whatsoever shall at any time be found and the invoice therefore has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within thirty (30) Days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twelve (12) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated in accordance with Section 8.2 from the date that the undercharge or overcharge actually occurred.

8.5 **Taxes:**

8.5.1 **Taxes.** Both Parties agree that the conversion of the Fuel into Energy is a service and not subject to Florida sales or use taxes. Except as otherwise provided in this Agreement, in addition to all other amounts due and payable under this Agreement: (i) Seller shall be responsible for all Taxes of any kind, if any, relating to the delivery of Energy, Capacity, and/or related services (including but not limited to Ancillary Services) prior to and at the Receipt Point; (ii) PEF shall be responsible for all Taxes of any kind, if any, relating to the delivery of Energy, Capacity, and/or related services (including but not limited to Ancillary Services) after the Receipt Point (by way of clarification of the foregoing, Taxes include any taxes incurred in connection with downstream sales of the Energy); and (iii) PEF shall be responsible for all Taxes of any kind, if any, related to the acquisition and delivery of Fuel to the Facility. Each Party shall provide the other Party upon written request a certificate of exemption or other reasonably satisfactory evidence of exemption if any exemption from or reduction of any Tax is applicable. Each Party shall exercise commercially reasonable efforts to obtain and to cooperate in obtaining any exemption from or reduction of any Tax.

8.5.2 **Facility Taxes.** Except as specified in Section 8.5.1, the payment of any and all present or future Taxes on or respecting the Facility, in connection with the development, permitting, design, engineering, procurement, construction, testing, completion,

ownership, leasing, operation or maintenance of the Facility or any related infrastructure, transmission or transportation facilities shall be the sole and exclusive responsibility and obligation of Seller. PEF shall provide to Seller for payment by Seller any invoice or assessment for any such tax received by PEF from any Governmental Authority.

- 8.5.3 **Tax Indemnification.** Nothing in Section 21 or any other provision of this Agreement will be deemed to limit the After-Tax Basis portion of the Indemnifications provided in Section 20.
- 8.5.4 **Cooperation.** The Parties agree to oppose by all reasonable lawful means any federal, state, county or municipal Tax that is sought to be imposed upon the transactions contemplated by this Agreement.
- 8.5.5 **Price.** The payments to be made by PEF pursuant to this Agreement are inclusive of any present Tax and all benefits and burdens of personnel with respect to the services performed. Such payments include all Tax credits, incentives and benefits available to Seller including, but not limited to, Internal Revenue Code Section 199 Income Attributable to Domestic Production Activities.

9.0 TESTING AND CAPACITY RATING

9.1 **Capacity Delivery Date; Available Capacity and Heat Rate:**

- 9.1.1 The Capacity Delivery Date shall not occur before the Scheduled Capacity Delivery Date. In addition, in order to achieve the Capacity Delivery Date, Seller shall (or shall cause the Facility to) satisfy the following conditions and the same shall have been accepted by PEF:
- (a) the Initial Synchronization Date shall have occurred, the Facility shall be in compliance with the Interconnection Agreement and shall have met PEF's requirements for AGC, and the Facility shall have demonstrated the reliability of its communication systems with PEF;
 - (b) the Facility shall have demonstrated a Continuous Capability equal to or greater than the Minimum Capacity in an Initial Test completed successfully in accordance with Section 9.0 prior to the Capacity Delivery Date, as set forth in Seller's certified test report;
 - (c) the Facility shall have demonstrated an Actual Heat Rate equal to or less than the Guaranteed Heat Rate in an Initial Test completed successfully in accordance with Section 9.0 prior to the Capacity Delivery Date, as set forth in Seller's certified test report;

- (d) Seller shall have delivered to PEF a complete set of Heat Rate Curves for each available level and mode of operation.*[Insert from Proposer's Submission]*
 - (e) Seller shall have delivered to PEF a certificate of a responsible officer of Seller certifying that Seller's requirements pursuant to Section 13.5 have been satisfied as of the Capacity Delivery Date;
 - (f) Seller shall have provided to PEF certificates of insurance coverage, dated as of the Capacity Delivery Date, and copies of the insurance policies required to be maintained by Seller under Section 16.0;
 - (g) each of the representations and warranties of Seller set forth in Section 23.1 shall be true and correct as of the Capacity Delivery Date, and Seller shall have provided to PEF a certificate of a responsible officer of Seller to such effect;
 - (h) no Event of Default by Seller, and no event which, with the passage of time or giving of notice would become an Event of Default, shall have occurred and be continuing;
 - (i) Seller shall have provided to PEF the Performance Security;
 - (j) Seller shall have provided to PEF a certificate dated no later than the Capacity Delivery Date from an independent, registered engineer, reasonably acceptable to PEF, stating that the Facility has been designed, engineered and constructed in accordance with Good Engineering and Operating Practices and the terms of this Agreement; and
 - (k) a certificate of a responsible officer of Seller, dated no later than the Capacity Delivery Date, shall have been delivered to PEF, certifying that Seller has obtained all Governmental Approvals (other than the Deferred Governmental Approvals) required under Applicable Law for the ownership, operation and maintenance of the Facility.
- 9.1.2 The initial Available Capacity and the initial Level 1 Available Capacity of the Facility shall be effective on the Capacity Delivery Date, and shall be determined by Seller upon completion of such Initial Test as provided in Section 9.2.
- 9.1.3 The Available Capacity and the Level 1 Available Capacity shall be designated upon completion of the Initial Test or of any Capacity Test to the nearest whole MW unit of Capacity, and shall

be effective on the date of such test (or the Capacity Delivery Date, in the case of the Initial Test).

- 9.1.4 The maximum Capacity associated with each incremental mode of operation will be designated upon completion of the Initial Test or any other subsequent Capacity Test.

9.2 **Initial Tests:**

9.2.1 Seller shall provide to PEF a proposed Test Protocol not less than one hundred twenty (120) days before the Initial Test for PEF's review and approval. Such Test Protocol shall be consistent with the testing guidelines attached as Appendix I. The Parties shall meet promptly to address any PEF concerns about the Test Protocol and shall endeavor to agree on the Test Protocol by the date that is forty-five (45) days prior to the Initial Test.

9.2.2 The Parties shall agree on the date and time when Seller will attempt the Initial Test for the Facility; provided, that the date for such Initial Test shall be no earlier than the date [____ (__) days] prior to the Scheduled Capacity Delivery Date. *[Fill in date to be agreed.]* If the Initial Test for the Facility are completed successfully in accordance with this Section 9.0, Seller shall set the Available Capacity at any level not less than the Minimum Capacity and not greater than the lesser of (a) the Continuous Capability demonstrated by the most recent run of the Initial Test, or (b) Committed Capacity. If such test is not completed successfully, Seller shall provide notice to PEF as to when the Facility will be ready to reconduct the Initial Test. Subject to Section 9.4, Seller may perform the Initial Test any number of times prior to the Capacity Delivery Date until the Initial Test is completed successfully in accordance with this Section 9.0; provided, that nothing in this Section 9.0 shall be construed to extend the Scheduled Capacity Delivery Date.

9.2.3 The Level 1 Available Capacity shall be the lesser of (a) the Level 1 Committed Capacity or (b) the incremental Capacity associated with the Level 1 Mode of Operation demonstrated in the Initial Test.

9.2.4 The maximum Capacity associated with each incremental mode of operation will not exceed the maximum incremental Capacity demonstrated by the most recent run of Capacity Tests for each operating mode.

9.3 **Retesting:**

9.3.1 Subject to Section 9.4, after the Capacity Delivery Date, in order to establish a new level of Available Capacity, Seller may perform up to a maximum of four (4) Capacity Tests per Agreement Year.

9.3.2 PEF may require Seller to perform Tests:

- (a) Once per each Summer Period and once per each Winter Period at PEF's sole discretion;
- (b) At any time Seller claims it is unable to comply with any material obligation under this Agreement for a period of thirty (30) days or more in the aggregate as a consequence of an event of Force Majeure;
- (c) At any time Seller fails two (2) consecutive times to meet the operating level prescribed by PEF, as described in Section 13.11.

9.3.3 Upon completion of such Capacity Test(s), if any, Seller shall set the following:

- (a) the new Available Capacity, at a level not less than the Minimum Capacity and not greater than the lesser of (i) the Continuous Capability demonstrated by the most recent Capacity Test, or (ii) Committed Capacity. Seller may not establish a new level of Available Capacity except upon completion of a Capacity Test;
- (b) the Level 1 Available Capacity at the lesser of (i) the Level 1 Committed Capacity, or (ii) the incremental Capacity associated with Level 1 Mode of Operation demonstrated by the most recent Capacity Test; and
- (c) the maximum level of incremental Capacity associated with each Other Operating Mode at the maximum level demonstrated by the most recent Capacity Test for each applicable Other Operating Mode.

9.4 **Conduct of Tests:** Seller shall perform each Capacity Test at a time approved by PEF (such approval not to be unreasonably withheld) not less than five (5) Business Days nor more than fourteen (14) calendar days after receipt of notice of such Capacity Test by the Party not requesting such test. PEF may be present on-site to monitor each such Capacity Test. Seller shall provide to PEF a complete written report of all results of each such Capacity Test certified by a responsible officer of Seller, for PEF's review and verification, promptly upon becoming available to Seller (including all pertinent "raw" data (written and electronic) and all pertinent calibration records of test instrumentation). Each Capacity Test shall be performed in compliance with all Environmental Requirements

and in accordance with the capacity demonstration testing guidelines in Appendix I and the Test Protocol agreed under Section 9.1.

9.5 **PEF's Right to Observe Testing:** PEF shall have the right to observe all Capacity Tests and the right to receive copies of the results of such tests. PEF may have representative(s) attend and be present during such testing.

9.6 **Effectiveness of Capacity Tests:**

9.6.1 No Capacity Test shall be deemed to be successful unless such Capacity Test demonstrates a Continuous Capability equal to or greater than the Minimum Capacity. At any time, the last Capacity Test performed (whether or not successful and whatever the Continuous Capability demonstrated) shall be the effective test as of such time.

9.6.2 If any Capacity Test demonstrates a Continuous Capability less than the Minimum Capacity, then Seller shall promptly take corrective action to restore the Continuous Capability to a level equal to or greater than the Minimum Capacity and shall reschedule a Capacity Test to demonstrate such Continuous Capability at a time approved by PEF (such approval not to be unreasonably withheld) as soon thereafter as practicable but in any event not less than five (5) Business Days nor more than fourteen (14) calendar days after receipt of notice of such rescheduled test by PEF. Any period following an unsuccessful Capacity Test until a successful Test is completed as provided herein shall be deemed to be an Unscheduled Outage.

10.0 INTERCONNECTION, DELIVERY OF ENERGY, COMMITTED CAPACITY, ANCILLARY SERVICES, METERING

10.1 **Interconnection:**

10.1.1 Seller shall make all arrangements necessary to interconnect the Facility to the system of a third party or to the PEF transmission system, as applicable.

10.1.2 Without limiting the generality of Section 10.1.1, and as necessary in order to comply with Seller's obligations thereunder, at Seller's expense, Seller shall cause to be acquired, constructed, owned, operated and maintained, all facilities, infrastructures and property interests that are necessary for Seller to safely and reliably interconnect with and deliver all Energy and Capacity required to be delivered hereunder to the Receipt Point.

10.1.3 As between PEF and Seller, Seller shall (a) be solely responsible for all costs of interconnection to a third party transmission system, (b) be solely responsible for obtaining any credits against

transmission charges available from the third party related to such interconnection costs, and (c) retain all rights to any such credits.

10.1.4 If the Facility is directly interconnected to the PEF transmission system, the costs of such interconnection, including any transmission credits for such costs, shall be determined in accordance with PEF's open-access transmission tariff or an RTO or ISO or a similar organization open-access transmission tariff, as applicable.

10.2 Delivery of Energy, Committed Capacity:

10.2.1 This Section 10.2.1 shall apply (a) if the Facility is directly interconnected with the PEF system prior to the date service over the PEF transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff, or (b) if the Facility is not directly interconnected with the PEF system prior to the date service over the PEF transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff:

10.2.1.1 Seller shall deliver all Energy and Capacity required to be provided by Seller hereunder to the Receipt Point. Seller shall be responsible for all costs (including, losses pursuant to Section 10.2.1.2, balancing energy pursuant to Section 13.20 and congestion costs) associated with the delivery of such Energy and Capacity to the Receipt Point.

10.2.1.2 Seller shall be paid hereunder based upon the amount of Capacity and Energy delivered to the Receipt Point. Seller shall be responsible for all losses incurred to deliver such Energy and Capacity to the Receipt Point.

10.2.2 This Section 10.2.2 shall apply (a) if the Facility is directly interconnected with the PEF system beginning on the date service over the PEF transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff, or (b) if the Facility is not directly interconnected with the PEF system beginning on the date service over the PEF transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff:

10.2.2.1 PEF shall designate the Facility as a network resource or its replacement or equivalent under the RTO or ISO or a similar organization open-access transmission tariff, and shall pay the applicable access charge under the RTO or ISO or a similar organization open-access transmission tariff, provided that PEF only shall be responsible for

such charge to the extent it recovers the applicable transmission owner's or owners' transmission revenue requirements. If an access charge includes costs over and above the amount PEF is responsible for because of the Facility, such costs shall be allocated to Seller.

10.2.2.2 Seller shall deliver all Energy and Capacity required to be provided by Seller hereunder to the Receipt Point. Seller shall be responsible for all costs (including losses pursuant to Section 10.2.2.2, balancing energy pursuant to Section 13.20 and congestion costs) associated with the delivery of such Energy and Capacity to the Receipt Point.

10.2.2.3 Seller shall be paid hereunder based upon the amount of Capacity and Energy delivered to the Receipt Point. Seller shall be responsible for all losses incurred to deliver such Energy and Capacity to the Receipt Point.

10.3 **Third Party TSA:** If the Facility is not directly interconnected with the PEF system:

10.3.1 Seller shall within seven (7) days of the date this Agreement is executed, apply for any firm point-to-point transmission service required on a third party system to deliver all Energy and Capacity required to be provided by Seller hereunder to the Receipt Point. Seller shall use best efforts to enter into an agreement with such third party transmission provider for such firm point-to-point transmission service (the "Firm TSA"), and to obtain or have the third party transmission provider obtain any necessary Governmental Approvals of the Firm TSA, within one year of the date this Agreement is executed. Prior to executing the Firm TSA, or seeking or requesting the third party transmission provider to seek any necessary Governmental Approval of the Firm TSA, Seller shall seek PEF approval of the Firm TSA in the form to be executed or filed, such approval not to be unreasonably withheld. Prior to execution or filing, Seller shall use best efforts to revise the Firm TSA in such manner specified by PEF in its reasonable discretion, as provided in writing by PEF to Seller, provided that Seller shall not execute the Firm TSA or consent to any filing of the Firm TSA until such time as PEF grants approval of such execution or filing, such approval not to be unreasonably withheld. The Firm TSA shall provide Seller a right to terminate the Firm TSA effective on such date that transmission service over the third party's transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff.

- 10.3.2 Upon execution of the Firm TSA, Seller shall assign all scheduling, dispatch, and operational rights under the Firm TSA to PEF, including all rights to transmit all Energy and Capacity required to be provided by Seller hereunder to alternate points of delivery, pursuant to the Assignment of Firm TSA. As between PEF and Seller, PEF shall have the right to resell any unused transmission rights under the Firm TSA, and shall retain all revenues associated with any such sale.
- 10.3.3 Seller shall be responsible for all payment obligations under the Firm TSA and any additional payment obligations incurred for transmission service on the third party system. Subject to Section 10.3.4, Seller shall have the right to charge PEF for all costs incurred under the Firm TSA. Seller shall separately invoice PEF for all such costs charged to PEF for inclusion on the monthly invoice prepared pursuant to Section 7.0.
- 10.3.4 Upon receiving notice from PEF, Seller shall terminate the Firm TSA on such date that transmission service over the PEF transmission system or the third party transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff, or any other subsequent date specified by PEF. Upon the termination of the Firm TSA, (a) Seller shall not charge, and PEF shall not pay, any costs subsequently incurred by Seller for transmission service on the third-party system, and (b) PEF shall retain all scheduling, dispatch, and operational rights associated with the Facility under the RTO or ISO or a similar organization open-access transmission tariff.
- 10.4 **Metering:** Metering equipment necessary for determining the Energy and Capacity (real and reactive) for billing purposes shall comply with the metering requirements for the Facility under the Interconnection Agreement, or the provisions of this Agreement, as applicable. Metering equipment shall include, but not be limited to, MWh and kvar meters, metering cabinets, metering panels, conduits, cabling, metering units, current transformers and potential transformers directly or indirectly providing input to meters or transducers, meter recording devices, telephone circuits, signal or pulse dividers, transducers, pulse accumulators and any other equipment necessary to implement the provisions of this Agreement. All Energy meters for billing purposes will be revenue billing grade devices that meet Good Engineering and Operating Practices standards. All instrument transformers used for metering will be metering class devices with an accuracy of at least +/- 0.3%. Current transformer ratios will be chosen to measure minimum power within the devices accuracy range. PEF shall, at Seller's expense, design, own, purchase, install and maintain such metering equipment unless PEF agrees in writing to allow another party to design, own, purchase, install or maintain the metering equipment. PEF shall have

approval rights over design and location of such installations. Seller shall be responsible for securing adequate space for such installations and shall assure PEF reasonable access to all metering equipment if installed at a facility other than a facility owned by PEF. *[Applicability may vary based on location of Seller's facility and whether directly interconnected to PEF's transmission system.]*

- 10.4.1 A primary meter and associated recording device shall measure and record the flow of Energy and Capacity (real and reactive) associated with the Facility. The meter shall measure the unidirectional watt-hour and var-hour quantities (or other quantities required by PEF) and shall be used to determine the amount of Energy and Capacity received by PEF from the Seller.
- 10.4.2 A complete set of equivalent continuously operating redundant, back-up metering and recording devices shall be installed, at Seller's expense, and used for billing purposes only if the primary meters fail or are out of service for any reason.
- 10.4.3 PEF shall test, at Seller's expense, all metering equipment used to measure and record the receipt by PEF of Energy and Capacity for payment purposes. In those cases where PEF is not the owner of metering equipment used for measurement of Energy and Capacity for payment purposes, Seller shall test all such equipment in the presence of an PEF representative.
- 10.4.4 All metering equipment used by PEF for billing purposes pursuant to this Agreement shall be sealed and shall be opened only by PEF in the presence of a representative of Seller, provided Seller elects to be present pursuant to Section 10.4.6.
- 10.4.5 Seller shall be responsible for the costs incurred by PEF in maintaining and upgrading the metering equipment required pursuant to this Agreement.
- 10.4.6 At least every twelve (12) months and, in addition, upon reasonable prior notice by Seller or PEF, meter tests will be conducted in accordance with the provisions for meter testing in PEF's approved meter testing protocol. Seller may have a representative present during any metering inspection, test, or adjustment made by PEF. PEF shall provide Seller reasonable notice prior to such test, inspection, or adjustment. When, as a result of such a test, a meter is found to be no more than three tenths of one percent (0.3%) fast or slow because of incorrect calibration, no adjustment will be made in the amount paid to Seller for Energy and Capacity delivered to PEF. If the meter is found to be more than three tenths of one percent (0.3%) fast or slow, PEF will calculate the correct amount delivered to PEF for the actual period during which inaccurate measurements were

made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) months. The previous payments by PEF for this period shall be subtracted from the amount of payments that were calculated to have been owed under this Agreement. The difference shall be offset against or added to the next payment to either Party as appropriate under this Agreement.

- 10.5 **Transmission Rights.** Seller shall be entitled to any financial transmission rights allocated by an RTO or ISO or a similar organization associated with any transmission rights Seller obtained from a third party transmission provider for the delivery of Energy and Capacity from the Facility to the Receipt Point. PEF shall be entitled to all other physical or financial transmission rights allocated by an RTO or ISO or a similar organization associated with the delivery of Energy and Capacity.

11.0 OPERATING REPRESENTATIVES

- 11.1 **Operating Representatives:** At least twelve (12) months prior to the Scheduled Capacity Delivery Date, each Party shall appoint a member and an alternate member as Operating Representatives, and provide notice of such appointments to the other Party. Such appointments may be changed at any time by similar notice. The respective Operating Representatives shall meet as necessary at a mutually agreeable time and place upon prior notice. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations of each respective power system. Seller's Operating Representative shall be in direct contact with the Facility Site if the Facility's operator is a different entity than Seller. The Operating Representatives shall represent the Parties in all matters arising under this Agreement which may be delegated to them by mutual agreement of the Parties.
- 11.2 **Duties:** The duties of the Operating Representatives shall include those specifically identified elsewhere in this Agreement, plus the following consistent with the provisions of this Agreement:
- 11.2.1 Coordinate operation outage schedules;
 - 11.2.2 Establish control and operating procedures;
 - 11.2.3 Provide a list of Operating Representatives of each Party; and
 - 11.2.4 Such other duties as may be conferred upon them by mutual agreement of the Parties.
- 11.3 **Decisions/Disputes:** Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be referred by the

Operating Representatives to their principals for decision. All decisions and agreements made by the Operating Representatives or principals shall be evidenced in writing. The Operating Representatives shall have no authority to amend, modify, or waive this Agreement, and no such decision or agreement of the Operating Representatives shall be considered an amendment, modification or waiver of this Agreement, which only may be amended, modified, or waived as provided in Section 24.2.

12.0 PRE-OPERATION PERIOD

12.1 Design, Engineering, Procurement, and Construction of Facility:

Seller shall design, engineer, procure, and construct the Facility in accordance with Good Engineering and Operating Practices, including Environmental Requirements, and shall ensure that all equipment to be installed in the Facility shall be suitable for the use intended, and shall meet the requirements of applicable codes and standards. During the design, engineering, procurement and construction of the Facility, Seller shall provide to PEF such information as PEF may reasonably request regarding the design, engineering, procurement, and construction of the Facility.

12.2 Provision of Information:

12.2.1 Seller shall update and maintain the CPM Schedule as a detailed, integrated schedule for the development, permitting, design, engineering, procurement, construction, testing, and completion of the Facility, which shall identify key milestone dates and activities consistent with the Milestones and Milestone Dates set forth on Appendix M.

12.2.2 Seller shall submit to PEF a start-up and test schedule for the Facility, at least twelve (12) months prior to start-up and testing of the Facility, identifying key start-up and testing dates and activities and Fuel quantity and schedule requirements and proposed energy schedules.

12.2.3 Promptly after becoming aware that a Milestone Date reasonably could be expected to be missed, and in any event no later than five (5) Business Days after any missed Milestone Date, Seller shall notify PEF and shall submit to PEF for its review and comment a written recovery plan setting forth in reasonable detail, and with reasonable supporting documentation, (a) the causes and expected duration of the delay, and (b) Seller's plan to recover lost time and achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date.

12.2.4 Each calendar month until the Capacity Delivery Date, Seller shall submit progress reports in a form reasonably satisfactory to PEF,

attaching reasonable supporting documentation and including an updated CPM Schedule, indicating percentage completion of each major task, including each Milestone, and reporting on any potentially significant developments that may delay the construction schedule, including the achievement of any Milestone (including the Capacity Delivery Date) and, if Seller shall have missed a Milestone Date and PEF shall not have exercised Step-In Rights or, with respect to a Major Milestone, terminated this Agreement, updating PEF on Seller's progress in returning to the Milestone Date schedule set forth on Appendix M and in achieving the Capacity Delivery Date by the Scheduled Capacity Delivery Date.

- 12.3 **Development of Operating Procedures:** Seller and PEF shall mutually develop written system operating procedures no later than sixty (60) calendar days prior to the Initial Synchronization Date. The operating procedures shall be consistent with the requirements of this Agreement and will be intended as a guide for how to integrate the Facility's Energy and Capacity into PEF's electrical system. Topics covered shall include, but not necessarily be limited to, dispatch procedures, including dispatch procedures during system emergencies; deliveries of Energy during start-up and testing of the Facility; the method of day-to-day communications between the Facility operators and the PEF system operators; key personnel lists for both Seller and PEF operating centers; clearance and switching practices; outage scheduling; daily Available Capacity and Energy reports; and Facility operations log and reactive power output. The Operating Representatives, designated pursuant to Section 11.1, shall be responsible for developing and modifying, from time to time, these operating procedures in writing to reflect agreed upon changes.
- 12.4 **Submission of Operation and Maintenance Plans:** Prior to the Initial Synchronization Date, Seller shall deliver an initial schedule and operation and maintenance plan covering the first five (5) Agreement Years. Such plan shall address ongoing maintenance, reliability, environmental compliance, spare parts inventory, and shall include an operation and maintenance plan for less frequent major overhaul work when required on the Facility's generator, turbine, boilers and auxiliary equipment, including spare parts replacements. Seller shall, at Seller's expense, cause an independent party with recognized experience in the electrical generation industry as may be chosen by Seller and approved by PEF (which approval shall not be unreasonably withheld) to conduct a review of the proposed operation and maintenance plan to ascertain whether such plan is (a) effective and consistent with Good Engineering and Operating Practices and (b) adequate to allow the Facility to operate reliably in accordance with this Agreement. Seller shall provide PEF an updated plan meeting the requirements of this Section 12.4 by the last day of each May

with respect to the succeeding five (5) Agreement Years or the remaining Agreement Term, if less.

12.5 **Approval of Operation and Maintenance Plan:** The evaluation of the initial operation and maintenance plan by the independent party specified in Section 12.4 shall be provided to PEF, in writing, at least sixty (60) calendar days prior to the Initial Synchronization Date. Seller shall make all changes to the proposed operation and maintenance plan developed pursuant to Section 12.4, which the independent party determines are necessary for such plan to be (a) effective and consistent with Good Engineering and Operating Practices, (b) consistent with the requirements of this Agreement, and (c) adequate to allow the Facility to operate as specified in this Agreement unless (i) Seller disagrees with such determination(s), (ii) Seller provides PEF with a written explanation of the basis for such disagreement and the basis for Seller's belief that the proposed change is not needed to assure the reliable operation of the Facility as specified in Section 12.4 or is inconsistent with Good Engineering and Operating Practices or this Agreement, and (iii) (A) PEF concurs, or (B) a second qualified independent engineering firm which shall be chosen by Seller and approved by PEF (which approval shall not be unreasonably withheld) concludes, and provides a reasonable explanation thereof, that the change recommended by the first qualified independent engineering firm (x) is not needed under Good Engineering and Operating Practices, (y) is inconsistent with this Agreement, or (z) is not needed to assure the reliable operation of the Facility as specified in this Agreement. Seller shall perform Facility maintenance in accordance with such plan; provided, that Seller may vary from such plan when necessary due to changed circumstances, if said variance is required by Good Engineering and Operating Practices. Seller shall notify PEF within five (5) Business Days any such change, including a detailed explanation of the change, the reasons for the change, and the expected impact on Facility operations or maintenance, and shall provide to PEF such supporting documentation as PEF reasonably may require.

12.6 **Initial Synchronization Date:** Seller shall provide notice to PEF confirming the Initial Synchronization Date no less than six (6) calendar months prior to such date, which synchronization shall not occur before the date on which all protective equipment shall have been installed and tested and is operating as required by this Agreement or the Interconnection Agreement. PEF shall have the right to have representatives present and witness the synchronization at such time. Seller shall notify PEF immediately upon any change in the Initial Synchronization Date, and in no event shall synchronization occur without PEF's prior approval, which shall not be unreasonably withheld or delayed.

12.7 **Public Notice and Outreach:**

12.7.1 Seller shall use commercially reasonable efforts to undertake public outreach activities with the local community. Such outreach activities shall be designed to enhance, and implemented in a manner which reasonably could be expected to enhance, the likelihood that the Facility will receive all local Governmental Approvals required to construct, test, operate and maintain the Facility in a timely manner. PEF, in its sole and absolute discretion, may elect to review and assist with such outreach activities, but such assistance, if undertaken, shall not be construed to limit Seller's obligations hereunder or to create any liability on the part of PEF.

12.7.2 Seller shall comply with all public notice and publication requirements under Applicable Laws.

13.0 DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY

13.1 **Technical Requirements:** Power supplied by Seller hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of [____ kV] and power factor dispatchable and controllable in the range of 85% lagging to 90% leading as measured at the high side of the generator step-up transformer to maintain system operating parameters, as specified by PEF, with a net generation Capacity equal to the Committed Capacity. *[Insert voltage appropriate to interconnection point.]*

13.2 **System Protection:** Seller shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, PEF's system. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal operation, testing and repair. Seller shall have qualified personnel test and calibrate all system protective equipment at regular intervals not to exceed twenty-four (24) months. A unit functional trip test shall be performed after each overhaul of a turbine, generator or boilers prior to returning the equipment to service. The specifics of the unit functional trip test shall be as recommended by the manufacturers, in accordance with applicable codes and standards (e.g., NFPA 85) and otherwise consistent with Good Engineering and Operating Practices and as agreed by the Parties. If, at any time, PEF has reason to doubt the integrity of the Facility's system protective equipment and reasonably suspects that such loss of integrity would in any way jeopardize the reliability of the PEF system or PEF's supply of electric energy to its customers, Seller shall be required to demonstrate to PEF's satisfaction the correct calibration and operation of the equipment in question.

- 13.3 **Additions, Deletions and Alterations:** Seller shall not, without prior written approval of PEF, make or cause to be made any additions, deletions or alterations to the Facility's protective equipment, which equipment is necessary for or would affect the safety, reliability or integrity of PEF's system or PEF's supply of electric Energy to its customers.
- 13.4 **Reconnection with PEF System:** If the Facility is separated from the PEF system for any reason, under no circumstances shall Seller reclose into PEF's system without first obtaining PEF's specific approval in each instance, in the appropriate form, as determined by the Operating Representatives. Seller has no right of connection to the PEF system absent PEF's express direction to do so.
- 13.5 **Fuel Supply and Transportation:**
- 13.5.1 PEF shall deliver or cause to be delivered to Seller at the relevant Gas Delivery Point all quantities of Primary Fuel required by Seller (i) to generate Energy during a dispatch period pursuant to the relevant scheduling and dispatch notices and (ii) to perform start-ups in response to relevant scheduling and dispatch notices following a shutdown.
- 13.5.2 PEF shall be responsible for and bear all costs and expenses related to all transportation (and/or loss including evaporation) of Primary Fuel to the relevant Gas Delivery Point on one or more transporter(s) as determined in PEF's sole discretion. Seller shall be responsible for and bear all costs and expenses related to the transportation (and/or loss) of Primary Fuel from and after the relevant Gas Delivery Point.
- 13.5.3 Seller shall maintain at all times in on-site storage facilities at the Facility Site sufficient quantities of Back-up Fuel to operate the Facility solely on Back-up Fuel for a minimum of seventy two (72) continuous hours at the Committed Capacity. Seller shall replace any Back-up Fuel so consumed promptly and in any event within seventy-two (72) hours. Seller acknowledges that, failure to comply with this Section 13.5.3 shall constitute a material breach of this Agreement.
- 13.5.4 At Seller's expense, Seller shall cause to be acquired, constructed, owned, operated and maintained, all facilities, infrastructures and property interests that are necessary for Seller to receive and use Primary Fuel delivered by PEF at the Gas Delivery Point so as to enable the Facility to produce Energy and Capacity as committed to PEF under this Agreement including without limitation all costs associated with the construction and operation of the gas pipeline lateral(s) necessary to connect the Facility to the gas pipeline(s) of the Primary Fuel supplier and which enables either Seller or PEF

as applicable to enter into a gas interconnect agreement with the gas transportation pipeline for such deliveries.

- 13.5.5 Seller agrees to accept at the Gas Delivery Point any Primary Fuel meeting the minimum quality requirements for delivered Primary Fuel under the applicable gas transportation provider's FERC gas tariff and the applicable transportation agreements.
- 13.5.6 The Parties shall exercise best efforts to minimize any gas imbalances or other penalties or charges from transporters of Primary Fuel delivered to the Facility ("Imbalance Charges"). If PEF or Seller receives an invoice from a transporter for Imbalance Charges, the Parties shall determine the cause for such charges. To the extent that the Imbalance Charges were incurred as a result of PEF's actions or inaction, then PEF shall pay such Imbalance Charges. To the extent that the Imbalance Charges were incurred as a result of Seller's actions or inaction, then Seller shall pay such Imbalance Charges. Imbalance Charges that are not due to the action or inaction of PEF or Seller or whose cause cannot be determined shall be shared equally by PEF and Seller.
- 13.5.7 All Primary Fuel supplied by PEF pursuant to this Agreement shall be measured at the Gas Delivery Point. Measurement shall be determined by the Gas Interconnection Meters. PEF shall retain title to Primary Fuel provided by PEF consistent with PEF's scheduling and dispatch notices. The title to all energy generated by the Facility as a result of the conversion of such Primary Fuel to Energy in the Facility shall vest in PEF immediately upon generation thereof and pursuant to this Agreement; Seller shall make the Facility available to PEF to convert PEF's Primary Fuel to PEF's Energy. Notwithstanding the foregoing, risk of loss of Primary Fuel supplied by PEF pursuant to this Agreement shall transfer from PEF to Seller at the Gas Delivery Point and Seller shall bear the risk of loss of energy generated at the Facility until it is transferred from Seller to PEF at the Receipt Point.
- 13.5.8 Custody and Control to all Primary Fuel delivered under this Agreement shall pass from PEF to Seller at the Gas Delivery Point. As between the Parties, PEF shall be deemed to be in exclusive possession and control of the Primary Fuel delivered under this Agreement, and responsible for any damage or injury caused thereby, prior to the time the Primary Fuel is delivered at the Gas Delivery Point. After delivery of the Primary Fuel to the Gas Delivery Point, as between the Parties, Seller shall be deemed to be in exclusive possession and control and responsible for any injury or damage caused thereby.

13.6 **Control of Facility:**

- 13.6.1 Seller shall operate the Facility consistent with PEF's Dispatch and Control Rights. Control of the Facility will either be by Seller's manual control under the direction of PEF (whether orally or in writing) or by Automatic Generation Control by PEF's system control center as determined by PEF. PEF shall have Dispatch and Control Rights to control the Facility within the Facility Operating Capabilities up to [___ MW] above the Level 1 Available Capacity so as to be able to receive the Level 1 Available Capacity on an integrated hourly basis and to schedule the voltage desired by PEF for the Facility to maintain. *[Insert number of MW appropriate to Proposer's facility.]*
- 13.6.2 PEF may from time to time request that the real power output be equal to the Peaking Capability of the Facility but shall not require the real power output of the Facility to be below the Minimum Load without Decommithing the Facility. Seller shall meet this request or, within ten (10) calendar days, notify PEF of the engineering or operational circumstances which prevented Seller from complying with PEF's request. PEF's request shall be made orally with as much prior notice to Seller as practicable. Failure to operate at any point above the highest operating level specified in Appendix A pursuant to such request shall not be deemed to be an Unsheduled Outage.
- 13.6.3 PEF's exercise of its rights under this Section 13.6 shall not give rise to any liability on the part of PEF, including any claim for breach of agreement or for breach of any covenant of good faith and fair dealing.
- 13.7 **Notice of Shutdown:** Seller shall Decommit the Facility whenever directed to do so by PEF, whether orally or in writing. For purposes of exercising its Dispatch and Control Rights, PEF agrees that the minimum notice period between an PEF request to Decommit and the time at which the Facility shall have completed shutdown shall be [___ hours] and the minimum run time between Successful Start-up and shutdown shall be [___ hours] *[Insert minimum shutdown notice and minimum run time from Proposer's submission.]* Such notice and timing limitations shall not apply (a) to the extent determined by PEF to be necessary for safe and reliable operation and maintenance of any part of PEF's system, or (b) if PEF determines that a failure to interrupt or reduce deliveries of Energy is likely to endanger life or property, or result in significant disruption of electric service to PEF's customers. In the event PEF requests Seller to Decommit the Facility with less than [___ hours] *[Insert minimum notice and minimum run time from Proposer's submission.]*; Seller shall make all reasonable efforts to comply with such request.
- 13.8 **Startup of Facility:** Seller shall Commit the Facility whenever directed to do so by PEF, whether orally or in writing. For purposes of exercising

its Dispatch and Control Rights, PEF agrees that the minimum notice period between an PEF request to Commit and the time at which the Facility shall have met its assigned Ready for Control shall be [____ hours] and the minimum run time between Successful Start-up and shutdown shall be [____ hours] *[Insert minimum shutdown notice and minimum run time from Proposer's submission.]* Such notice timing limitations shall not apply (a) to the extent determined by PEF to be necessary for safe and reliable operation and maintenance of any part of PEF's system, or (b) if PEF determines that a failure to start up the Facility is likely to endanger life or property, or result in significant disruption of electric service to PEF's customers. In the event PEF requests Seller to Commit the Facility with less than [____ hours] *[Insert minimum startup notice and minimum shutdown time from Proposer's submission.];* Seller shall make all reasonable efforts to comply with such request.

- 13.9 **Projections of Available Capacity:** During the term of this Agreement, Seller shall provide PEF, on a daily basis, projections of the Available Capacity, Level 1 Available Capacity, and the Capacity associated with any Other Operating Mode, for each hour of the current day and the next six (6) days. Such estimates shall be furnished by 8:00 A.M. EPT., each day, unless otherwise agreed in writing by the Parties, and shall be updated on a daily basis by 3:00 P.M. EPT each day. Notwithstanding the above, Seller shall keep PEF informed at all times including but not limited to periods of Decommittment as to any change in the generation capability of the Facility, including Available Capacity, Level 1 Available Capacity, any Unscheduled Outages, including Level 1 Unscheduled Outages, or any unscheduled outages associated with any Other Operating Mode and applicable Scheduled Outages, as well as any Fuel-related operating, or maintenance concerns that could affect the generation capability of the Facility.
- 13.10 **Estimated Schedule of Operations:** PEF shall, by 10:00 A.M. EPT. each day, provide Seller with an estimated schedule of operations for the next day, consistent with the Facility Operating Capabilities, including a Ready for Control, if applicable. Notwithstanding such estimated schedule, PEF shall have the exclusive right to schedule the Facility for the delivery of Capacity, Energy and/or Ancillary Services at any time, including on a day-ahead, hour-ahead and real-time basis within the Facility Operating Capabilities. If the Facility fails to meet the Ready for Control specified by PEF, Seller shall declare the difference between the scheduled Ready for Control and the actual Ready for Control an Unscheduled Outage of the Facility, provided the specified Ready for Control was within the Facility Operating Capabilities of the Facility and consistent with Section 13.7 and Section 13.8.
- 13.11 **Failure to Achieve Operating Levels:**

- 13.11.1 For purposes of calculating the Capacity payment, for each instance where Seller fails, after oral notification from PEF, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the operating level requested by PEF up to the Available Capacity, the difference between Available Capacity and the actual operating level shall be designated an **Unscheduled Outage** for the Facility for the previous twenty-four (24) hour period.
- 13.11.2 For purposes of calculating the Capacity payment, for each instance where Seller fails, after oral notification from PEF, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the Level 1 Available Capacity, the difference between the Level 1 Available Capacity and the actual incremental Capacity provided above the Base Operation Mode shall be designated an **Unscheduled Outage** for the Facility for the previous twenty-four (24) hour period.
- 13.12 **Outages:** No later than [_____] of the calendar year prior to the Scheduled Capacity Delivery Date, and no later than April 1 of each year thereafter during the Agreement Term, Seller shall submit to PEF, in writing, Seller's preliminary desired scheduled outages for the following five (5) calendar years and a detailed maintenance plan for the first calendar year of the five (5) calendar year schedule ("Scheduled Outages"); provided, that under no circumstances shall Seller be permitted to request Scheduled Outages during the Peak Months. Following the Capacity Delivery Date, Seller may request PEF's approval for additional outages for the purpose of performing work on specific components of the Facility that would limit the Facility's output and which should not, in the reasonable opinion of Seller, be postponed until the next Scheduled Outage (a "Maintenance Outage"). In no event shall the total of requested Scheduled Outage Hours and Maintenance Outage Hours exceed the total number of Planned and Maintenance Outage Hours included in (and as defined in) Appendix G in any calendar year. The preliminary outage schedule submitted April 1 of each year may be revised by Seller by August 15 of each year. By October 31 of each year, PEF shall notify Seller whether the requested Scheduled Outages are acceptable. If PEF cannot accept any of the requested Scheduled Outages or Maintenance Outages, PEF shall advise Seller of the time period closest to the requested period(s) when the outage(s) can be scheduled. Such approval of Scheduled Outages and Maintenance Outages shall not be withheld unreasonably. In the event PEF requests Seller to change a Scheduled Outage or Maintenance Outage after PEF has approved Seller's outage schedule for such year, Seller shall make all reasonable efforts to comply with such request. Except as may be specified within this Section 13.12, Seller shall perform Facility maintenance in accordance with the outage schedule and maintenance plan as approved by PEF. PEF shall have the

right, upon giving twelve (12) months prior notice to Seller, to change the months that shall be treated as Peak Months, provided, however, the total number of Peak Months in a calendar year shall never be greater than seven (7).

13.13 **Maintenance of Records:** Each Party, respectively, shall keep and maintain complete and accurate records and all other data required by each of them and by applicable Governmental Authorities for the purposes of proper administration of this Agreement.

13.13.1 Seller shall maintain an accurate and up-to-date operating log at the Facility with records of (a) real and reactive power production for each clock hour; (b) changes in operating status, Scheduled Outages, Maintenance Outages and any other outages and deratings using the latest version of the NERC operating guidelines; and (c) any unusual conditions found during inspections.

13.13.2 Seller shall maintain accurate maintenance records showing work history and schedule for all scheduled and unscheduled maintenance work performed.

13.13.3 Starting with the second (2nd) calendar month immediately following the Initial Synchronization Date, Seller shall provide a report to PEF by the fifteenth (15th) calendar day of each calendar month, utilizing the format detailed in Appendix D, as may be revised by PEF from time to time.

13.13.4 Either Party shall have the right from time to time, and upon at least fourteen (14) calendar days' notice to the other Party, to examine the records and data of the other Party relating to this Agreement during the period the records are required to be maintained.

13.14 **Reports, Etc.:** During the financing term and to the extent that Seller has access, Seller will ensure that PEF receives copies of any construction progress reports, maintenance evaluations or maintenance reports and environmental compliance reports to be provided to any third party with a financial security interest in or lien on the Facility, including evaluations or reports generated at the request of such third party or performed by a consultant engaged by such third party.

13.15 **Qualified Personnel:** During the term of this Agreement, Seller shall employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such with PEF. Seller shall ensure that such personnel are on duty at the Facility Site at all times, twenty-four (24) hours every calendar day during the term of this Agreement.

- 13.16 **Compliance with Reliability Requirements:** The Parties recognize that PEF is a member of NERC and FRCC, and that, to ensure continuous and reliable electric service, PEF operates its system in accordance with the operating criteria and guidelines of NERC and/or FRCC or to the extent applicable an RTO or ISO or a similar organization. If an emergency is declared by PEF, PEF shall verbally notify Seller's personnel and, if requested by PEF, Seller's personnel shall place the Capacity of the Facility within exclusive control of PEF or its designee for the duration of such emergency.
- 13.17 **Emergency Plans:** Seller shall cooperate with PEF in establishing emergency plans, including recovery from a local or widespread electrical blackout, or a voltage reduction, in order to effect load curtailment, and other plans which may be necessary. Seller shall make technical references available concerning Start-up Times, black-start capabilities, black stop capabilities and minimum load carrying ability. In addition, Seller shall develop a hurricane preparedness plan. Such plan shall include but not be limited to operation of the Facility before, during and after experiencing hurricane conditions. PEF shall have the right to approve such hurricane preparedness plan prior to its implementation, which approval shall not be unreasonably withheld. Seller agrees that PEF's approval of such hurricane preparedness plan shall in no way create any liability for PEF nor shall such approval eliminate the need for Seller to perform its own due diligence to determine the adequacy of its hurricane preparedness plans.
- 13.18 **13.18. Cooperation During Emergency:** During an emergency, Seller shall supply Energy to PEF as required by PEF orally or in writing up to the Facility's Peaking Capability that PEF is able to receive. If the Facility has any Unscheduled Outages or Scheduled Outages during such an emergency, Seller shall make all good faith efforts to reschedule the outage(s) or, if the outage(s) has begun, expedite the completion thereof.
- 13.19 **Operation of Facility:**
- 13.19.1 Seller shall operate and maintain the Facility in accordance with Good Engineering and Operating Practices, including Environmental Requirements, and shall ensure that all equipment to be installed in the Facility shall be suitable for the intended purpose, and shall meet the requirements of applicable codes and standards.
- 13.19.2 Seller shall operate the Facility with all automatic controls (except the Automatic Generation Control) and protection equipment, speed governors and voltage regulators and safety interlock controls at the Facility in service whenever the Facility is connected to, or operated in parallel with, the PEF system.

The Automatic Generation Control shall be operated pursuant to PEF's Dispatch and Control Rights.

13.19.3 In no event shall Seller be entitled to compensation for any Energy generated by the Facility in excess of the level requested by PEF during any hour that the Facility's actual output exceeds the output level requested by PEF. All Energy payments shall be in accordance with Section 7.0.

13.20 **Responsibility for Imbalance Payments under RTO or ISO or a similar organization or Standard Electric Market Rules:** In the event that: (i) an RTO or ISO or a similar organization is established that owns or exercises operational control over PEF's transmission system; or (ii) FERC establishes or approves electric market rules ("Market Rules") that apply to PEF's system, then responsibility for imbalance or other payments associated with imbalances required to be paid by or to the RTO or ISO or a similar organization or under the Market Rules shall be as follows:

13.20.1 Seller shall be responsible for imbalance payments associated with Seller's failure to follow PEF's dispatch instructions issued pursuant to Section 13.0 or dispatch instructions of an RTO or ISO or a similar organization, in an amount equal to the sum of (a) the product of (i) the difference between Facility's actual output during each applicable hour and the output level requested by PEF or an RTO or ISO or a similar organization, multiplied by (ii) the positive difference, if any, of (x) price required to be paid by PEF to the RTO or ISO or a similar organization for any imbalance during such hour, minus (y) the price PEF would have paid Seller for the energy that Seller failed to deliver which caused the imbalance, plus (b) any other associated penalties, amounts or costs to PEF.

13.20.2 If Seller operates at the levels specified in PEF's dispatch instructions issued pursuant to Section 13.0, then Seller shall not be responsible for any imbalance payments.

13.21 **Seller as Operator:** Except with the prior written consent of PEF, Seller or an affiliate thereof shall be the sole operator of the Facility; provided, that Seller shall be entitled to appoint a qualified third-party operator in its place, with PEF's consent, such consent not to be unreasonably withheld. No appointment of an affiliate or third-party operator by Seller shall relieve Seller of any obligation or liability under this Agreement.

13.22 **Dispatch, Control, Operation and Maintenance of the Facility:** With respect to control, operation, and maintenance of the Facility, it is agreed by the Parties that Seller and not PEF is solely responsible for implementation of all control, operating and maintenance procedures which relate to the possession, control, use or custody of the Facility.

- 13.23 **Peak Hours.** PEF shall have the right to change the Peak Hours by providing Seller a minimum ninety (90) days notice. The total number of Peak Hours shall not exceed [] percent ([]%) of the total hours during a calendar year.

14.0 DATA ACQUISITION

- 14.1 **Installation of Equipment:** Except as may be provided in this Section 14.1 and Section 14.3, Seller shall, at its own expense, design, engineer, purchase, install, connect, operate, repair, maintain and own all telemetering equipment, the generator control unit and the generator control panel for the Facility as may reasonably be required in compliance with the specifications for such equipment and software set forth in Appendix J or as updated from time to time by PEF by notice to Seller in order to receive telemetry and to control the Energy and Capacity from the Facility as required to dispatch the Facility and to provide for the safe and reliable operation of PEF's electric system. Such equipment shall meet PEF's reasonable specifications for transmission of telemetered data to and from locations specified by PEF. Telemetering equipment shall include, but not be limited to, transducers, meters, test switches for transducers and meters, alternating current and direct current sources, telephone lines and interconnecting wiring with proper identification for supervisory and communication equipment. PEF shall, at Seller's expense, own, design, engineer, purchase, install, connect, terminate, repair, maintain, replace, relocate and remove a work station and/or remote terminal unit ("RTU") to link the Facility and PEF's system control center ("Plant RTU"). With respect to PEF's work station or Plant RTU, as the case may be, Seller shall (i) provide adequate space for, (ii) coordinate planning and installation of, and (iii) provide PEF twenty-four hour access each day to, such PEF's work station or Plant RTU.
- 14.2 **Data Acquisition Equipment:** The data acquisition equipment shall monitor analog and digital signals deemed necessary and shall meet PEF specifications set forth in Appendix J or otherwise reasonably determined as necessary from time to time by PEF to implement the provisions of this Agreement. Such data acquisition equipment and software shall be state-of-the-art at the time it is purchased, be compatible at all times with the computer master equipment and software receiving the telemetry signals (including Automatic Generation Control) and supply status information, MWh, voltage, MW and MVAR analog information, certified site data (at locations as agreed to by PEF) including dry bulb, wet bulb, or relative humidity and barometric pressure, as well as any other data reasonably required by PEF or Seller from time to time, with respect to the Facility. Such data acquisition equipment and software shall be separate from, or capable of operating independently of, any equipment and software of any person or entity other than Seller or any equipment and software of Seller other than the Facility located at the Facility Site. Data available on such data acquisition equipment shall not be accessible to any person or entity

other than Seller without the prior written approval from PEF. Seller agrees to treat as proprietary to PEF and confidential any and all data available on such data acquisition equipment.

- 14.3 **PEF Switchyard RTU:** If required by PEF, the PEF switchyard RTU shall be installed by PEF to provide interconnection telemetry exclusively to the PEF system control center. The PEF switchyard RTU shall be in addition to the Plant RTU provided for in Section 14.1, and any other RTUs which may be installed in the future to supply data to or from PEF. The PEF switchyard RTU shall, at Seller's expense, be owned, designed, engineered, purchased, installed, repaired, maintained, replaced, relocated or removed by PEF, subject to Seller approval.

15.0 RECORDS AND AUDITS

- 15.1 **Books and Records:** Seller's books, records and accounts, correspondence, accounting procedures and practices and any other supporting evidence pertaining to the Facility or this Agreement (all the foregoing hereinafter referred to as "Records") shall be open to inspection, audit and reproduction, during normal working hours by PEF or its authorized representative on three (3) Business Days prior notice, to the extent necessary to permit adequate evaluation and verification of any invoices, payments or claims based on Seller's actual costs incurred. For the purpose of evaluating or verifying such actual or claimed costs incurred or units expended, PEF and its authorized representatives shall have access to said Records from the Commencement Date until seven (7) years after the close of each Agreement Year to which such Records relate.

15.2 **Inspection; Construction; Environmental and Operating Records:**

15.2.1 Subject to Seller's reasonable safety and security requirements, PEF employees or its agents shall have the right to monitor the licensing, permitting, construction, start-up, testing, and commissioning of the Facility, either onsite or off-site. Seller shall comply with all reasonable requests of PEF for information resulting therefrom.

15.2.2 PEF-authorized representatives may, from time to time during normal business hours and with reasonable advance written or verbal notice, have access to the Facility to inspect the environmental and operation and maintenance records of the Facility or for other purposes necessary to determine Seller's performance under the terms of this Agreement, provided that PEF's inspections do not unreasonably interfere with Seller's operation and maintenance of the Facility.

- 15.3 **PEF Audit Rights:** Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by PEF during and after

completion of construction of the Facility. PEF or its authorized representative shall have access during normal working hours to all necessary facilities of Seller, and shall be provided adequate and appropriate work space, in order to conduct the audits in compliance with the provisions of this Section 15.0.

- 15.4 **PEF Access to Records:** Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require PEF to evaluate whether the Seller must be consolidated, as a variable interest entity (as defined in FIN 46R), in the financial statements of PEF. Seller agrees to fully cooperate with PEF and make available to PEF all financial data and other information, as deemed necessary by PEF, to perform that evaluation on a timely basis upon execution of this Agreement and periodically as required by FIN 46R. If the result of the evaluation under FIN 46R indicates that Seller must be consolidated in the financial statements of PEF, Seller agrees to provide financial statements, together with other required information, as determined by PEF, for inclusion in disclosures contained in the footnotes to the financial statements and in PEF's required filings with the Securities and Exchange Commission ("SEC"). This information must be received by PEF in a timeframe consistent with PEF's earnings release and SEC filing schedules, to be determined at the sole discretion of PEF. Additionally, Seller agrees to fully cooperate with PEF and its independent auditors in completing an assessment of Seller's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of PEF.

16.0 INSURANCE

- 16.1 **Liability Insurance:** Seller shall procure or cause to be procured a policy or policies of liability insurance issued by an insurer satisfactory to PEF on a standard "Insurance Services Office" commercial general liability form, or an Associated Electric and Gas Insurance Services ("AEGIS") form or other industry form acceptable to PEF. Said policy(ies) shall cover liabilities which might arise under, or in the performance or nonperformance of, this Agreement. A Certificate of Insurance shall be delivered to PEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, said policy(ies) shall contain (i) an endorsement providing coverage, including products liability/completed operations coverage for the term of the Agreement, and (ii) a broad form contractual liability endorsement for PEF Entities. Effective at least fifteen (15) calendar days prior to the Initial Synchronization Date, the policy(ies) shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards.

- 16.2 **Coverage Required:** The policy(ies) described in Section 16.1 shall have a limit of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, combined single limit, for personal injury, bodily injury (including death), and property damage; provided, that in the event that such insurance becomes totally unavailable or procurement becomes commercially impracticable, such unavailability or impracticability shall not constitute an Event of Default under this Agreement, but PEF and Seller shall enter into negotiations to develop substitute protection for PEF Entities which PEF, in its reasonable judgment, deems adequate. Any premium assessment or deductible shall be for the account of Seller and not PEF Entities.
- 16.3 **Conditions of Coverage:** In the event that the policy(ies) is on a "claims made" basis, the retroactive date(s) of the policy(ies) shall be the Commencement Date or such other date as to protect the interests of PEF Entities. Furthermore, if the policy(ies) is on a "claims made" basis, Seller's duty to provide such coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort; if coverage is on an "occurrence" basis, such insurance shall be maintained by Seller during the entire period of interconnection and performance by the Parties under this Agreement. The policy(ies) shall not be canceled or materially altered without at least thirty (30) calendar days' written notice from the insurer to PEF. Coverage must be reasonably acceptable to PEF.
- 16.4 **PEF as Additional Insured, Etc.:** Depending on the policy procured by Seller, and with PEF's concurrence, PEF Entities shall be designated either as an additional named insured or as an additional insured for all policies specified in Section 16.1, and each policy(ies) shall be endorsed to be primary to any insurance which may be maintained by, or on behalf of, PEF Entities. All policies shall include waivers of subrogation in favor of PEF Entities.
- 16.5 **Property Insurance:** Seller shall procure or cause to be procured "All Risk" property insurance, including boiler and machinery insurance, in an amount equal to the replacement cost of the Facility to provide comprehensive coverage for the Facility. Such policy(ies) shall include waivers of subrogation in favor of PEF Entities.
- 16.6 **Environmental Pollution Liability Insurance:** Seller shall procure or cause to be procured environmental pollution liability insurance, which shall include clean up, bodily injury and property damage for existing and new pollution conditions both on and offsite. Such insurance shall be in an amount of no less than Ten Million Dollars (\$10,000,000.00) per occurrence and in the policy aggregate and contain a deductible of no more than One Million Dollars (\$1,000,000.00) per occurrence. Environmental pollution liability may be written on claims made form. PEF Entities shall be designated as an additional insured for such

policy(ies), and such policy(ies) shall be endorsed to be primary to any insurance which may be maintained by, or on behalf of, PEF Entities. Such policy(ies) shall include waivers of subrogation in favor of PEF Entities.

- 16.7 **Copies of Policies:** Certificates of insurance or a copy of the policy(ies) referenced in Sections 16.1, 16.5, and 16.6 shall be made available for inspection by PEF at Seller's offices upon reasonable advance notice to Seller.

17.0 COMPLIANCE WITH LAWS, RULES AND REGULATIONS

- 17.1 **Compliance with Applicable Laws:** Seller shall operate and maintain the Facility in compliance with all Applicable Laws.

- 17.2 **Governmental Approvals:** Seller agrees to seek, obtain, maintain, comply with and, as necessary, renew, replace, or modify from time to time, and in a timely manner, any and all Governmental Approvals, including Environmental Licenses, which are required by Applicable Law as prerequisites to engaging in the activities envisioned by this Agreement. The cost of compliance with all Governmental Approvals, including Environmental Licenses, which are required by Law is the Seller's sole responsibility.

- 17.3 **Design and Permitting:**

17.3.1 Seller shall design, engineer, procure, construct, operate and maintain the Facility, and shall obtain and maintain Governmental Approvals and environmental emission allowances, credits or approvals on terms and conditions, such that Seller will be in compliance with, and the Facility will be designed, engineered, constructed, procured, operated and maintained, in accordance with the requirements of this Agreement (including pursuant to PEF's Dispatch and Control Rights) without violating Applicable Laws, including Environmental Requirements, and Seller shall not be excused from any obligation under this Agreement nor shall any right of PEF (including PEF's Dispatch and Control Rights) be limited because of any conflict between the requirements hereof and the requirements of Applicable Law, including Environmental Requirements, or because of any failure to obtain or maintain any Governmental Approval or environmental emissions allowance, credit or approvals. Seller shall notify PEF in writing of any Governmental Approvals that cannot be transferred due to sale or transfer of ownership.

17.3.2 Without limiting the generality of Section 17.1, 17.2, or 17.3.1, Seller shall design, engineer, procure, construct, test, operate and maintain the Facility, and shall obtain and maintain Governmental Approvals on terms and conditions, such that:

- (a) at the point in time when the Facility is Ready for Control, the Facility shall have full load-following capability equal to the Maximum Sustained Rate;
- (b) the Peaking Capability shall be not less than [____ MW] in the Winter Period and [____ MW] in the Summer Period *[Insert numbers of MW from Proposer's submission]*; and
- (c) the Facility shall operate in accordance with the Facility Operating Capabilities.

17.3.3 Seller shall use commercially reasonable efforts to obtain and maintain all Governmental Approvals required to allow, and shall design, engineer, procure, construct, and, subject to receipt of such Governmental Approvals, test, operate and maintain the Facility, such that:

- (a) the Facility shall be capable of operating on Back-up Fuel at the Committed Capacity for up to five hundred (500) hours per calendar year;
- (b) the Facility shall be capable of operating for a minimum of one hundred and eight (108) continuous hours at the Committed Capacity using Back-up Fuel stored at the Facility Site without replenishment;
- (c) the Facility shall be capable of achieving Successful Start-up operating solely on Back-up Fuel; and
- (d) the Facility shall be capable of switching from the Primary Fuel to the Back-up Fuel without interruption or diminution in output and without disconnecting from the transmission system.

17.4 **Environmental Reporting:**

17.4.1 Seller shall submit to PEF an annual environmental summary report describing the Facility's status and stating whether or not Seller is in compliance with all applicable Environmental Requirements and Environmental Licenses, including certification conditions under the Florida Electrical Power Plant Siting Act and the National Environmental Policy Act, if necessary. Such report shall be submitted annually, on or before the anniversary of the Commencement Date, or coincident with periodic reports to Governmental Authorities.

17.4.2 Seller shall notify PEF within five (5) Business Days of any violations or alleged violations of Environmental Requirements (as evidenced by agency warning letters, notices of violations, or similar written or verbal communications to or from any

environmental agency), describing the matter in reasonable detail, including the anticipated resolution, and attaching copies of such communications and Seller's responses, if any.

17.5 **Environmental Allowances:** Seller shall be responsible for obtaining, at its expense, all applicable environmental allowances, offsets or credits, if any, necessary under Applicable Law and Governmental Approvals required as of [] [NOTE; INSERT DUE DATE OF SUBMISSIONS] for the construction or operation of the Facility as required by this Agreement. Seller shall be responsible for obtaining at its expense all applicable environmental allowances, offsets or credits, if any, necessary under new Applicable Law and Governmental Approvals (i.e., Applicable Laws and Governmental Approvals that have been enacted after the date stated in the previous sentence of this paragraph).

17.6 **Rate Regulation:**

17.6.1 Notwithstanding anything to the contrary in this Agreement, if PEF, at any time during the term of this Agreement, fails to obtain or is denied the authorization of the FPSC, or the authorization of any other legislative, administrative, judicial or regulatory body which now has, or in the future may have, jurisdiction over PEF's rates and charges, to recover from its customers all of the payments required to be made to Seller under the terms of this Agreement or any subsequent amendment hereto, PEF may, at its sole option, adjust the payments made under this Agreement to the amount(s) which PEF is authorized to recover from its customers. In the event that PEF so adjusts the payments to which Seller is entitled under this Agreement, then, Seller may, at its sole option, terminate this Agreement upon one hundred-eighty (180) days notice to PEF. If such determination of disallowance is ultimately reversed and such payments previously disallowed are recovered, PEF shall pay all withheld payments. Seller acknowledges that any amounts initially received by PEF from its customers, but for which recovery is subsequently disallowed and charged back to PEF, may be offset or credited, against subsequent payments to be made by PEF to Seller under this Agreement.

17.6.2 If, at any time, PEF receives notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or will seek to prevent full recovery by PEF from its customers of all payments required to be made under the terms of this Agreement or any subsequent amendments to this Agreement, then PEF shall, within thirty (30) days of such notice, give notice thereof to Seller. PEF shall use reasonable efforts to defend and uphold the validity of this Agreement and its right to recover from its customers all payments required to be made by PEF hereunder, and will cooperate in any effort by Seller to intervene in any proceeding

challenging, or to otherwise be allowed to defend, the validity of the Agreement and the right of PEF to recover from its customers all payments to be made by it hereunder. The Parties do not intend this Section 17.6 to grant any rights or remedies to any third party(ies) or to any legislative, administrative, judicial or regulatory body; and this Section 17.6 shall not operate to release any person from any claim or cause of action which Seller may have relating to, or to preclude Seller from asserting, the validity or enforceability of any obligation undertaken by PEF under this Agreement.

- 17.7 **No Application to FERC:** This Agreement may be amended or modified only by an instrument in writing signed by both Parties. Unless the Parties mutually agree in writing, neither Party nor any affiliate thereof may make application to FERC, or any other Governmental Authority having jurisdiction over this Agreement, seeking any change in this Agreement pursuant to the provisions of Sections 205 or 206 of the Federal Power Act or under any other statute, regulation or other provision promulgated by a Governmental Authority, nor support any such application by a third party. Absent the agreement of the Parties to any proposed change, the standard of review for changes to any Section of this Agreement, whether proposed by a Party, a non-Party or FERC actions sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine). The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.

The Parties agree that, if and to the extent that FERC adopts a final Mobile-Sierra policy statement in Docket No. PL02-7-000 (“Final Policy Statement”), which requires that, in order to exclude application of the “just and reasonable” standard under the Mobile-Sierra doctrine, the Parties must agree to language which varies from that set forth in this Section 17.7, then, without further action of either Party, such Section shall be deemed amended to incorporate the specific language in the Final Policy Statement that requires the “public interest” standard of review

18.0 FORCE MAJEURE

- 18.1 **Force Majeure Relief:** Except as otherwise provided in this Agreement, each Party shall be excused, pursuant to the procedures set forth in this Section 18.0, from performance to the extent its nonperformance is caused by Force Majeure; provided, however, that Seller’s failure to perform

during hurricane conditions shall not be excused as Force Majeure in the event Seller has not acted in a diligent and prudent manner to adopt and implement a hurricane preparedness plan.

18.2 **Notice of Force Majeure, Etc.:**

18.2.1 In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall notify the other of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) for performance may be affected thereby. Such notice shall be given to the other Party as soon as practicable but in no event later than five (5) Business Days after the claiming Party's awareness of the Force Majeure, i.e., the effect of such event or circumstance, and in no event later than fifteen (15) days after the occurrence of such event or circumstance, and shall provide such substantiating documentation as may be required to verify such event or circumstances and its effects within fifteen (15) days of such notice. The Party claiming Force Majeure shall notify the other Party of the status of its efforts to remove or recover from such Force Majeure in such form and with such frequency as the other Party reasonably may request under the circumstances (but not less than weekly). When the Party claiming Force Majeure is able to resume performance of its obligations under this Agreement, such claiming Party shall give the other Party prompt notice to such effect.

18.2.2 The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. Prior to the Capacity Delivery Date, no event of Force Majeure shall be deemed to extend, or to excuse failure of Seller to achieve, any Milestone under Section 3.0, to extend the Schedule Capacity Delivery Date, or to excuse failure to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date, except to the extent such event of Force Majeure (a) substantially impairs a critical-path item on the CPM Schedule, and (b) cannot be overcome by revising, rearranging, expediting, or accelerating such CPM Schedule or by the payment of money to expedite or accelerate such CPM Schedule.

18.3 **Mitigation of Force Majeure:** Any Party suffering an occurrence of Force Majeure shall use commercially reasonable efforts to remedy the cause(s) preventing its performance of this Agreement as promptly as possible.

18.4 **Effect of Force Majeure on Capacity Payments:** If in any month the Available Capacity of the Facility is decreased with respect to any hour or Peak Hour as a result of Force Majeure, then:

18.4.1 Without limiting the generality of Section 18.3, Seller shall endeavor diligently to cause the Available Capacity of the Facility to be restored promptly to a level not less than the Minimum Capacity, and Seller shall cause a Capacity Test to be conducted as promptly thereafter as possible as provided in Section 9.0. Any whole or partial interruption or reduction in the Facility's Capacity to a level below Committed Capacity until the conclusion of such Capacity Test shall be deemed to be an Unscheduled Outage.

18.4.2 Upon conclusion of the Capacity Test, if the Continuous Capability is less than the Minimum Capacity, and if Seller provides to PEF evidence reasonably satisfactory to PEF that such shortfall is a direct consequence of such event of Force Majeure, and that Seller, notwithstanding Seller's efforts to mitigate the effects of such Force Majeure, has not been able to restore the Facility, then, until the earlier of the demonstration by Seller in a Capacity Test that the Continuous Capability is not less than the Minimum Capacity or the expiration of the Force Majeure Aggregate Allowance:

- (a) the Committed Capacity shall be deemed to be equal to the Continuous Capability demonstrated by the most recent Capacity Test;
- (b) Seller shall set the Available Capacity at a level not more than such Continuous Capability; and
- (c) PEF's Dispatch and Control Rights, and its payment obligations hereunder, shall be prorated accordingly.

18.5 **Limitation:** PEF at its option may terminate this Agreement as provided in Section 19.3 to the extent that (a) performance by Seller of its obligations hereunder shall have been excused pursuant to this Section 18.0 for a period in excess of the Force Majeure Aggregate Allowance, or (b) Seller shall have been excused pursuant to this Section 18.0 from achieving the Capacity Delivery Date by the Final Capacity Delivery Date.

19.0 DEFAULT AND TERMINATION

19.1 **Seller Events of Default:** Each of the following shall constitute an Event of Default by Seller:

19.1.1 Seller abandons construction or operation of the Facility;

19.1.2 Seller fails to achieve a Major Milestone by the corresponding Milestone Date (other than failure to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date) and Seller has failed to cure such failure within thirty (30) days of such Milestone Date;

- 19.1.3 Seller (a) fails to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date and fails to pay delay liquidated damages or otherwise fails to comply with the provisions of Section 3.2.3; or (b) fails to achieve the Capacity Delivery Date by the Final Capacity Delivery Date;
- 19.1.4 After the Capacity Delivery Date, the Facility fails to maintain a Capacity Billing Factor of at least sixty-four percent (64%);
- 19.1.5 The Facility fails to demonstrate a Continuous Capability at least equal to the Minimum Capacity in three successive Capacity Tests after the Capacity Delivery Date;
- 19.1.6 Seller sells electrical Energy, Capacity or Ancillary Services from the Facility to a third party other than as expressly provided in Section 6.4.1;
- 19.1.7 Seller fails to make a payment to PEF, including payment of any liquidated damages, that is not subject to a good-faith dispute within ten (10) days after notice from PEF that such payment is due under this Agreement;
- 19.1.8 If (a) a receiver or liquidator or trustee is appointed by order of a court of competent jurisdiction with respect to Seller or Seller's Guarantor, or a substantial portion of the assets of Seller or Seller's Guarantor; (b) Seller or Seller's Guarantor is adjudicated bankrupt or insolvent or a substantial portion of the assets of Seller or Seller's Guarantor are sequestered by decree of a court of competent jurisdiction; (c) a petition to declare bankruptcy or to reorganize Seller or its Guarantor pursuant to any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to Seller or Seller's Guarantor, as now or hereafter in effect, is filed against Seller or Seller's Guarantor; (d) Seller or Seller's Guarantor files a voluntary petition to declare bankruptcy or to reorganize pursuant to any bankruptcy law or insolvency law, or consents to the filing of any bankruptcy or reorganization petition against it under any similar law; or (e) without limitation of the generality of the foregoing, Seller or Seller's Guarantor files a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to Seller or Seller's Guarantor, as now or hereafter in effect, or Seller or Seller's Guarantor files an answer admitting the material allegations of a petition filed against it in such a proceeding;

- 19.1.9 Seller is in default of any material provision of this Agreement not specifically mentioned in this Section 19.1 and Seller has failed to cure such default within thirty (30) days after notice of such default from PEF to Seller; provided, that so long as such default of Seller is not a failure to pay money, (a) if it is not feasible to correct such default within thirty (30) days after PEF has delivered notice of such default to Seller, but it remains feasible to correct within sixty (60) days, and (b) if within ten (10) days after said notice from PEF, Seller provides PEF notice of its intention to cure such default and evidence that it remains feasible to correct such default within sixty (60) days after such notice from PEF, it shall not constitute an Event of Default hereunder until the earliest feasible date within such sixty (60) day period when a cure could be effected so long as (w) corrective action by Seller is instituted within ten (10) days following the notice from PEF, (x) such corrective action is diligently pursued, (y) Seller provides PEF bi-weekly written reports as to the nature and progress of such corrective action, and (z) such cure is effected within sixty (60) days of the notice from PEF; or
- 19.1.10 Seller fails to comply with the requirements of section 15.4 of this Agreement.
- 19.1.11 Seller fails to comply with the requirements of Section 16 of this Agreement;
- 19.1.12 Failure by Seller or its Guarantor to comply with or perform any agreement or obligation to be complied with or performed by it under Section 4 of this Agreement if such failure is continuing after any applicable grace period has elapsed;
- 19.1.13 The expiration or termination of any Guaranty, or any disaffirmation, disclaimer, repudiation or rejection, in whole or in part, or any challenge to the validity, of such Guaranty by Seller or its Guarantor, or any other set of circumstances whereby such Guaranty fails or ceases to be in full force and effect for the purpose of this Agreement (in each case, other than in accordance with such Guaranty's terms) prior to the satisfaction of all obligations of Seller without the written consent of PEF;
- 19.1.14 (i) The issuer of an outstanding letter of credit delivered to PEF pursuant to this Agreement fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) the issuer of such letter of credit fails to comply with or perform its obligations under such letter of credit if such failure is continuing after the lapse of any applicable grace period; (iii) the issuer of such letter

19.1.15

19.1.16 Any representation or warranty made by Seller herein is false or misleading in any material respect when made or when deemed made or repeated.

19.2 **PEF Events of Default:** Each of the following shall constitute an Event of Default by PEF:

19.2.1 PEF fails to make a payment due to Seller that is not subject to a good-faith dispute within ten (10) days after notice from Seller that such payment is due under this Agreement; or

19.2.2 If (a) a receiver or liquidator or trustee of PEF or of a substantial part of the assets of PEF is appointed by order of a court of competent jurisdiction; (b) by decree of such a court, PEF is adjudicated bankrupt or insolvent or a substantial part of the assets of PEF are sequestered; (c) a petition to declare bankruptcy or to reorganize PEF pursuant to any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to PEF, as now or hereafter in effect, is filed against PEF; (d) PEF files a voluntary petition to declare bankruptcy or to reorganize pursuant to any bankruptcy law or insolvency law, or consents to the filing of any bankruptcy or reorganization petition against it under any similar law; or (e) without limitation of the generality of the foregoing, PEF files a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to PEF, as now or hereafter in effect, or PEF files an answer admitting the material allegations of a petition filed against it in such a proceeding; or

19.2.3 Any representation or warranty made by PEF herein is false or misleading in any material respect when made or when deemed made or repeated.

19.3 **Termination for Prolonged Force Majeure:** To the extent any event or events of Force Majeure (a) excuse Seller from achieving the Capacity Delivery Date by the Final Capacity Delivery Date pursuant to the provisions of Section 18.0, or (b) after the Capacity Delivery Date, excuse

Seller from performing any of its material obligations hereunder pursuant to the provisions of Section 18.0 for four thousand, three hundred twenty (4,320) hours in the aggregate (whether resulting from the same or multiple events or circumstance and whether or not continuous) (the "Force Majeure Aggregate Allowance"): (i) PEF may terminate this Agreement without penalty or further liability for either Party upon thirty (30) days notice to Seller, and (ii) upon such termination, PEF shall return any undrawn Completion Security or Performance Security within ninety (90) days of the effective date of such termination.

19.4 **Remedies:** Upon the occurrence of any Event of Default, the non-defaulting Party may, at its option:

19.4.1 Terminate this Agreement without penalty or further obligation by the non-defaulting Party, by notice to the defaulting Party, and, if prior to the Capacity Delivery Date, Seller shall pay PEF liquidated damages as provided in Section 3.0;

19.4.2 Offset from any payment(s), due from the non-defaulting Party to the defaulting Party, any amount otherwise due from the defaulting Party to the non-defaulting Party;

19.4.3 In the case of an Event of Default by Seller, draw on the Completion Security or the Performance Security, as the case may be, in the amount of the non-defaulting party's damages (including liquidated damages payable under Section 3.0). For the avoidance of doubt, such damages may include but are not limited to any and all costs and expenses related to the supply and transportation of Primary Fuel to the Facility;

19.4.4 In the case of an Event of Default by Seller, PEF, at its option, may apply to any court of competent jurisdiction for the appointment of a receiver to take charge of, manage, preserve, protect, complete construction of, and operate the Facility, to make all necessary and needed repairs to the Facility, and to pay all taxes and assessments against the Facility and insurance premiums for insurance thereof, it being hereby agreed that, upon occurrence of an Event of Default, (a) PEF shall be entitled to such appointment; (b) upon application by PEF, the court may forthwith appoint such receiver with the usual powers and duties thereof; (c) Seller consents, and Seller shall not object to such appointment; and (d) appointment of a receiver under this Section 19.4 shall not in and of itself terminate this Agreement;

19.4.5 In the case of an Event of Default by PEF, then, notwithstanding the exclusivity requirement set forth in Section 6.4, Seller may cover PEF's obligations to pay for Capacity under this Agreement by selling such Capacity to a third party, in which event PEF shall pay to Seller, within twenty (20) days after Seller's invoice (with

such supporting documentation as may be required to verify such failure and the amounts set forth on such invoice), an amount equal to the amount, if any, by which the amount received by Seller from reselling such Capacity at the Receipt Point, acting in a commercially reasonable manner, is less than the amount required to be paid by PEF to Seller hereunder with respect to such Capacity ("Seller's Cost of Cover");

19.4.6 In the case of default by Seller under Section 19.1.6 "Sales to third parties" PEF will receive the higher of the profits from such unauthorized sale or PEF's costs to cover.

19.4.7 Exercise any other right or remedy available to it in equity or, subject to Section 19.5, any other right or remedy available to it hereunder or at law or in equity;

19.5 **Liquidated Damages:** The Parties acknowledge and agree that the damages which PEF would actually suffer as a result of (a) delay by Seller in achieving the Capacity Delivery Date by the Scheduled Capacity Delivery Date, or (b) termination of this Agreement upon Seller's failure to achieve a Major Milestone under Section 3.0, including failure to achieve the Capacity Delivery Date as provided therein, or upon any other Seller Event of Default prior to the Capacity Delivery Date, are now, and will in the future remain, incapable of determination with any mathematical precision or certainty, and that the mutually agreed liquidated damages required to be paid upon such failure hereunder (i) are in the nature of liquidated damages, (ii) are not unconscionable, (iii) do and will not constitute a conversion by or unjust enrichment of PEF, (iv) are unequivocal, fair and reasonable under the circumstances and not a penalty, (v) shall constitute PEF's sole and exclusive damages upon such delay or termination (PEF hereby waiving, in consideration of the right to such liquidated damages in such events, any rights it may have to seek damages in excess of such agreed delay or termination liquidated damages), and (vi) were bargained for and derived through mutual negotiations and agreement between Seller and PEF and constitute a material and integral part of the agreement between the Parties; provided, that nothing herein shall limit PEF's rights to seek any equitable remedies otherwise available to PEF; provided, further, that such liquidated damages shall not be PEF's sole and exclusive damages with respect to any default or Event of Default not expressly described in Section 3.2, with respect to which PEF shall continue to have all rights and remedies described herein; and provided, further, that during any period in which PEF has exercised Step-In Rights as provided in Section 5.1 and has not relinquished possession of the Facility and the Facility Site to Seller or terminated this Agreement pursuant to Section 19.3, Seller shall not be obligated to pay such liquidated damages.

19.6 **PEF's Cost of Cover:**

19.6.1 If Energy, Capacity, Energy Conversion Services, or Ancillary Services are not delivered or made available from the Facility at the Receipt Point due to Unscheduled Outage(s) or for any reason in breach of Seller's obligations hereunder and PEF in its absolute and sole discretion, for any reason it deems appropriate, or for no reason at all, elects to cover Seller's obligations under this Agreement from a third party:

- (a) unless Seller's failure is excused pursuant to Section 18.0, Seller shall pay to PEF, within ten (10) Business Days of Seller's submission to PEF of the Monthly Billing Statement, an amount equal to the amount, if any, by which the cost to PEF of obtaining such deliveries at the Receipt Point, acting in a commercially reasonable manner (including without duplication brokerage or other transaction costs, generation charges, fuel charges, reservation charges, start-up costs, transmission charges, transmission losses, and charges for ancillary services) exceeds the amount required to be paid by PEF to Seller hereunder with respect to such Energy or Capacity ("PEF's Cost of Cover");
- (b) any capacity used in the production of such replacement capacity or energy shall not be treated as Committed Capacity or Available Capacity for purposes of this Agreement unless purchased by PEF from an entity with an Investment Grade Credit Rating (or which has provided security equivalent to the security required to be provided by Seller hereunder) pursuant to a firm contract with a term not less than the remaining portion of the Agreement Term, which means, in any hour or Peak Hour, that neither such capacity nor the energy delivered by such entity in replacement of Energy or Capacity shall be treated as Committed Capacity, Available Capacity or as Energy delivered in such hour or Peak Hour hereunder, including for purpose of clauses (a)(i) of the definition of "Hourly Capacity Factor" or "Hourly Peak Capacity Factor"; and
- (c) PEF shall not have any obligation to obtain or continue such deliveries.

19.6.2 For avoidance of doubt, Seller shall have no right to substitute electrical capacity or energy, at the Receipt Point or otherwise, generated at any facility other than the Facility, for Capacity or Energy which Seller has failed for any reason to generate at the Facility and to deliver or make available at the Receipt Point.

19.7 **Survival of Rights; Remedies Cumulative.** No termination under this Section 19.0 (or otherwise under this Agreement) shall affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Agreement. Except as expressly provided in Section 19.5, the rights and remedies of the Parties hereunder shall not be exclusive of any other right or remedy available hereunder or at law or in equity and shall be cumulative.

20.0 INDEMNIFICATION

20.1 **Indemnification:** EACH PARTY (THE "INDEMNITOR") SHALL FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS ON AN AFTER-TAX BASIS THE OTHER PARTY AND EACH OF THE OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THE PARTNERS, MEMBERS, PARTICIPANTS, PRINCIPALS, REPRESENTATIVES, SHAREHOLDERS, DIRECTORS, TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS OF EACH OF THEM (THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL LOSSES, COSTS, DAMAGES, INJURIES, LIABILITIES, CLAIMS, DEMANDS, PENALTIES AND INTEREST, INCLUDING REASONABLE ATTORNEY'S FEES ("DAMAGES"), DIRECTLY RELATED TO THIS AGREEMENT, TO THE EXTENT CAUSED OR CONTRIBUTED TO BY (A) THE FAULT, INTENTIONAL ACT, NEGLIGENCE OR STRICT LIABILITY OF THE INDEMNITOR OR ITS SUBSIDIARIES, AFFILIATES, CONTRACTORS OR SUBCONTRACTORS OR ANY OF THE OFFICERS, PARTNERS, MEMBERS, PARTICIPANTS, SHAREHOLDERS, PRINCIPALS, DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS OF ANY OF THEM, OR (B) BREACH BY THE INDEMNITOR OF THIS AGREEMENT.

20.2 **Environmental Indemnity:** WITHOUT LIMITING THE GENERALITY OF SECTION 20.1, SELLER AGREES TO HOLD PEF'S INDEMNITEES HARMLESS ON AN AFTER-TAX BASIS FROM ANY LIABILITY ASSOCIATED WITH ON-SITE OR OFF-SITE CONTAMINATION OR OTHER ENVIRONMENTAL DAMAGE RESULTING FROM ANY PRIOR USES OR FROM CONSTRUCTION AND OPERATING ACTIVITIES EXCEPT AS AND TO THE EXTENT SUCH CONTAMINATION OR OTHER ENVIRONMENTAL DAMAGE WAS THE DIRECT RESULT OF PEF ACTIONS, OTHER THAN ACTIONS PERFORMED PURSUANT TO PEF'S RIGHTS UNDER THIS AGREEMENT.

20.3 **Notice of Claim.**

20.3.1 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of a claim for which it is entitled to

indemnity under this Section 20, the Indemnitee will promptly notify the Indemnitor in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Section 20.1 or 20.2. (The written notice is referred to as a "Notice of Claim"). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim.

- 20.3.2 **Notice of Third Party Claim.** If an Indemnitee receives notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) days after such Indemnitee's receipt of notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail and will indicate, if reasonably practicable the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving written notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor's own expense and by such Indemnitor's own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.
- 20.3.3 **Direct Claim.** Any Direct Claim must be asserted by giving the Indemnitor written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of thirty (30) days from receipt of such notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such thirty (30) day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.
- 20.3.4 **Failure to Provide Notice.** A failure to give timely notice or to include any specified information in any notice as provided in this Section 20.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure; provided, further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any claim which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

20.4 **Defense of Third Party Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 20.3.2, an Indemnitee receives written notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 20.3.2, the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) days after receiving written notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice.

20.5 **Subrogation of Rights.** Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnitor shall execute upon request all

instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

- 20.6 **Rights and Remedies Cumulative.** The rights and remedies of a Party pursuant to this Section 20 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

21.0 LIMITATIONS OF LIABILITY

- 21.1 **LIMITATION ON DAMAGES.** NEITHER PARTY NOR ITS SUBSIDIARIES OR AFFILIATES NOR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPANTS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS, TRUSTEES, SUCCESSORS OR ASSIGNS OF ANY OF THEM SHALL IN ANY EVENT BE LIABLE TO THE OTHER PARTY OR ITS SUBSIDIARIES OR AFFILIATES OR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPANTS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS OR TRUSTEES OF ANY OF THEM FOR CLAIMS FOR PUNITIVE, CONSEQUENTIAL, SPECIAL, MULTIPLE, OR INDIRECT DAMAGES OF ANY NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW OR OTHERWISE, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. NOTHING IN THIS SECTION 21.1 SHALL BE DEEMED TO AFFECT OR LIMIT THE RIGHT OF AN INDEMNITEE TO CLAIM INDEMNIFICATION FROM THE INDEMNITOR UNDER SECTION 20 IN RESPECT OF A THIRD PARTY CLAIM AGAINST THE INDEMNITEE FOR PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM THE INDEMNITOR'S NEGLIGENCE OR WILLFUL MISCONDUCT. NOTHING IN THIS SECTION 21.1 SHALL BE CONSTRUED TO PRECLUDE THE RECOVERY BY PEF OF ANY PAYMENT DUE PEF IN ACCORDANCE WITH THIS AGREEMENT.

- 21.2 **LIMITED RECOURSE.** NO PARTNER, SHAREHOLDER, MEMBER, PARENT COMPANY OR OTHER AFFILIATE OF EITHER PARTY (OR ANY OFFICER OR DIRECTOR OF ANY THEREOF), NOR ANY PARTNER, SHAREHOLDER, MEMBER, PARENT COMPANY OR OTHER AFFILIATE OR SUCCESSOR-IN-INTEREST OF SUCH PARTNER, SHAREHOLDER, MEMBER, PARENT COMPANY OR OTHER AFFILIATE (OR ANY OFFICER OR DIRECTOR OF ANY THEREOF), SHALL HAVE ANY PERSONAL LIABILITY OR RESPONSIBILITY FOR, RELATING TO OR IN CONNECTION WITH SAID PARTY'S FAILURE TO PROPERLY PERFORM ANY TERM, COVENANT, CONDITION OR PROVISION

OF THIS AGREEMENT, EXCEPT AS MAY BE EXPRESSLY UNDERTAKEN BY SEPARATE WRITTEN AGREEMENT.

21.3 **Effect of Security.** The liability of Seller hereunder shall not be affected by the existence, amount, waiver, or release of, or exercise or failure to exercise remedies with respect to, Step-In Rights, any Completion Security or Performance Security, or any other security for Seller's obligations hereunder. PEF may draw on or exercise other rights or remedies with respect to, all or any part of such security to the extent available hereunder, and from all such forms, and in any sequence, as PEF in its sole discretion may elect, except as such rights are specifically limited in the express provisions of this Agreement.

21.4 **Cost of Cover:** Seller and PEF acknowledge and agree that among other things, PEF's Cost of Cover and Seller's Cost of Cover constitute direct damages and shall not be limited by Section 21.1 or Section 21.2, respectively.

22.0 NOTICES

22.1 **Notices:** All notices required under this Agreement shall be in writing unless expressly specified otherwise herein, and shall be delivered in person, by certified mail or by a nationally recognized overnight courier, return receipt requested, or by facsimile transmission with confirmation by voice or automatic answer-back service, as specified below:

To Seller:

Telephone: _____
Fax: _____

To PEF:

Telephone: _____
Fax: _____

22.2 **Notices Effective:** Notices shall be effective upon receipt; provided, that in the event a Party fails to notify the other of the correct person and address for notices pursuant to Section 22.3 below, any notice to that Party shall be deemed effective on the third day following the date such notice is sent to the person and address last provided by such Party.

- 22.3 **Designation of New Notice Recipients:** Either Party may, at any time, by notice designate any different person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

23.0 REPRESENTATIONS AND WARRANTIES

- 23.1 **Seller's Representations and Warranties:** Seller hereby represents and warrants as follows:

- 23.1.1 Seller is a *[type of entity]* duly organized, validly existing and in good standing under the laws of the State of *[State]* and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.
- 23.1.2 The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary *[corporate, company, partnership]* company action, and do not and will not:
- (a) Require any consent or approval of Seller's [governing body or owners], other than that which has been obtained and is in full force and effect;
 - (b) Violate any provision of Applicable Law or violate any provision in any [constitutive documents] of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
 - (c) Result in a breach or constitute a default under Seller's [constitutive documents], or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
 - (d) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material

adverse effect on the ability of Seller to perform its obligation under this Agreement.

23.1.3 This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, or by general principles of equity).

23.1.4 The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

23.1.5 All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery, and performance under this Agreement have been duly obtained and are in full force and effect, except for those approvals described in Section 2.1 or the Deferred Governmental Approvals.

23.2 **PEF's Representation and Warranties:** PEF hereby represents and warrants the following:

23.2.1 PEF is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of PEF; and PEF has all requisite power and authority to conduct its business, to own its properties, and to execute, delivery, and perform its obligations under this Agreement.

23.2.2 The execution, delivery, and performance of its obligations under this Agreement by PEF have been duly authorized by all necessary corporate action, and do not and will not:

- (a) Require any consent or approval of PEF's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect;
- (b) Violate any provision of Applicable Law or violate any provision in any corporate documents of PEF, the violation of which could have a material adverse effect on the ability of PEF to perform its obligations under this Agreement;
- (c) Result in a breach or constitute a default under PEF's corporate charter or bylaws, or under any agreement relating to the management or affairs of PEF or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which PEF is a party or

by which PEF or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of PEF to perform its obligations under this Agreement; or

- (d) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of PEF now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of PEF to perform its obligation under this Agreement.

23.2.3 This Agreement is a valid and binding obligation of PEF, enforceable against PEF in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors or by general principles of equity).

23.2.4 The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which PEF is a party or any judgment, order, statute, or regulation that is applicable to PEF.

23.2.5 Except for those approvals described in Section 2.1, all Governmental Approvals required by any Governmental Authority to authorize PEF's execution, delivery, and performance under this Agreement have been duly obtained and are in full force and effect.

24.0 MISCELLANEOUS

24.1 Assignment or Sale, Etc.:

24.1.1 Seller may not (a) assign any of its rights or obligations under this Agreement (whether directly or through the assignment, sale, lease, transfer or other disposition of any direct or indirect interest in Seller by any direct or indirect owner of Seller) or (b) sell, lease, assign, transfer or otherwise dispose of all or a portion of the Facility (whether directly or through the assignment, sale, lease, transfer or other disposition of any direct or indirect interest in Seller by any direct or indirect owner of Seller) without the prior written consent of PEF; provided, that without the prior consent of PEF, Seller may assign its rights and interests under this Agreement to the Lenders as collateral security, or create a security interest in favor of the Lenders over its rights and interests in this Agreement; provided, further, that it shall be a condition to any

such assignment, sale, lease, transfer, or other disposition (including any collateral assignment or any exercise of remedies by the Lenders pursuant thereto) that all security required under Section 4.0 or Section 5.0, as applicable, shall be, or shall remain, in place notwithstanding such disposition, or that replacement security in form, substance and amount reasonably satisfactory to PEF shall have been provided prior to such disposition.

- 24.1.2 Prior to any assignment, sale, lease, transfer, or other disposition (a) by Seller of all or any portion of the Facility (other than sales of surplus or used equipment no longer required for operation of the Facility in accordance with this Agreement), or (b) any assignment, sale, lease, transfer, or other disposition by any direct or indirect owner of Seller of its direct or indirect ownership interest in Seller, Seller shall (or shall cause such owner to) give PEF at least thirty (30) days prior written notice of the complete, material proposed terms and conditions of such disposition. PEF at its sole and absolute option shall have the exclusive right to acquire the Facility or such portion thereof, or such direct or indirect ownership interest, proposed to be transferred for the same consideration and on terms and conditions no less favorable to Seller than those offered by the proposed transferee. To give effect to this right of first refusal, PEF shall notify Seller of its intent to purchase (together with a proposed purchase agreement) within ten (10) Business Days after the expiration of the thirty (30) day notice of proposed terms and conditions required above, and the resulting transaction shall close within thirty (30) days after such notice of intent to purchase from PEF; provided, that failure by PEF to give the notice of intent to purchase within ten (10) Business Days shall be deemed to be an election by PEF not to exercise such right. In the event PEF notifies Seller that regulatory approval is useful or required for the close of the transaction, PEF shall take all actions required to seek approval of such closing within the second thirty (30) day period including the submittal of all necessary applications, and the second thirty (30) day period shall be extended for the period of time necessary to obtain final and non-appealable approvals. Seller shall cause all contracts, agreements, or other understandings with respect to any such assignment, sale, lease, transfer or other disposition described in this Section 24.1 to specifically set forth and acknowledge PEF's exclusive right of first refusal set forth in this Section 24.1.2. Seller immediately shall notify (or shall cause such direct or indirect owner to notify) PEF of any material change to the terms or conditions set forth in Seller's notice to PEF of such proposed disposition, and upon receipt of such notice the time periods set forth in this Section 24.1.2 shall be extended and shall be deemed to have begun on the effective date of such second notice from Seller or such owner.

- 24.1.3 Seller shall not be released from its obligations hereunder by virtue of any assignment, sale, lease, transfer, or other disposition described in this Section 24.1 unless such release is expressly agreed upon by PEF in writing.
- 24.1.4 Any attempt by Seller to make any assignment, sale, lease, transfer or other disposition described in this Section 24.1 in violation of this Section 24.1 shall be void ab initio and shall not be effective.
- 24.2 **Amendments:** This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by the Parties and, if requested by PEF, approved by the FPSC. This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and permitted assigns.
- 24.3 **Conflict in Provisions:** In case of conflict between this Agreement's Sections 1.0 through 24.0 and appendices to this Agreement, Sections 1.0 through 24.0 shall take precedence.
- 24.4 **Survival:** The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Agreement, shall survive such termination and inure to the benefit of the Parties.
- 24.5 **No Waiver:** Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- 24.6 **Section Headings:** Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- 24.7 **Service Agreement:** This Agreement is intended to strictly provide services which are not subject to Florida sales/use Tax and is not intended and shall not be construed, interpreted, or applied to create a lease, license or similar arrangement for the use, possession, custody or control of property.
- 24.8 **Review, Approval, Etc. by PEF:** The Parties explicitly acknowledge and agree that PEF's reviews, agreement, comment, approvals, disapprovals and authorizations pursuant to this Agreement are administrative in nature and do not relieve Seller of its obligations for the design, engineering,

procurement, construction, operation, or maintenance of the Facility including Environmental Licensing and compliance with Environmental Requirements or other Applicable Laws or Governmental Approvals, or impose any such obligations on PEF, and that PEF's technical review and inspections of the Facility, or of drawings, plans, or other technical data, whether before or after the Capacity Delivery Date, and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility or relieve Seller of any of its obligations, duties or responsibilities hereunder.

- 24.9 **Construction of Agreement:** The Parties expressly agree that no provision of this Agreement should be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having been deemed to have structured or dictated such provision.
- 24.10 **Complete Agreement:** This Agreement is intended as the complete and exclusive statement of the agreement between the Parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement and recourse may not be had to alleged prior drafts, negotiations, prior dealings, usage of trade, course of dealing or course of performance to explain or supplement the express terms of this Agreement.
- 24.11 **Counterparts:** This Agreement may be executed and delivered in counterparts, and may be delivered by facsimile transmission.
- 24.12 **Severability:** In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of the provisions hereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
- 24.13 **Good Faith:** The Parties agree to act in accordance with the principles of good faith and fair dealing in the performance of this Agreement.
- 24.14 **Disclaimer of Third Party Beneficiary Rights.** Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- 24.15 **No Partnership:** Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture between Seller and PEF or, except as expressly set forth in Section 5.0, an agency relationship between Seller and PEF. Each Party shall be individually and severally liable for its own obligations under this Agreement.

- 24.16 **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 without regard to conflicts of law rules.
- 24.17 **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement (“proceedings”), each Party irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida in connection with any action or proceeding relating to this Agreement, and waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have any jurisdiction over such Party.
- 24.18 **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.
- 24.19 **Confidentiality.** Neither Party shall disclose directly or indirectly without the prior written consent of the other Party the terms of this Agreement to a third party (other than to the employees, lenders, counsel, accountants and other agents of the disclosing Party, or prospective purchasers of all or substantially all of a Party’s assets or of any rights under this Agreement, provided such Persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, or (ii) to the extent necessary for the enforcement of this Agreement. Each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure of the terms of this Agreement (other than as permitted herein) and use reasonable efforts to prevent or limit the disclosure. The existence of this Agreement is not subject to this confidentiality obligation. Notwithstanding Section 21.1, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The terms of this Agreement shall be kept confidential by the Parties hereto for two years from the expiration hereof.
- 24.20 **Forward Contract.** The Parties agree that the transactions hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that PEF and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

[Remainder of page intentionally left blank. Signature page follows.]

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

[SELLER]	PROGRESS ENERGY FLORIDA, INC. a Florida corporation
By: _____	By: _____
Date: _____	Date: _____

APPENDIX A

CALCULATION OF MONTHLY CAPACITY PAYMENT AND OTHER PAYMENTS

I. Monthly Capacity Payment (MCP_{Total})

The Monthly Capacity Payment for each Monthly Billing Period shall be determined according to the following formula:

$$MCP_{Total} = MCP_{Base} - MCD_{Level 1} + MCP_{other}$$

A. Calculation of MCP_{Base}

In the event that the $CBF < 64\%$, then no MCP shall be due

$$MCP_{Base} = 0$$

In the event that the CBF is greater than or equal to 64% but less than 94%, then

$$MCP_{Base} = CC * [B \text{ \$/MW-Month}] * [(98 - 2*(94-CBF))/100]$$

In the event that the CBF is equal to or greater than 94% but less than 98%, then

$$MCP_{Base} = CC * [B \text{ \$/MW-Month}] * [(100 - 0.5 * (98 - CBF))/100]$$

In the event that the CBF is equal to or greater than 98%, then

$$MCP_{Base} = CC * [B \text{ \$/MW-Month}]$$

Where:

CC = Committed Capacity, expressed in MW

B = \$ ___/MW-Month *[Insert the adjusted price of the capacity, measured in \$/MW-Month, taking into account the Base and Level 1 mode of operation (i.e., (Base \$MW-Month * CC in MW) + (Level 1 \$/MW-Month * Level 1 Incremental Capacity in MW) / (CC in MW), from Proposer's submission.]*

CBF = Capacity Billing Factor for such Monthly Billing Period

B. Calculation of $MCD_{Level 1}$

In the event that the L1BF is equal to or greater than 98%, then

$$MCD_{Level 1} = 0; \text{ i.e., no dollars are to be subtracted from MCP Base}$$

In the event that the L1BF is equal to or greater than 94% but less than 98%, then

$$MCD_{Level 1} = L1CC * [\$ X/MW-Month] * [(98 - L1BF)/100]$$

In the event that the L1BF is greater than or equal to 75% but less than 94%, then

$$MCD_{Level 1} = L1CC * [\$ X /MW-Month] * [.04 + (3*(94 - L1BF))/100]$$

In the event that the L1BF < 75%, then all of the dollars associated with operating the Facility Level 1 Mode of Operation are to be subtracted from MCPBase, and

$$MCD_{\text{Level 1}} = L1CC * [\$ X / \text{MW-Month}]$$

Where:

L1CC = Level 1 Incremental Committed Capacity, expressed in MW

X = ___ \$/MW-Month *[Insert the price per MW-Month submitted by Proposer for Level 1 Mode of Operation]*

L1BF = Level 1 Capacity Billing Factor calculated based on the performance for such Monthly Billing Period, as follows:

$$L1BF = \sum_{k=1}^n \frac{\left(\frac{L1AC}{L1CC} \right)}{n}$$

L1AC = the Level 1 Available Capacity for Level 1 Mode of Operation for such Monthly Billing Period, expressed in MW. L1AC shall never be greater than L1CC.

n = number of hours in the Monthly Billing Period

k = each hour, for the Monthly Billing Period

C. Calculation Of Payments Associated With Other Modes Of Operation (MCP_{other})

[Payments for incremental capacity provided from other operating modes included in Proposer's submission, which include additional operating limitations and/or are not able to be placed under PEF'S AGC, to be inserted here, taking account of the following:

1. *The amount of the incremental capacity associated with the specific operating mode proposed in the Submittal.*
2. *The availability of the incremental capacity.*
3. *The operating limitations associated with supplying the incremental level of capacity (e.g., notice period, continuous capability, limitations per cycle etc.).*
4. *Actual measured performance associated with incremental capacity.*
5. *The incremental heat rate will be taken into account for the pricing of energy.*

Corresponding changes will be made to definitions and to substantive provisions of PPA, to address such matters as testing, dispatch, etc.]

II. Other Payments (OP_{total})

Other Payments for each Monthly Billing Period shall be determined according to the following formula:

$$OP_{total} = (HRAP_{net} + VOMP + SUFCA + SFP)$$

A. Calculation of Heat Rate Adjustment Payment -- $HRAP_{net}$

The $HRAP_{net}$ may be due PEF by Seller, in which case it will be a negative value, or the $HRAP_{net}$ may be due the Seller by PEF, in which case it will be a positive value. As follows:

$$HRAP_{net} = HRAP_{Due\ PEF} - HRAP_{Due\ Seller}$$

A.1 Actual Heat Rate Higher Than Guaranteed Heat Rate: In the event that there are hours during the Monthly Billing period, for which Energy is being delivered pursuant to PEF's Control (excluding any Start-Up time associated with a successful start conducted at PEF's request) where the Actual Heat Rate is higher than the Guaranteed Heat Rate, Seller shall make a Heat Rate Adjustment Payment to PEF, calculated in accordance with the following methodology:

$$HRAP_{Due\ PEF} = \sum_{f=1}^r \left[\left(\frac{AHR_f - GHR}{GHR} \right) * FC_f \right] * NEOI_f$$

Where:

$HRAP_{Due\ PEF}$ = Heat Rate Adjustment Payment due PEF by Seller, expressed in dollars for the Monthly Billing period.

AHR_f = Actual Heat Rate on Primary Fuel for hour f (expressed in MMBtu/MWh).

GHR = Guaranteed Heat Rate on Primary Fuel, (expressed in MMBtu/MWh).

f = Each hour during the Monthly Billing Period in which the Actual Heat Rate is higher than the Guaranteed Heat Rate.

r = Total number of hours during the Monthly Billing Period in which the Actual Heat Rate is higher than the Guaranteed Heat Rate.

FC_f = PEF's Marginal Gas Cost for hour f (expressed in Dollars per MMBtu).

$NEO1_f =$ the hourly Net Energy Output generated using the Primary Fuel for hour f of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;

A.2 Actual Heat Rate Lower Than Guaranteed Heat Rate: In the event that there are hours during the Monthly Billing Period for which Energy is being delivered pursuant to PEF's Control (excluding any Start-Up time associated with a successful start conducted at PEF's request) where the Actual Heat Rate is lower than the Guaranteed Heat Rate, PEF shall make a Heat Rate Adjustment Payment to Seller, calculated in accordance with the following methodology:

$$HRAP_{Due\ Seller} = \sum_{f=1}^r \left[\left(\frac{GHR - AHR_f}{GHR} \right) * FC_f \right] * NEO1_f$$

Where:

$HRAP_{Due\ Seller} =$ Heat Rate Adjustment Payment due Seller by PEF, expressed in dollars for the Monthly Billing period.

$GHR =$ Guaranteed Heat Rate on Primary Fuel (expressed in MMBtu/MWh.)

$AHR_f =$ Actual Heat Rate on Primary Fuel for hour f (expressed in MMBtu/MWh).

$f =$ Each hour during the Monthly Billing Period in which the Actual Heat Rate is lower than the Guaranteed Heat Rate.

$r =$ Total number of hours during the Monthly Billing Period in which the Actual Heat Rate is lower than the Guaranteed Heat Rate.

$FC_f =$ PEF's Marginal Gas Cost for hour f (expressed in Dollars per MMBtu).

$NEO1_f =$ the hourly Net Energy Output generated using the Primary Fuel for hour f of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;

B. Calculation of Variable O&M Payment -- VOMP

The Variable O&M Payment for each Monthly Billing Period shall be determined according to the following formula:

$$VOMP = \sum_{k=1}^n \left[(NEO1_k + NEO2_k) * VOM \right] + SP$$

Where:

- VOMP = the Variable O&M Payment, expressed in dollars, for the Monthly Billing Period;
- NEO1_k = the hourly Net Energy Output generated using the Primary Fuel for hour k of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;
- NEO2_k = the hourly Net Energy Output generated using the Back-up Fuel for hour k of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;
- VOM = Variable Operations and Maintenance charge, expressed in dollars per MWh, equal to *[To be inserted from Proposer's submission.]*;
- n = number of hours in the Monthly Billing Period;
- k = each hour, for the Monthly Billing Period: and
- SP = any Start-up Cost(s) for such Monthly Billing Period for which Seller is entitled to payment.

C. Calculation of Start Up Fuel Cost Adjustment – SUFCA

1. The Start Up Fuel Cost Adjustment for the Monthly Billing Period for each successful start-up conducted pursuant to an PEF initiated dispatch instruction shall be as follows:

$$SUFCA = \sum_n^y SUFCA_n$$

2. If fuel consumed during start-up is greater than quantities specified in Appendix E:

If $AFSU_t \geq GFSU_t$ then:

$$SUFCA_n = (AFSU_t - GFSU_t) * FC_n$$

If $AFSU_t \leq GFSU_t$ then:

$$SUFCA_n = 0$$

Where:

$SUFCA =$ Start Up Fuel Cost Adjustment expressed in dollars for the Monthly Billing Period

$SUFCA_n =$ Start Up Fuel Cost Adjustment for start-up n expressed in dollars

$GFSU_t =$ Guaranteed fuel for type of start up t, expressed in MMBtu's, as specified in Appendix E

$AFSU_t =$ Actual fuel consumed during type of start-up t, expressed in MMBtu's, as measured by the metering system

t = type of Start-up

n = each Successful Start for the Monthly Billing Period conducted pursuant to a PEF initiated dispatch instruction

y = total number of Successful Starts for the Monthly Billing Period

$FC_n =$ PEF's Marginal Gas Cost applicable on day of start-up n (expressed in Dollars per MMBtu)

D. Calculation of Back-up Fuel Payment – SFP

The Back-up Fuel Payment shall consist of the following, when applicable: 1) the cost of Back-up Fuel burned pursuant to PEF's dispatch orders, and 2) the carrying cost of Back-up Fuel in Seller's inventory.

$$SFP = SFB + CC_{INV}$$

1. Payment for Back-up Fuel burned --SFB.

$$SFB = WAC_{INV} * \sum_i^n (GHR_{SF} * NEO2_i)$$

Where:

SFB = Payment for Back-up Fuel Burned, for the Monthly Billing Period, expressed in dollars;

WAC_{INV} = Weighted Average Cost of Back-up Fuel Inventory (expressed in \$/MMBtu);

GHR_{SF} = Guaranteed Heat Rate on Back-up Fuel (expressed in MMBtu/MWh);

- NEO_{2i} = the hourly Net Energy Output generated using the Back-up Fuel for hour i of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;
- i = each hour for the Monthly Billing Period in which Back-up Fuel is being burned in the Facility;
- n = the total number of hours in the Monthly Billing Period in which Back-up Fuel was burned at the Facility.

2. Payment for carrying cost of Back-up Fuel – CC_{INV}

The Carrying Cost of inventory for the Back-up Fuel shall be calculated as follows for the Monthly Billing Period:

$$CC_{INV} = INVOL * I * WAC_{INV}$$

Where:

- a. INVOL = Average Back-up Fuel Inventory for the Monthly Billing Period; INVOL shall never exceed the specified inventory of Back-up Fuel for the Facility. INVOL is calculated pursuant to the following formula;

$$INVOL = \left(2 * INVOL_{BEGMO} - \sum_i^n (GHR_{SF} * NEO_{2i}) + INVOL_{PURCH} \right) / 2$$

INVOL_{BEGMO} = Inventory volume at the beginning of the Monthly Billing Period, expressed in MMBtu

INVOL_{PURCH} = Volume of Back-up Fuel delivered to the Facility during the Monthly Billing Period, expressed in MMBtu

GHR_{SF} = Guaranteed Heat Rate on Back-up Fuel (expressed in MMBtu/MWh);

NEO_{2i} = the hourly Net Energy Output generated using the Back-up Fuel for hour i of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;

i = each hour for the Monthly Billing Period in which Back-up Fuel is being burned in the Facility;

n = the total number of hours in the Monthly Billing Period in which Back-up Fuel was burned at the Facility.

- b. I = carrying cost rate per month in percent (Source: Prime Interest Rate published in the last Business Day of the month in the Wall Street Journal)

c. WAC_{INV} = weighted average cost of the Back-up Fuel Inventory for the Monthly Billing Period, expressed in dollars per MMBtu.

Where:

$$WAC_{INV} = \frac{(WAC_{BEG} * INVOL_{BEGMO} + INVOL_{PURCH} * C_{PURCH})}{(INVOL_{BEGMO} + INVOL_{PURCH})}$$

WAC_{BEG} = Weighted average cost of inventory at the beginning of the Monthly Billing Period, expressed in \$/MMBtu

$INVOL_{BEGMO}$ = Inventory volume at the beginning of the Monthly Billing Period, expressed in MMBtu

$INVOL_{PURCH}$ = Inventory volume delivered during the Monthly Billing Period, expressed in MMBtu

C_{PURCH} = Cost of Back-up Fuel delivered during the Monthly Billing Period, expressed in \$/MMBtu. (Costs shall include commodity costs, barging and trucking costs, loading and unloading costs, handling costs etc.)

A sample calculation of the Monthly Capacity Payment and the Other Payments in a Monthly Billing Period is attached as Exhibit 1 for illustrative purposes.

SAMPLE PAYMENT CALCULATION

I. Capacity Payment Calculation for a Monthly Billing Period

Assumptions

CC = 100 MW
 L1CC = 30 MW
 CBF = 98%
 L1BF = 94%
 Base \$/MW-Month = 8,000
 Level 1 \$/MW-Month = 5,000
 B = adjusted price = [(100 * 8,000) + (30 * 5,000)] / 100 = 9,500
 \$/MW-Month

Calculation

$MCP_{Total} = MCP_{Base} - MCD_{Level 1}$
 $MCP_{Base} = 100 * 9,500$
 $MCP_{Base} = \$950,000$
 $MCD_{Level 1} = 30 * 5,000 * [(98 - 94) / 100]$
 $MCD_{Level 1} = \$6,000$
 $MCP_{Total} = 950,000 - 6,000 = \$944,000$

II. Other Payments Calculation for a Monthly Billing Period

A. Heat Rate Adjustment Payment Calculation for four hours in the month.
 In two of the hours the Actual Heat Rate was higher than the Guaranteed Heat Rate.

Assumptions

NEO1 = 98.00 MWh produced in hour₁ and 85.00 MWh in hour₂
 AHR = 10.000 MMBtu/MWh in hour₁ and 9.850 MMBtu/MWh in hour₂
 GHR = 8.000 MMBtu/MWh
 FC = 7.45 \$/MMBtu

Calculations

$$HRAP_{Due PEF} = \sum_{f=1}^r \left[\left(\frac{AHR_f - GHR}{GHR} \right) * FC_f \right] * NEO1_f$$

$$\begin{aligned}
HRAP_{DuePEF} &= \{(10.000-8.000)/8.000\} * 7.45 * 98.00 + \{(9.850- \\
&8.000)/8.000\} * 7.45 * 85.00 \\
&= \$182.52 + 146.43 \\
&= \$328.95
\end{aligned}$$

In two of the hours the Actual Heat Rate was lower than the Guaranteed Heat Rate

Assumptions

NEO1 = 90.00 MWh produced in hour₃ and 95.00 MWh in hour₄
AHR = 7.000 MMBtu/MWh in hour₃ and 7.200 MMBtu/MWh in hour₄
GHR = 8.000 MMBtu/MWh
FC = 7.45 \$/MMBtu

Calculations

$$HRAP_{Due Seller} = \sum_{f=1}^r \left[\left(\frac{GHR - AHR_f}{GHR} \right) * FC_f \right] * NEO1_f$$

$$\begin{aligned}
HRAP_{DueSeller} &= \{(8.000-7.000)/8.000\} * 7.45 * 90.00 + \{(8.000- \\
&7.200)/8.000\} * 7.45 * 95.0 \\
&= \$83.81 + 70.77 \\
&= \$154.58
\end{aligned}$$

$$\begin{aligned}
HRAP_{net} &= HRAP_{Due PEF} - HRAP_{Due Seller} \\
&= \$328.95 - \$154.58 \\
&= \$174.37
\end{aligned}$$

B. Variable O&M Payment for a Monthly Billing Period:

Assumptions

NEO1 = 74,100 MWh

NEO2 = 25,767 MWh
 VOM = 3.00 \$/MWh
 SP \$ = \$30,000 (Assumes 3 start-ups at \$10,000 each)

Calculations

$$VOMP = \sum_{k=1}^n \left[(NEO1_k + NEO2_k) * VOM \right] + SP$$

$$\begin{aligned}
 VOMP &= (74,100 + 25,767) * 3.00 + 30,000 \\
 &= \$329,601
 \end{aligned}$$

C. Start Up Adjustment Payment for a Start Up during Monthly Billing Period

Assumptions (Assumes 3 start-ups)

AFSU₁ = 10,000 MMBtu
 AFSU₂ = 9,800 MMBtu
 AFSU₃ = 9,600 MMBtu
 GFSU_t = 8,000 MMBtu
 FC_n = 7.45 \$/MMBtu

Calculations

$$\begin{aligned}
 SUFCA &= (AFSU_t - GFSU_t) * FC_n \\
 SUFCA_n &= ((10,000 - 8,000) + (9,800 - 8,000) + (9,600 - 8,000)) * \\
 7.45 & \\
 &= \$40,230
 \end{aligned}$$

D. Back-up Fuel Payment for a Monthly Billing Period:

Assumptions

NEO_{2i} = 25,767 MWh
 GHR_{SF} = 8.15 MMBtu/MWh
 I = 5.05% per annum = 0.4208% per month
 WAC_{BEG} = \$18.05/MMBtu
 INVOL_{BEGMO} = 10,000,000 gallons @ 0.140 MMBtu/Gallon
 = 1,400,000 MMBtu
 INVOL_{PURCH} = 1,250,000 gallons @ 0.140 MMBtu/Gallon
 = 175,000 MMBtu
 C_{PURCH} = \$ 2.76 /gallon ÷ 0.140 MMBtu/Gallon
 = \$19.714/MMBtu

Calculations

$$\begin{aligned}
 INVOL &= \left(2 * INVOL_{BEGMO} - \sum_i^n (GHR_{SF} * NEO_{2i}) + INVOL_{PURCH} \right) / 2 \\
 &= (2 * 1,400,000 \text{ MMBtu} - (8.15 \text{ MMBtu/MWh} * 25,767 \text{ MWh}) + 175,000 \\
 &\text{MMBtu}) / 2 \\
 &= (2,800,000 - 210,000 + 175,000) / 2 = (2,765,000) / 2 \\
 &= 1,382,500 \text{ MMBtu}
 \end{aligned}$$

$$\begin{aligned}
 WAC_{INV} &= \frac{(WAC_{BEG} * INVOL_{BEGMO} + INVOL_{PURCH} * C_{PURCH})}{(INVOL_{BEGMO} + INVOL_{PURCH})} \\
 &= (\$18.05/\text{MMBtu} * 1,400,000 \text{ MMBtu} + \$19.714/\text{MMBtu} * 175,000 \text{ MMBtu}) / \\
 &(1,400,000 \text{ MMBtu} + 175,000 \text{ MMBtu}) \\
 &= \$18.235 / \text{MMBtu}
 \end{aligned}$$

Payment for Back-up Fuel Burned:

$$\begin{aligned}
 SFB &= WAC_{INV} * \sum_i^n (GHR_{SF} * NEO_{2i}) \\
 &= \$18.235/\text{MMBtu} * (8.15 \text{ MMBtu/MWh} * 25,767 \text{ MWh}) \\
 &= \$3,829,333.31
 \end{aligned}$$

Payment for Carrying Cost:

$$\begin{aligned}
 CC_{INV} &= INVOL * I * WAC_{INV} \\
 &= 1,382,500 \text{ MMBtu} * 0.4208\% * \$18.235/\text{MMBtu} \\
 &= \$106,082.74
 \end{aligned}$$

$$\begin{aligned}
 OP_{total} &= (HRAP_{net} + VOMP + SUFCA + SFP) \\
 &= (\$174.37 + \$329.61 + \$40,230 + \\
 (3,829,333.31 + 106,082.74) & \\
 &= \$3,976,150
 \end{aligned}$$

APPENDIX B
DEFERRED GOVERNMENTAL APPROVALS

[To be provided.]

APPENDIX C
[FORM OF] GUARANTY

This Guaranty (the "Guaranty") is given as of this ___ day of _____, 20___, by [Seller's Guarantor,] a _____ [type of entity] ("Guarantor") to Progress Energy Florida, Inc., a Florida corporation ("PEF").

WHEREAS, Guarantor *[owns, directly or indirectly, [all] of the outstanding [shares of capital stock]]* of *[Seller]* ("Seller");

WHEREAS, Seller *[wishes to enter][has entered]* into *[a Contract]* with PEF, *[dated as of _____, 20___,]* for the purchase and sale of electrical energy and capacity from Seller's *[Facility]* located at *[_____]* (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Contract");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Contract;

WHEREAS, *[PEF is willing to enter into the Contract on the condition that Guarantor enters into this Guaranty] [pursuant to the terms of the Contract, Seller is required, under the circumstances set forth therein, to provide Completion Security or Performance Security to PEF, which security may include a guaranty from Seller's Guarantor, substantially in the form of this Guaranty];*

WHEREAS, Guarantor will benefit from the transactions contemplated by the Contract;

NOW, THEREFORE, in consideration of the foregoing, *[and as an inducement to PEF to enter into the Contract,]* Guarantor hereby agrees as follows:

1. **Guaranty:** Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to PEF, as primary obligor and not merely as a surety, the due and punctual payment and performance by Seller of all obligations to be paid or performed by Seller under the Contract, all as and when required to be paid or performed under the Contract, in all respects strictly in accordance with the terms, conditions and limitations contained in the Contract (the "Obligations"). This Guaranty is a continuing guarantee of the full and punctual payment and performance of the Obligations and is in no way conditioned upon any requirement that PEF first attempt to enforce any of the Obligations against Seller, any other guarantor of the Obligations, or any other person or entity, or resort to any other means of obtaining payment or performance of any of the Obligations. This Guaranty is a guarantee of performance and payment and not of collection.

2. **Guaranty Absolute:** This Guaranty shall continue in full force and effect until Seller or Guarantor shall have performed or discharged all of the Obligations in full. Further, this Guaranty shall remain in full force and effect without regard to, and shall not be affected or impaired by, any of the following:
- (a) any invalidity, irregularity or unenforceability in whole or in part of this Guaranty or the Contract;
 - (b) the existence of any claim, setoff, defense or other right which Guarantor or Seller may have against PEF or any other person or entity;
 - (c) any release or discharge (whether by operation of law or otherwise) of Seller, Guarantor, or any other person or entity from its obligations under the Contract;
 - (d) the occurrence or continuance of any event of bankruptcy, reorganization or insolvency with respect to Seller, Guarantor, or any other person or entity, or the dissolution, liquidation or winding up of Seller, Guarantor, or any other person or entity;
 - (e) any amendment, supplement, reformation or other modification of the Contract;
 - (f) the exercise, non exercise or delay in exercising, by PEF or any other person or entity of any of its rights or remedies under this Guaranty or the Contract;
 - (g) any assignment or other transfer of this Guaranty by PEF, or any assignment or other transfer of the Contract in whole or in part;
 - (h) any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in Seller;
 - (i) the absence of any notice to, or knowledge by, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses; or
 - (j) any other event, occurrence or circumstance that might otherwise constitute or give rise to a defense to performance by a surety or a guarantor.
3. **Waivers by Guarantor:** In addition to waiving any defenses to which clauses (a) through (j) of Section 2 may refer, Guarantor hereby unconditionally and irrevocably waives, as a condition precedent to the performance of its obligations hereunder, (a) notice of acceptance hereof, (b) notice of any action taken or omitted to be taken by PEF in reliance hereon, (c) any requirement that PEF be diligent or prompt in making demands hereunder or giving notice to Guarantor of any default by Seller,

(d) any requirement that PEF exhaust any right, power or remedy or proceed against Seller under the Contract or any other agreement or instrument referred to therein, or against any other person or entity under any other guarantee of any of the Obligations, and (e) any claim or defense that PEF shall have impaired any right of Guarantor against Seller, any other guarantor of any of the Obligations, or any other person or entity, by way of reimbursement, subrogation or otherwise. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of the Contract or any other agreement or instrument referred to therein shall be done or omitted; or

(iii) any of the Obligations shall be modified, supplemented or amended in any respect in accordance with the terms of the Contract with or without notice to Guarantor.

4. **Limit:** The liability of Guarantor hereunder shall not exceed at any time the sum of (a) the amount payable by Guarantor pursuant to Section 11, plus (b) an amount equal to (i) on or prior to the Capacity Delivery Date, the difference equal to (A) the Completion Security Amount, minus (B) the amount of Liquid Security provided by Seller to PEF at such time, or (ii) after the Capacity Delivery Date, the difference equal to (A) the Performance Security Amount, minus the amount of Liquid Security provided by Seller to PEF at such time.

5. **Bankruptcy; Reinstatement; Subrogation:**

(a) Guarantor shall not commence or join with any other person or entity in commencing any bankruptcy, reorganization or insolvency proceedings of or against Seller. Guarantor understands and acknowledges that by virtue of this Guaranty, Guarantor specifically has assumed any and all risks of a bankruptcy or reorganization case or similar proceeding with respect to Seller. As an example and not in any way a limitation, a subsequent modification of the Obligations or any rejection or disaffirmance thereof by any trustee, receiver or liquidating agency of Seller or of any of its respective properties, or any settlement or compromise of any claim made in any such case, in any reorganization case concerning Seller, shall not affect the obligations of Guarantor to pay and perform the Obligations in accordance with their original terms.

- (b) The obligations of Guarantor under this Guaranty automatically shall be reinstated if and to the extent that for any reason any payment by or on behalf of Seller in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.
 - (c) Subrogation. Guarantor hereby agrees that until the performance and satisfaction in full of all Obligations and the expiration and termination of all Obligations, it shall not exercise any right or remedy arising by reason of the performance of any of its obligations under this Guaranty, whether by reimbursement, subrogation or otherwise, against Seller, or any other guarantor of any of the Obligations, or any security for any of the Obligations.
6. **Representations and Warranties:** Guarantor represents and warrants as follows:
- (a) Due Organization. Guarantor is a [corporation] duly organized and validly existing under the laws of the state of its formation.
 - (b) Power and Authority. Guarantor has full [corporate] power, authority and legal right to enter into this Guaranty and to perform its obligations hereunder.
 - (c) Due Authorization. This Guaranty has been duly authorized, executed and delivered by Guarantor.
 - (d) Enforceability. This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally and except as enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).
 - (e) No Conflicts. The execution and delivery by Guarantor of this Guaranty and the performance by Guarantor of its obligations hereunder will not (i) violate the provisions of Guarantor's [certificate of incorporation or bylaws]; (ii) violate the provisions of any Applicable Law; or (iii) result in a breach of or constitute a default under any agreement to which Guarantor is a party or by which it or its assets or property are bound.
 - (f) No Proceedings. There is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending or, to the best knowledge of Guarantor, threatened against Guarantor which reasonably could be expected to have a material

adverse effect on Guarantor's ability to perform its obligations under this Guaranty.

- (g) **Financial Condition.** The balance sheet of Guarantor as of _____, 20__, and the related statement of income for the 12 month period ending on such date, heretofore furnished by Guarantor to PEF, present fairly the financial condition and results of operations of Guarantor as of such date and for such period in conformity with generally accepted accounting principles and practices applied on a consistent basis. Guarantor on such date did not have any material contingent liabilities, liabilities for Taxes, unusual forward or long term commitments, swap obligations or guarantee obligations, or unrealized or anticipated losses from any unfavorable commitments that are not reflected or provided for in said financial statements as of such date. Since such date, there has been no material adverse change in the financial condition, operations or properties of Guarantor. Guarantor was solvent immediately after the execution and delivery of this Guaranty and since that time no winding up order has been made or any resolution passed for the winding up of Guarantor and no administration order has been made and no receiver, administrative receiver, administrator or liquidator has been appointed in respect of Guarantor. Guarantor is Seller's Guarantor and the amount set forth in Section 4 does not exceed Guarantor's Credit Limit.

7. **Affirmative Covenants:**

- (a) **Existence.** Guarantor shall preserve and maintain its [corporate] existence.
- (b) **Rights, Franchises.** Guarantor shall preserve and maintain all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business, except where the failure to maintain any such right, privilege, or franchise could not reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations hereunder.
- (c) **Compliance with Law.** Guarantor shall comply with the requirements of Applicable Law, except where the failure to comply could not reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations hereunder.
- (d) **Interest in Seller.** Guarantor shall cause to be maintained and preserved the [corporate] existence of Seller, and Guarantor shall maintain, directly or indirectly, legal and beneficial ownership (free and clear of any lien or encumbrance of any kind) of at least fifty percent (50%) of the ownership interests in Seller.

- (e) Financial Status. Guarantor at all times shall have an Investment Grade Credit Rating .
8. **Independent and Separate Obligations:** The obligations of Guarantor hereunder are independent of the obligations of Seller with respect to all or any part of the Obligations and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not any other such obligations exist, whether or not Guarantor is the alter ego of Seller, and whether or not Seller is joined therein or a separate action or actions are brought against Seller.
 9. **Payment:** All payments hereunder shall be made in the currency and type of funds specified for payments in the Contract. Any and all payments made hereunder shall be made free and clear of and without deduction for any and all present or future Taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, or any set off or counterclaim.
 10. **Full Recourse:** The obligations of Guarantor set forth herein constitute the full recourse obligations of Guarantor, enforceable against Guarantor to the full extent of all the assets and properties of Guarantor.
 11. **Indemnification:** Guarantor shall indemnify and hold harmless on an After-Tax Basis PEF from and against any and all loss, liability and expense (including reasonable fees and disbursements of counsel to PEF) which may be sustained or incurred by or on behalf of PEF in enforcing any obligations of Guarantor hereunder.
 12. **Amendments; Waivers; Etc.:** Neither this instrument nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by PEF and Guarantor. No delay or failure by PEF to exercise any remedy against Seller or Guarantor will be construed as a waiver of that right or remedy. No failure on the part of PEF to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder against Guarantor preclude any exercise of such right against or any other or further exercise thereof against Guarantor or the exercise of any other right against Guarantor. The remedies herein provided are cumulative and not exclusive of any remedies provided at law or in equity.
 13. **Severability:** In the event that the provisions of this Guaranty should be claimed or held to be inconsistent with any other instrument evidencing or securing the Obligations, the terms of this Guaranty shall remain fully valid and effective. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective.
 14. **Assignment:**

- (a) Assignability. Guarantor shall not assign any of its rights or obligations under this Guaranty. PEF may, at any time and from time to time, assign, in whole or in part, the rights of PEF hereunder to any person or entity to whom PEF may assign all or any of its rights or obligations under the Contract, whereupon such assignee shall succeed to the rights of PEF hereunder to the extent so assigned.
 - (b) Successors and Assigns. Subject to Section 14(a) hereof, this instrument shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of PEF and its successors and assigns.
15. Address for Notices: All notices and other communications provided for hereunder shall be given in accordance with the notice requirements of the Contract, and if to Guarantor, at the address specified below the space for its execution of this Guaranty.
16. JURISDICTION:
- (a) SERVICE OF PROCESS. GUARANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF ANY PROCESS, PLEADING, NOTICE OR OTHER PAPERS BY THE MAILING OF COPIES THEREOF BY REGISTERED, CERTIFIED OR FIRST CLASS MAIL, POSTAGE PREPAID, TO GUARANTOR AT ITS ADDRESS SPECIFIED BELOW THE SPACE FOR ITS EXECUTION OF THIS GUARANTY OR BY ANY OTHER METHOD PROVIDED OR PERMITTED UNDER NEW YORK LAW.
 - (b) NON-EXCLUSIVE JURISDICTION. GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY: (i) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF THIS GUARANTY SHALL BE CONDUCTED IN THE COURTS OF THE STATE OF NEW YORK OR IN FEDERAL COURTS SITUATED IN NEW YORK AND THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS; PROVIDED, THAT IF A NEW YORK COURT OR FEDERAL COURT SITUATED IN NEW YORK SHALL HAVE DETERMINED THAT IT CANNOT ACCEPT JURISDICTION OVER ANY ACTION BECAUSE OF THE FAILURE TO JOIN AN INDISPENSABLE PARTY, THEN PEF MAY BRING AN ACTION IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION; (ii) CONSENTS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION, OR PROCEEDING; AND (iii) WAIVES ANY OBJECTION WHICH GUARANTOR MAY HAVE TO THE LAYING OF VENUE OF

ANY SUCH SUIT, ACTION, OR PROCEEDING IN ANY SUCH COURT. GUARANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. GUARANTOR AT PEF'S OPTION MAY BE JOINED IN ANY PROCEEDING AGAINST SELLER.

17. **GOVERNING LAW:** THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CHOICE OF LAW (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).
18. **WAIVER OF JURY TRIAL:** GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR THE CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN), OR ACTION OF GUARANTOR, SELLER, OR PEF.
19. **Entire Agreement:** This Guaranty contains the complete agreement of Guarantor with respect to the matters contained herein and supersedes all other negotiations or agreements, whether written or oral, with respect to the subject matter hereof.
20. **Section Headings:** Section headings contained herein are for convenience of reference only and shall not be considered in the interpretation or enforcement of the provisions hereof.

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guaranty effective as of _____, 20__.

[SELLER'S GUARANTOR]

By: _____

Name: _____

Title: _____

Address: _____

Attn: _____

Telephone: _____

Facsimile: _____

APPENDIX D
FACILITY ACTUAL NET GENERATION AND PERFORMANCE DATA

MONTH OF: _____

[To be provided.]

FACILITY ACTUAL NET GENERATION AND PERFORMANCE DATA

YEAR OF: _____

DATE	OUTAGE TYPE	HOURS	(MW) AFFECTED	DESCRIPTION

- (1) FO – FORCED OUTAGE
- MO – MAINTENANCE OUTAGE
- PD – PLANNED DERATING
- MD – MAINTENANCE DERATING
- FD – FORCED DERATING
- PO – PLANNED OUTAGE

APPENDIX E
START-UP COSTS

Type of Start-up	Cost (Dollars) per Successful Start-up	Guaranteed Maximum Fuel Consumption (MMBtu)
Hot (0-4 hours offline)		
Warm/Hot (4-12 hours offline)		
Warm/Cold (12-48 hours offline)		
Cold (Greater than 48 hours offline)		

[Insert Dollars and MMBtu's from Proposer's submission]

APPENDIX F
FACILITY OPERATING CAPABILITIES

[To be provided.]

APPENDIX G
PLANNED OUTAGE HOURS

[To be provided.]

APPENDIX H
RECEIPT POINT

[To be provided.]

APPENDIX I

CAPACITY AND HEAT RATE DEMONSTRATION TESTING GUIDELINES

1.0 Introduction

This document provides guidelines for conducting testing on a power plant unit and its components. Capacity demonstrations and/or performance tests may be conducted as the Initial Tests and as periodic Tests. The objective of the Initial Test and of each other Capacity Test described in Section 9.0 of the Agreement is to establish the Facility's Continuous Capability, Heat Rate and incremental Capacity associated with each applicable mode of operation above the Base Operation Mode.

2.0 Test Protocol Development

Seller will develop, and submit to PEF for review and approval, a test protocol (the "Test Protocol") that will be used to perform the Initial Tests and periodic Tests required by the PPA. The following describes the essential components of the Test Protocol and identifies specific areas of focus.

2.1 Instrumentation

An instrument list will be developed identifying the instruments to be used for test data. The instrument list will include identification of type, accuracy, location, and calibration requirements for all instruments utilized in the test(s). If temporary instrumentation is to be used, the specified accuracy and connection points for such instrumentation will be described. Continuous Capability and Fuel Flow will be metered by the billing meters.

2.2 Test Uncertainty

Provisions will be included for a pre-test and post-test uncertainty analysis. This analysis is to be used as a measure of the quality of the test only, and should conform to the guidance in ASME 19.1.

2.3 Test Tolerance

No test tolerance is to be applied in calculation procedures or in comparison of test results to Committed Capacity or to Minimum Capacity. Continuous Capability will be the corrected as-tested Capacity (see part 2.8) less calculated post-test uncertainty, as determined under part 2.2.

2.4 Fuel Heat Content

Fuel heat content will be measured using Fuel samples drawn during each Test procedure. If the Facility has an on-line gas chromatograph, these

samples may be compared with the measured values in order to establish accuracy of the gas chromatograph. Future tests may rely solely on the gas chromatograph provided it has an acceptable accuracy of < 0.1% and assuming calibration status and associated documentation are provided to the satisfaction of PEF.

2.5 Test Conditions

The Test Protocol will detail the plant operational condition(s) under which the test will be conducted. The description will include a mechanical valve lineup, an electrical distribution lineup, definition of steady-state conditions and the status of various power augmentation equipment/systems (including inlet air treatment devices) during the test(s). These conditions will be in general agreement with the guidance of ASME PTC-46.

The plant shall be in reliable operation prior to conducting any test.

Each incremental Capacity level (e.g., Base Operation Mode, Level 1 Mode of Operation [Add Other Operating Modes, if any]) will be specifically defined and described such as to represent a separate demonstration test lineup in accordance with Section 9.0 of the Agreement.

The Test Protocol will provide for initial and periodic Capacity demonstrations of the Facility to be conducted in part while on the Back-up Fuel. As part of this demonstration, the unit will successfully transition from the primary to the Back-up Fuel without disconnecting from the grid. In a separate test, Seller will demonstrate the ability of the Facility to start up using only the Back-up Fuel.

Facility operation during the Capacity Tests must conform to all Applicable Laws, including all Environmental Licenses. Compliance with emissions requirements will be demonstrated through the Facility's CEMS system. The CEMS system must be certified at the time of the Initial Test and each other Capacity Test.

The test periods will be defined as three one-half hour test periods for each operating mode, all run in a single continuous four hour period. The corrected results for each period must satisfy the repeatability requirements of ASME PTC-46. If possible, test periods should be held at times when ambient conditions are close to reference ambient conditions to minimize corrections.

2.6 Data Collection

The Test Protocol will detail all data collection requirements. The description will include minimum data intervals and DCS or equipment control system settings (dead-bands, compression, averaging, etc.) to be used during the test period.

2.7 Correction Curves

The Test Protocol will provide plant correction curves only for ambient dry-bulb temperature, ambient atmospheric pressure, ambient relative humidity and Fuel constituents to correct test conditions to Reference Conditions. Seller will be required to demonstrate the methods and models used to develop the plant correction curves including the individual equipment data and correction curves utilized to develop the Facility-level corrections. Seller shall provide sample calculations that demonstrate how the correction curves are applied.

2.8 Results

The Test Protocol will define the calculation of and corrections to the test results in keeping with the requirements of the PPA. The corrected as-tested Capacity and Heat Rates of the Facility will be the average of the three qualified test periods, and the Continuous Capability of the Facility will be the corrected as-tested Capacity less the post-test uncertainty (as determined under part 2.2).

2.9 Reporting

The Test Protocol will describe the content and time requirements to provide preliminary and final reports for the Initial Test and periodic Capacity Tests. "Raw" written and electronic data shall be provided to PEF within two working days following each test. Calibration records pertaining to that test instrumentation shall also be provided.

3.0 References

The following are identified as the reference documents to be used in the general development of the Test Protocol. Where these references are non-committal, or there is a potential for conflicting interpretation, the Test Protocol will specify the mutually agreed interpretation to be used.

- ASME PTC 1-1991, General Instructions
- ASME PTC 19.1, Instrument Uncertainty
- ASME PTC 46-1996, Performance Test Code on Overall Plant Performance
- ASME PTC 6, Steam Turbine Generator
- ASTM D1945-1996, Standard Test Method for Analysis of Natural Gas by Gas Chromatography
- ASTM D3588-1998, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels
- AGA Report No. 8 - 1994, Compressibility and Super compressibility for Natural Gas and Other Hydrocarbon Gases

- ASME MFC 3M-1989 (ISO 5167), Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi
- ASME Steam Tables, 1967
- ASHRAE Psychometric Charts

APPENDIX J
TELEMETERING SPECIFICATIONS

Each installation shall be evaluated separately for SCADA requirements because of the many possible agreements and interconnection configurations. Generally, equipment will be specified capable of supporting the following data points:

- Megawatt-hours received
- Megawatt-hours delivered
- KQ-hours received
- KQ-hours delivered
- Voltage
- Current
- +/- Megawatts, instantaneous value and limits
- +/- Megavars, instantaneous value and limits
- Control indication and current Maximum Sustained Rating (MSR)
- Fuel Volumes
- Fuel Quality if Installed
- Breaker and Switch positions
- Equipment Trouble Alarms
- Generator Voltage Regulator Status, and
- other Generator Parameters.

Quantities shall be provided to various Parties through various information or communication systems. Specific designs will be developed to meet those requirements. Multi-ported remote terminal units (RTUs) accessible by all appropriate Parties shall be used, provided the appropriate security levels are implemented. Equipment control of breakers, switches and other devices via SCADA shall be provided to only one responsible Party.

Power for SCADA or metering communication equipment shall be provided by the station battery. Office power systems and switching networks are not acceptable.

APPENDIX K
DESCRIPTION OF FACILITY SITE

[To be provided.]

APPENDIX L
REFERENCE CONDITIONS

[To be provided.]

APPENDIX M
MILESTONES

[To be provided.]

APPENDIX N
FORM OF ASSIGNMENT OF FIRM TSA

[To be provided.]

APPENDIX O
CPM SCHEDULE

[To be provided.]

APPENDIX P
GUARANTEED CAPACITY AND HEAT RATE CURVES

[To be provided.]

**ATTACHMENT
A2
NON-TOLLING
FORM**

**POWER PURCHASE AGREEMENT FOR
FIRM CAPACITY AND ASSOCIATED FIRM ENERGY**

between

and

PROGRESS ENERGY FLORIDA, INC.

dated as of

_____, 2008

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APPENDICES

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THIS CONTRACT is made and entered as of the ____ day of ____, 2008, by and between ____, a ____ [corporation] (“Seller”), having its principal place of business in ____, ____, and PROGRESS ENERGY FLORIDA, INC., a Florida corporation (“Buyer”), having its principal place of business in St. Petersburg, Florida. Seller and Buyer shall collectively herein be called the “Parties” and each may be individually identified herein from time to time as a “Party”.

WITNESSETH:

WHEREAS, Seller will construct and be the owner and operator of a [____] MW [*Seller to provide, not less than 50 MW*] power production facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, electricity to be generated by such facility;

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

1. DEFINITIONS; RULES OF CONSTRUCTION

- 1.1 **Definitions.** When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following defined meanings.

“**After-Tax Basis**” means, with respect to any payment to be received by any Party, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Party so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all Federal, state and local Taxes required to be paid by such Party in respect of the receipt or accrual of the base payment and the additional payment (taking into account the net present value of any reduction in such Taxes resulting from Tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state and local Tax rates applicable to the corporation for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local Taxes for Federal income tax purposes.

“**Ancillary Services**” means all commercial products produced by or related to the Facility, including spinning reserves, operating reserves, black start capability, black stop capability, balancing energy, reactive power, regulation service, emissions credits (including NO_x, SO₂, and CO₂ credits), renewable energy credits, any other environmental or regulatory credits or allowance resulting from operation of the Facility or any similar benefit Buyer otherwise would have realized from or related to the Facility if Buyer rather than Seller had constructed, owned or operated the Facility.

“**Annual Capacity Factor**” or “**ACF**” means the arithmetic average of the last twelve Monthly Capacity Factors, expressed as a percentage. Until the first

twelve months of Monthly Capacity Factors of the Contract Term have been calculated, the arithmetic average of the Monthly Capacity Factors achieved to date shall be the Annual Capacity Factor for purposes of this Contract.

“Annual Peak Capacity Factor” or **“APCF”** means the sum of the last twelve Monthly Weighted Peak Capacity Factors, expressed as a percentage. Until the first twelve months of Monthly Peak Capacity Factors of the Contract Term have been calculated, the arithmetic average of the Monthly Peak Capacity Factors to date shall be used as the Annual Peak Capacity Factor.

“Applicable Laws” means any and all federal, state, regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, Governmental Approvals, codes, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any governmental authority, that apply to the facilities, services or obligations of either Party under this Contract, whether now or hereafter in effect.

“Assignment of Firm TSA” – the Assignment of Firm TSA, to be entered into by and between Seller [*Seller's third-party transmission provider,*] and Buyer in a form substantially the same as that set out in Appendix D.

“Associated Firm Energy” means the amount of Energy corresponding to Committed Capacity, which Seller must make available to Buyer hereunder.

“Automatic Generation Control” or **“AGC”** means procedures and equipment which automatically adjust a control area’s generation to maintain its net interchange schedule plus frequency bias.

“Available Capacity” or **“AC”** means the Continuous Capability less all Unscheduled Outages and Scheduled Reductions, expressed in the nearest whole megawatt quantities, which shall be reported by Seller pursuant to Section 13.9. Available Capacity shall never be greater than Committed Capacity.

“Back-up Fuel” means [*define, if any*].

“Base Operation Mode” means the mode of operation which, under normal circumstances, achieves net generation levels in a range from minimum hourly net generation to maximum hourly net generation which can be obtained from the Facility while under Buyer’s control. Base Operation Mode generation levels can be maintained for sustained periods without operating difficulties taking into account reference conditions (*i.e.*, summer conditions). The maximum hourly net generation for the Base Operation Mode corresponds to the high generation limit set into the AGC by Seller under normal conditions. The minimum hourly net generation for the Base Operation Mode corresponds to the low generation limit set into the AGC by Seller under normal conditions.

“Business Day” means any day on which Federal Reserve Member Banks in Florida are open for business. A Business Day shall begin at 8:00 A.M. EPT and end at 5:00 P.M. EPT.

“Buyer” means Buyer in its capacity as a purchaser of Products and other merchant functions, as distinct from the function of Buyer as a transmission owner.

“Buyer Entities” means Buyer, its parent, present and future subsidiaries and any other entity which directly or indirectly controls, is controlled by or under common control with any of the foregoing, and each of their respective officers, directors, employees, and agents.

“Buyer’s Avoided Cost” the payment rate described in the “Methodology of Calculating Avoided Energy Costs” in Appendix C of Buyer's COG-1 Tariff and as calculated each hour for the Power Production Pricing Area corresponding to the Receipt Point.

“Buyer’s Cost of Cover” has the meaning given thereto in Section 19.6.

“Capacity” means net electrical power, in MW, generated by the Facility and delivered to or available for Buyer’s system at the Receipt Point.

“Capacity Billing Factor” or **“CBF”** means the product of the Annual Capacity Factor and [] plus the product of the Annual Peak Capacity Factor and [] (*i.e.*, $CBF = (0.4 * ACF) + (0.6 * APCF)$). For purposes of determining the Capacity Billing Factor, neither the Annual Capacity Factor nor the Annual Peak Capacity Factor shall be greater than one hundred percent (100%).

“Capacity Delivery Date” means the date on which the Facility begins delivering Available Capacity hereunder, which shall be the later of (a) the Scheduled Capacity Delivery Date, (b) the day immediately following the date of successful completion of the Initial Test in accordance with Section 9 as demonstrated by written test results and reports certified by a responsible officer of Seller and confirmed by Buyer, or (c) the date on which the other conditions set forth in Section 9.1 shall have been satisfied.

“Capacity Test” means the Initial Test and each other test as described in Section 9 that is performed by Seller to determine the Continuous Capability and the incremental Capacity associated with each applicable mode of operation above the Base Operation Mode included in Appendix A of this Contract. [*Insert other modes of operation from Seller’s submission.*]

“Commencement Date” means the date on which both Parties shall have executed and delivered this Contract.

“Commit” or **“Commitment”** means to initiate (or the initiation of) the start-up sequence of the Facility at Buyer’s request.

“Committed Capacity” or **“CC”** means the firm Capacity of the Facility associated with the Base Operation Mode at Reference Conditions using the correction curves provided in the Test Protocol, equal to [] MW. *[Insert Guaranteed Firm Capacity associated with Base Operation at Reference Conditions from Seller’s submission.]*

“Continuous Capability” means the highest sustained net Capacity associated with the maximum hourly net generation Base Operation Mode at which the Facility can operate consistent with Environmental Requirements without exceeding the design operating conditions, temperatures and pressures defined by the applicable manufacturer(s), as determined by a Capacity Test pursuant to Section 9.

“Contract” means this Power Purchase Agreement for Firm Capacity and Associated Firm Energy and all of the Appendices hereto.

“Contract Term” has the meaning given thereto in Section 2.4.

“Contract Year” means the twelve Monthly Billing Periods preceding each anniversary of the first day of the first full Monthly Billing Period following the Capacity Delivery Date.

“CPM Schedule” means the detailed, integrated schedule for the development, permitting, design, engineering, procurement, construction, testing and completion of the Facility, using the “critical path management” method, attached hereto as Appendix O, as revised from time to time as provided herein.

“Credit Limit” means the amount of unsecured credit in United States dollars that Buyer assigns to Seller or Seller’s Guarantor, as applicable, as determined from time to time. Buyer will make a good faith calculation of such Credit Limit employing the credit risk methodology utilized on a day-to-day basis in the operation of its business.

“Credit Rating” means the credit rating assigned to an entity’s unsecured debt (or the issuer rating if an unsecured rating is not available) by Standard & Poor’s (“S&P”), a division of The McGraw-Hill Companies, Inc. or the equivalent rating assigned by Moody’s Investors Service (“Moody’s”). In the event an entity is assigned a rating by both S&P and Moody’s and one rating is lower than the other, the lower rating will be considered the “Credit Rating” of such entity.

“Decommit”, “Decommitting” or **“Decommitment”** means to initiate (or the initiation of) the shutdown sequence of the Facility at Buyer’s request.

“Deferred Governmental Approvals” means those Governmental Approvals, including Environmental Licenses, which are required under Applicable Law for Seller to own, operate, or maintain the Facility, but which cannot be obtained under Applicable Law prior to the Capacity Delivery Date, all of which Governmental Approvals are listed on Appendix B.

“Determination of Need” means a determination made by the FPSC under Section 403.519 of the Florida Statutes that there is a need for the Facility.

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

“Dispatch and Control Rights” means the absolute and sole right of Buyer in any manner, for any reason it deems appropriate, or for no reason at all, in Buyer’s unfettered discretion, solely in Buyer’s own interest, without regard to Seller’s interest, and without any liability or obligation in connection therewith, (a) to Commit and Decommit the Facility and (b) through supervisory equipment (e.g., AGC) or otherwise, to control the Capacity and Energy output of the Facility pursuant to this Contract, subject only to the Facility Operating Capabilities. These rights also extend to control of the reactive power output of the Facility, voltage, frequency and other characteristics of such Energy output, including all Ancillary Services.

“Dispute” has the meaning given thereto in Section 25.1.

“Eastern Prevailing Time” or **“EPT”** means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

“Energy” means electrical energy in MWh generated by the Facility and delivered to Buyer at the Receipt Point.

“Environmental License” means any and all Governmental Approvals applicable to the Facility, the Facility Site, or any “associated facility” (as defined in subsection (6) of Section 403.503 of the Florida Statutes) relating to environmental protection, natural resource protection, land use or zoning.

“Environmental Requirements” means any and all requirements applicable to the Facility, the Facility Site, or any “associated facility” (as defined in subsection (6) of Section 403.503 of the Florida Statutes) under any Environmental License or any Applicable Laws relating to environmental protection, natural resource protection, land use or zoning.

“Event of Default” means for Seller, any of those occurrences specified in Section 19.1 and, for Buyer, any of those occurrences specified in Section 19.2.

“Facility” means *[Insert description of Seller’s facility.]*

“Facility Operating Capabilities” means certain operating capabilities of the Facility which shall be available to Buyer pursuant to this Contract as set forth in Appendix G. *[To include, among other things, types of information in Seller’s submission.]*

“Facility Site” means the real property on which the Facility will be located, as more particularly described in Appendix L.

“FERC” means the Federal Energy Regulatory Commission and any successor thereto.

“Final Capacity Delivery Date” – [] months after the Scheduled Capacity Delivery Date.

“Firm TSA” has the meaning given thereto in Section 10.3.1.

“Force Majeure” means an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including Governmental Authority); acts of God; war, terrorism, riot or insurrection; blockades; embargoes; sabotage; epidemics; explosions and fires not originating in the Facility or caused by its operation; hurricanes; floods; national or regional general strikes, lockouts or other labor disputes or difficulties affecting the electric power industry or the State of Florida generally. Force Majeure shall not include (i) normal climatic conditions (including normal inclement weather) affecting construction, testing, start-up, operation or maintenance of the Facility or related facilities, (ii) equipment breakdown (or inability to use equipment) caused by its design, engineering, construction, operation, or maintenance, or otherwise caused by an event originating at the Facility, (iii) strikes, lockouts or other labor disputes or difficulties, including collective bargaining disputes, affecting Seller or its affiliates or Seller’s vendors, suppliers or contractors that are not part of a national or regional strike, lockout or labor dispute; (iv) late delivery of equipment or materials (except to the extent caused by an event that would otherwise constitute Force Majeure hereunder), (v) failure of performance of any third party, including any third party providing electric transmission service, natural gas transportation or supplying any Fuel, except to the extent that such failure was caused by an event that would otherwise constitute Force Majeure hereunder, (vi) the inability of Seller, for any reason to obtain or maintain adequate transmission service, or (vii) inability of Seller or the Facility to meet the requirements of Applicable Law, to obtain required environmental allowances, offsets or credits, or to obtain, maintain, or comply with all Governmental Approvals required under Applicable Law, including Environmental Requirements and Environmental Licenses (whether such Applicable Law is in effect on the Commencement Date or is subsequently amended, modified, enacted, or promulgated).

“Force Majeure Aggregate Allowance” has the meaning given thereto in Section 19.3.

“FPSC” means the Florida Public Service Commission and any successor thereto.

“**FRCC**” means the Florida Reliability Coordinating Council and any successor thereto.

“**Fuel**” means Primary Fuel or Back-up Fuel, as applicable.

“**Fuel Contracts**” -- has the meaning given thereto in Section 13.5.1.

“**GAAP**” means generally accepted accounting principles in the United States.

“**Good Engineering and Operating Practices**” means generally accepted and sound electric utility generation industry practices, methods and acts applicable to similarly situated regulated electric utility owned generation facilities in the United States which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

- (a) Adequate materials, equipment redundancy, spare parts, resources and supplies, including Back-up Fuel in sufficient reliable volumes and quality, are available to meet the Facility’s needs under normal conditions and reasonably anticipated abnormal conditions;
- (b) Sufficient qualified operating, maintenance and supervisory personnel are available and adequately experienced and trained to operate, maintain and supervise the Facility properly, efficiently and within manufacturer’s guidelines and specifications and are capable of responding to emergency conditions;
- (c) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;
- (d) Appropriate monitoring and testing are done periodically to ensure that equipment and systems are functioning as designed and to provide assurance that equipment and systems will function properly under normal conditions and emergency conditions; and
- (e) Equipment and systems are operated in a safe manner and in a manner safe to workers, the general public and the environment and with regard to design and operating limitations such as steam pressure, temperature and moisture content, chemical content and quality of make-up water, operating voltage range, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.

“Governmental Approval” means any and all licenses, permits, franchises, agreements, approvals, authorizations, consents, waivers, rights, exemptions, releases, variances, exceptions, or order of or issued by, or filings with, or notice to, any Governmental Authority under Applicable Laws.

“Governmental Authority” means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a party at law.

“Guarantor” means a creditworthy entity providing a Guaranty.

“Guaranty” means an irrevocable guaranty in the form of a guaranty agreement from Seller’s Guarantor in a form substantially the same as that set out in Appendix C.

“Hourly Capacity Factor” or **“HCF”** means (a) during any hour that the Facility is not undergoing a Scheduled Reduction, a figure (expressed as a percentage) calculated by (i) dividing the Available Capacity in such hour by the Committed Capacity, and (ii) multiplying by 100 (provided that for purposes of this definition the Available Capacity of the Facility shall be subject to reduction pursuant to Section 13.11); or (b) during any hour during which the Facility is undergoing a Scheduled Reduction or is Decommited by Buyer, the Hourly Capacity Factor shall be equal to the ACF of the preceding Monthly Billing Period. [*Note: This definition may be modified to reflect the modes of operation of the facility submitted by Seller.*]

“Hourly Peak Capacity Factor” or **“HPCF”** means (a) in any Peak Hour that the Facility is not undergoing a Scheduled Reduction, a figure (expressed as a percentage) calculated by (i) dividing the Available Capacity in such hour by the Committed Capacity, and (ii) multiplying by 100 (provided that for purposes of this definition the Available Capacity of the Facility shall be subject to reduction pursuant to Section 13.11); or (b) during any Peak Hour during which the Facility is undergoing a Scheduled Reduction or is Decommited by Buyer, the Hourly Peak Capacity Factor shall be equal to the APCF of the preceding Monthly Billing Period. [*Note: This definition would be later modified to reflect the modes of operation of the facility submitted by Seller.*]

“Indemnifiable Loss” means any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnitee” – Either Party when acting the capacity of an indemnitee as described in Section 20.1.

“Indemnitor” – Either Party when acting in the capacity of an indemnitor as described in Section 20.1.

“Initial Synchronization Date” means the first date upon which (a) Energy is generated by the Facility, and (b) such Energy is delivered to Buyer at the Receipt Point, all pursuant to Section 12.6.

“Initial Test” means the first Capacity Test of the Facility completed successfully as described in Section 9.

“Interconnection Agreement” means a contract between Buyer’s transmission function and Seller which principally delineates and governs (a) the interconnection of Buyer’s electrical system and the Facility, (b) Seller’s responsibility for the costs of installing, operating, maintaining, repairing, upgrading and removing the interconnection facilities and related equipment necessary to safely and effectively connect the Facility to Buyer’s electrical system and (c) the Parties’ respective ownership rights and other obligations with respect to the interconnection.

“Investment Grade Credit Rating” means (a) with respect to a corporation, limited liability company, partnership, or other entity other than a financial institution, a Credit Rating of BBB- or above from S&P or Baa3 or above from Moody’s with, in the case of a rating of BBB-/Baa3, a “stable” outlook, and (b) with respect to a financial institution, a Credit Rating of A- or above from S&P or A3 or above from Moody’s.

“Lenders” means any entity or group of entities (including, upon prior notice to Buyer, any and all successors pursuant to refinancing but excluding Seller or any affiliate thereof) providing all or substantially all of the debt financing, in any form (including lease financing), for the development, construction or improvement of the Facility.

“Level 1 Available Capacity” or **“LIAC”** means Level 1 Capability less all Level 1 Unscheduled Outages and Scheduled Reductions, expressed in the nearest whole MW quantities, which shall be reported by Seller pursuant to Section 13.9. Level 1 Available Committed Capacity shall never be greater than Level 1 Committed Capacity.

“Level 1 Capability” or **“LIC”** means the highest sustained Capacity associated with the Level 1 Mode of Operation at which the Facility can operate consistent with Environmental requirements without exceeding the design operating conditions, temperatures and pressures for Level 1 Mode of Operation defined by the applicable manufacturer(s), as determined by the Capacity Test pursuant to Section 9.

“Level 1 Committed Capacity” means the incremental maximum Capacity for Level 1 Mode of Operation equal to _____ MW at Reference Conditions using

applicable manufacturers' correction curves. [*Insert incremental capacity, at Reference Conditions, for Level 1 Mode of Operations, from Seller's submission.*]

"Level 1 Mode of Operation" means [*Insert description, from Seller's submission, of Level 1 Mode of Operation, which must be capable of being placed under Buyer's Automatic Generation Control and must not have additional operating limitations.*]

"Level 1 Unscheduled Outage" means a whole or partial interruption or reduction of the Facility's Capacity to a level below the Level 1 Committed Capacity, whether the Facility is on-line or off-line, expressed in the nearest whole MW, that does not qualify as a Scheduled Reduction.

"Liquid Security" means security in the form of one or more of the following: (a) a cash deposit in United States dollars, or (b) an unconditional, irrevocable, stand-by letter of credit issued by an issuer acceptable to Buyer capable of issuing letters of credit and having an Investment Grade Credit Rating, in form and substance acceptable to Buyer (including, in the case of a letter of credit, provisions (i) for partial draws, and (ii) permitting Buyer to draw upon such letter of credit in full, if such letter of credit is not renewed or replaced at least twenty (20) Business Days prior to its expiry date (or as otherwise required by Section 4.0), without further notice to or action by any party).

"Maintenance Outage" has the meaning given thereto in Section 13.12.

"Major Equipment" means the [*combustion turbine generator set, heat recovery steam generator, and steam turbine*]. [*Insert additional major equipment from Seller's submission.*]

"Major Milestone" means a Milestone specified as a Major Milestone in Part A of Appendix N.

"Market Rules" has the meaning given thereto in Section 13.19.

"Maximum Sustained Rate" means the maximum safe and continuous load-following capability of the Facility, expressed in MW per minute, to which the Facility can be raised or lowered to meet Buyer's dispatch instructions.

"Milestone" has the meaning given thereto in Section 3.1.

"Milestone Date" has the meaning given thereto in Section 3.1.

"Minimum Capacity" means a Capacity equal to ___ MW which is equal to ninety-five percent (95%) of the Committed Capacity.

"Minimum Load" means the minimum MW level below which Buyer shall not dispatch the Facility without Decommithing the Facility, which minimum shall be

equal to ____ MW net of internal electrical requirements of the Facility. [*Insert number of MW from Seller's submission.*]

“Monthly Billing Period” means the period beginning on the first day of each month, except that the initial Monthly Billing Period shall consist of the period beginning at 12:00 A.M. EPT on the Initial Synchronization Date, and ending with the last day of such month at 11:59 P.M. EPT.

“Monthly Billing Statement” means a monthly summary prepared by Seller in accordance with Section 8.1.

“Monthly Capacity Factor” or **“MCF”** means in any month, the arithmetic average of the Hourly Capacity Factors for the Monthly Billing Period, expressed as a percentage.

“Monthly Capacity Payment” or **“MCP”** means monthly payments for Committed Capacity calculated in accordance with Appendix A.

“Monthly Energy Payment” or **“MEP”** means monthly payments for Energy calculated in accordance with Appendix A.

“Monthly Peak Capacity Factor” or **“MPCF”** means in any month, the arithmetic average of the Hourly Peak Capacity Factors for the Monthly Billing Period, expressed as a percentage.

“Monthly Weighted Peak Capacity Factor” or **“MWPCF”** means the product of the Monthly Peak Capacity Factor and a monthly weight factor, where the monthly weight factor is equal to 0.1 for the Peak Months and 0.06 for the Non-Peak Months.

“NERC” means North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

“Net Energy Output” or **“NEO”** means in any Monthly Billing Period, the Energy generated by the Facility and delivered to the Receipt Point during such Monthly Billing Period.

“Non-Peak Months” means those months which are not Peak Months.

“Notice of Claim” has the meaning given such term in Section 20.3.1.

“Operating Representatives” means the Parties’ representatives designated pursuant to Section 11, who act in matters pertaining to detailed operating arrangements for the delivery of Capacity and Energy provided under this Contract.

“Other Operating Mode” means [*Insert description of each other operating mode included in Seller's submission.*]

“**Payment Due Date**” has the meaning given such term in Section 8.1.

“**Peak Hours**” means those hours occurring April 1 through October 31, from 12:00 P.M. EPT to 9:00 P.M. EPT, and November 1 through March 31, from 6:00 A.M. EPT to 10:00 A.M. EPT and 6:00 P.M. EPT to 10:00 P.M. EPT. Buyer shall have the right to change such Peak Hours by providing Seller a minimum ninety (90) calendar days notice. The total number of Peak Hours shall not exceed thirty eight percent (38.0%) of the total hours during a calendar year.

“**Peak Months**” means the months of January, February, June, July, August, September and December, as such Peak Months may be modified in accordance with Section 13.12

“**Peaking Capability**” means the maximum Capacity the Facility can achieve for a period of at least [] continuous hours and at least [] hours per year, without exceeding the design pressures and temperatures recommended by the Major Equipment manufacturers. *[To include limitations from Seller’s submission.]*

“**Performance Security**” – the security provided by or on behalf of Seller for the benefit of Buyer pursuant to Section 4.1.

“**Performance Security Amount**” – the aggregate amount of Performance Security, equal to [] Dollars (\$) *[Insert amount equal to the product of the Committed Capacity (in kW) multiplied by One Hundred Eighty Dollars (\$180.00) per kW.] [Seller acknowledges that additional security will be required to cover costs that may arise from any firm transportation agreement entered into by Buyer to support the project in the event of a Seller’s default]*

“**Performance Security Liquid Amount**” – the amount of Performance Security required to be satisfied through Liquid Security, equal to (i) the Performance Security Amount, minus (ii) Seller’s Credit Limit, provided however, that the Performance Security Liquid Amount shall be, at a minimum ten percent (10%) of the Performance Security Amount if the entity providing credit support has a Credit Rating of BBB/Baa2 or lower. The Performance Security Liquid Amount shall be adjusted, if necessary, quarterly, within five (5) days of the issuance of quarterly financial statements of Seller or Seller’s Guarantor and within five (5) days of a change in Seller’s or Seller’s Guarantor’s, as applicable, Credit Rating, in any such case to reflect any adjustment in the Seller’s Credit Limit.

“**Person**” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“**Plant RTU**” has the meaning given thereto in Section 14.1.

“**Primary Fuel**” means natural gas which conforms to the tariff quality specifications of the pipeline through which the natural gas is shipped.

“Products” means each of Energy, Capacity and, to the extent applicable, each of Ancillary Services, as defined herein.

“Ready for Control” means a point in time, which will generally (but not necessarily), start at the top of the hour, when the Facility is turned over to Buyer’s system control center for Automatic Generation Control or manual control.

“Receipt Point” means (a) if the Facility is directly interconnected with Buyer’s transmission system, the point where the Facility interconnects with Buyer’s transmission system, or (b) if the Facility is not directly interconnected with Buyer’s transmission system, the location where the transmission system of the third party transmission provider under the Firm TSA interconnects with Buyer’s transmission system; in either case, as further described in Appendix I.

“Reference Conditions” means the ambient dry-bulb temperature, ambient relative humidity, and ambient atmospheric pressure set forth on Appendix M.

“Records” has the meaning given thereto in Section 15.1.

“RTO or ISO or a similar organization” means an independent entity authorized by FERC to operate the Buyer transmission system or the transmission system of the third party to which the Facility is directly interconnected.

“RTU” has the meaning given thereto in Section 14.1.

“Scheduled Capacity Delivery Date” means [_____, ____], as such date may be extended pursuant to Section 3.3. [*Insert date from Seller’s submission.*]

“Scheduled Outage(s)” has the meaning given thereto in Section 13.12.

“Scheduled Reduction” means any reduction in generating capability of the Facility, expressed in the nearest whole MW, as a result of a Scheduled Outage or a Maintenance Outage.

“Security Account” has the meaning given thereto in Section 4.2.

“Seller Entities” means Seller, its parent, present and future subsidiaries and affiliated entities and any other entity which directly or indirectly controls, is controlled by or is under common control with any of the foregoing, and each of their respective officers, directors, employees, and agents.

“Seller’s Cost of Cover” has the meaning given thereto in Section 19.4.

“Start-up Cost” means a one-time payment, payable once per Successful Start-up, in the applicable amount set forth in Appendix F.

“Start-up Time” means the time it takes from the moment the Facility is Committed until it is on-line and Ready for Control.

“Step-In Rights” has the meaning given thereto in Section 5.1.1.

“Successful Start-up” means a start-up of the Facility pursuant to a Buyer Commitment of the Facility, which start-up (a) is not undertaken in connection with a Capacity Test (whether or not such Capacity Test is requested by Buyer), (b) follows a shutdown of the Facility pursuant to a Buyer-initiated Decommittment of the Facility, (c) results in the Facility achieving Ready for Control status, and (d) results in the Facility reaching the level of dispatch or Commitment requested by Buyer.

“Summer Period” means the seven (7) month period beginning immediately after 12:00 A.M. EPT on March 31 and ending at 12:00 A.M. EPT on the following October 31.

“Tax” means any or all ad valorem, property, net income, gross receipts, net worth, franchise, occupational, severance, emissions, generation, first use, conservation, energy, transmission, utility, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments. Tax is meant to include any other similar taxes or charges levied by a Governmental Authority. Tax also includes any penalties and interest that may be imposed for underreporting, failure to report or late filing of returns or reports for any Tax.

“Test Protocol” has the meaning given thereto in Appendix J.

“Third Party” means a Person that is not a member of Buyer Entities or Seller Entities.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Unscheduled Outage” means a whole or partial interruption or reduction of the Facility’s Capacity to a level below Committed Capacity, whether the Facility is on-line or off-line, expressed in the nearest whole MW, that does not qualify as a Scheduled Reduction.

“Winter Period” means the five (5) month period beginning immediately after 12:00 A.M. EPT on October 31 and ending at 12:00 A.M. EPT on the following March 31.

- 1.2 **Rules of Construction.** In this Contract (a) words denoting any gender include each other gender; (b) the singular includes the plural and the plural includes the singular; (c) the word “or” is not exclusive; (d) a reference to an Applicable Law includes any amendment or modification to such Applicable Law, and all regulations, rulings and other Applicable Laws promulgated under such Applicable Law; (e) a reference to a Person includes its successors and permitted assigns; (f) the words “include”, “includes” and “including” are not limiting;

(g) exhibits, schedules, annexes or appendices to any document shall be deemed incorporated by reference in such document; (h) references to any document, instrument or agreement shall include (1) all exhibits, schedules and other attachments thereto, (2) all documents, instruments or agreements issued or executed in replacement thereof, and (3) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time; (i) the term "day" shall mean any calendar day commencing at 12:01 A.M. EPT and ending at 12:00 A.M. EPT; (j) the term "month" shall mean a calendar month; and (k) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Contract as a whole and not to any particular provision, unless otherwise indicated.

2. CONDITIONS PRECEDENT; CONTRACT TERM

2.1 **Condition Precedent to Purchase and Sale.** The obligations of Seller to generate, deliver and sell, and of Buyer to accept delivery of and purchase, Capacity and Energy hereunder shall be subject to the satisfaction of the conditions precedent that:

(a) the FPSC shall have issued a final Determination of Need for the Facility, which order is not subject to appeal,

(b) the FPSC shall have issued a final order approving this Contract, and finding that Buyer is entitled to recover from its customers all payments for Energy and Capacity, which order is no longer subject to appeal,

(c) if applicable, the FERC shall have issued a final order authorizing Seller to make the sales of electrical energy and capacity contemplated by this Contract, which order is no longer subject to appeal, and

(d) each other Governmental Authority having jurisdiction over this Contract shall have issued a final order approving this Contract or otherwise authorizing sales of electrical energy and capacity under this Contract, as applicable, which orders are no longer subject to appeal.

Buyer and Seller shall be co-petitioners on the application for such Determination of Need, and each Party shall cooperate in making such application (and each other application for a Governmental Approval under this Section 2.1) promptly after execution of this Contract, and shall prosecute such application diligently and in good faith; provided that nothing in this Section 2.1 shall be construed to require Buyer to consent to any modification of this Contract or any other condition or requirement imposed on Buyer relating to such application, which modifications, conditions or requirements may be rejected by Buyer in its sole and absolute discretion.

2.2 **Performance Security.** All obligations and liabilities of Buyer hereunder, and all rights of Seller hereunder, shall be subject to the satisfaction of the condition

precedent that Seller shall have delivered the Performance Security to Buyer not later than ten (10) days after the Commencement Date.

2.3 Failure of Conditions Precedent.

2.3.1 If the conditions precedent set forth in Section 2.1 shall not have been satisfied on or prior to the first anniversary of the Commencement Date, (a) Buyer by thirty (30) days notice to Seller may terminate this Contract without penalty or further liability, and (b) Buyer shall return any undrawn Performance Security to Seller within thirty (30) days of the effective date of such termination.

2.3.2 If the condition precedent set forth in Section 2.2 shall not have been satisfied on or prior to the Commencement Date, Buyer by notice to Seller may terminate this Contract without penalty or further liability for Buyer.

2.4 **Contract Term.** The term of this Contract (the "Contract Term") shall commence on the Commencement Date and shall expire on _____, 20___, unless sooner terminated in accordance with Section 3 or Section 19 hereof.

3. CONTRACT MILESTONES

3.1 **Contract Milestones.** Seller shall achieve each of the milestones set forth in Parts A and B of Appendix N in connection with its ownership, development and construction of the Facility (a "Milestone") on or (except in the case of Capacity Delivery Date) prior to the milestone date set forth on Appendix N corresponding to such Milestone (a "Milestone Date"). Time is of the essence of this Contract with respect to Seller's obligation to meet each Milestone (including each Major Milestone).

3.2 **Failure to Achieve Milestone(s).**

3.2.1 If Seller fails to achieve any Milestone (including any Major Milestone) by the corresponding Milestone Date, then (a) Seller shall give Buyer notice of such failure as provided in Section 12.2, and (b) Buyer shall have the right, but not the obligation, to exercise Step-In Rights as provided in Section 5.

3.2.2 If Seller fails to achieve any Major Milestone by the corresponding Milestone Date (including failure to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date) or upon any other Seller Event of Default prior to the Capacity Delivery Date, then, except as provided in Section 3.3 (and provided that Buyer is not then exercising Step-In Rights with respect to such failure and that Seller is not paying delay liquidated damages as provided in Section 3.2.3), Buyer shall be entitled to terminate this Contract by notice to Seller as

provided in Section 19. Upon such termination, Seller shall pay to Buyer, on demand, in immediately available funds (or if not so paid, Buyer shall be entitled to draw upon the Performance Security), liquidated damages at the rate set forth on Appendix N with respect to such Major Milestone (or, in the case of an Event of Default other than failure to achieve a Major Milestone by the corresponding Milestone Date, at the rate set forth therein with respect to the next unmet Major Milestone).

- 3.2.3 Notwithstanding the provisions of Section 3.2.2, if Seller fails to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date, then, except as provided in Section 3.3, and provided that Buyer is not then exercising Step-In Rights with respect to such failure, Seller may extend the Scheduled Capacity Delivery Date day-for-day to a date not later than the Final Capacity Delivery Date, by paying to Buyer delay liquidated damages at a rate equal to [_____ Dollars (\$ _____)] *[Insert amount equal to product of Committed Capacity (in kW) multiplied by \$[_____] per kW]* per day. Buyer shall not be entitled to terminate this Contract with respect to such failure unless Seller shall have failed to pay such liquidated damages, shall have failed to comply with the security requirements set forth in Section 4, or shall have failed to achieve the Capacity Delivery Date by the Final Capacity Delivery Date, whereupon Buyer shall be entitled to terminate this Contract as provided in Section 19. Upon such termination, Seller shall pay to Buyer, on demand, in immediately available funds (or if not so paid, Buyer shall be entitled to draw upon the Performance Security), liquidated damages at the rate set forth on Appendix N with respect to such failure.

3.3 **Effect of Force Majeure; Final Capacity Delivery Date.**

- 3.3.1 The Milestone Dates (other than the Final Capacity Delivery Date) may be extended upon the occurrence of an event of Force Majeure as and to the extent provided in Section 18; provided that in no event shall the total number of days of all the extensions made pursuant to this Section 3.3 and Section 18 as a result of Force Majeure exceed one hundred eighty (180) days in the aggregate; provided, further, that if Seller fails to achieve the Capacity Delivery Date on or prior to the Final Capacity Delivery Date, then regardless of the extent to which such failure is excused for Force Majeure as provided in Section 18, such failure shall be deemed an Event of Default by Seller, and in addition to Buyer's right to terminate this Contract as provided in Section 19.3 and in addition to any delay liquidated damages paid or owed by Seller to Buyer, Seller shall also pay Buyer the sum of _____, (\$ _____) as liquidated damages for failure to achieve the Final Capacity Delivery Date.

- 3.3.2 The Final Capacity Delivery Date shall not be extended for any reason, including payment of liquidated damages, renewal or replenishment of Performance Security, or Force Majeure.

4. PERFORMANCE SECURITY

- 4.1 **Security for Performance.** Not later than ten days after the Commencement Date, and as a condition thereto, Seller shall provide Buyer security for performance of all of Seller's obligations hereunder to be performed after the Capacity Delivery Date (the "Performance Security"). Such Performance Security shall be in an amount equal to the Performance Security Amount, and may be provided in the form of one or both of a Guaranty or Liquid Security; provided, that the amount of Liquid Security provided by Seller with respect thereto shall not at any time be less than the Performance Security Liquid Amount at such time.
- 4.2 **Security Account:** All cash deposits or other Liquid Security shall be held in an account designated by Buyer (the "Security Account") for the benefit of Buyer, free and clear of all liens (including the liens of the Lenders) of any Person other than Buyer. Any Security Account shall be established and maintained at the expense of Seller and held by a depository bank or securities intermediary acceptable to Buyer pursuant to a control agreement in form and substance acceptable to Buyer. Prior to the establishment of any Security Account, or to the entering into or refinancing of any loan, credit, or reimbursement agreement, indenture, other debt or security arrangement with any Lender, Seller shall obtain the express written waiver of the Lenders (in form and substance satisfactory to Buyer) which are entitled to liens at that time, to any and all rights in and to the Performance Security, as applicable, and the proceeds therefrom
- 4.3 **Replacement of Security:**
- 4.3.1 Seller shall maintain the applicable security required under this Contract as set forth herein at all times during the Contract Term. Seller shall give Buyer notice thirty (30) days prior to the date, if any, on which any Performance Security is due to expire, advising Buyer of the scheduled expiration of such security. Seller shall replace any such security not later than ten (10) Business Days prior to such expiration with security meeting the requirements of this Contract. Seller shall replenish any amount drawn by Buyer against the Performance Security within five (5) Business Days of such draw.
- 4.3.2 Buyer shall have the right to monitor the financial condition of Seller and of the issuer of any Guaranty or letter of credit, and Seller shall notify Buyer within three (3) Business Days of becoming aware that any such entity's Credit Rating has been downgraded or its outlook changed. In addition, Seller shall provide to Buyer, no later than the Commencement Date and at the beginning of each calendar quarter

thereafter until the Capacity Delivery Date, and again on the Capacity Delivery Date and at the beginning of each calendar quarter thereafter, evidence satisfactory to Buyer sufficient to establish that Seller is in compliance with the security requirements set forth in this Section 4.0, including such evidence sufficient to establish that Seller, any Seller's Guarantor, or any issuer of a letter of credit as set forth herein has the required Credit Rating, as applicable, and sufficient to establish the Credit Limit of Seller and any Seller's Guarantor, as applicable.

- 4.3.3 In the event that the financial condition of any such entity has deteriorated to a level below Investment Grade Credit Rating or its Credit Limit has been reduced, such that the amount of Liquid Security provided by Seller to or for the benefit of Buyer is less than the Performance Security Liquid Amount, as applicable, Seller shall replace such Performance Security, or shall provide additional Liquid Security, such that the aggregate amount of Liquid Security is not less than the Performance Security Liquid Amount, which replacement security shall be issued by an entity with an Investment Grade Credit Rating, as applicable, and otherwise shall meet the requirements of this Section 4.0, within five (5) Business Days following the date Seller becomes aware of such failure to maintain an Investment Grade Credit Rating or reduction in Credit Limit or the date of any public announcement of such failure or reduction in Credit Limit.

5. STEP-IN RIGHTS

5.1 Operation by Buyer Following Exercise of Step-In Rights.

- 5.1.1 Upon the occurrence of (a) the failure of Seller to meet any Milestone by the corresponding Milestone Date, or (b) any Event of Default by Seller (whether before or after the Capacity Delivery Date) and the failure of Seller to cure such Event of Default within the applicable cure period, Buyer or its designee shall have the right, but not the obligation, to enter upon and complete the licensing, permitting, construction, start-up, testing and commissioning of, or operate and maintain, the Facility as agent for Seller ("Step-In Rights"), until the earliest of (x) the date upon which Seller shall provide to Buyer a certificate of an independent engineer reasonably acceptable to Buyer or otherwise demonstrate to Buyer's reasonable satisfaction that the circumstance which gave rise to Seller's failure to meet a Milestone or such Event of Default no longer exists, (y) the date Buyer in its sole discretion elects by notice to Seller to cease exercising Step-In Rights, or (z) the expiration or earlier termination of this Contract.
- 5.1.2 Subject to Section 5.2, during any period of exercise of Step-In Rights by Buyer, Buyer (a) shall use commercially reasonable efforts to complete the licensing, permitting, construction, start-up, testing and

commissioning of the Facility as provided herein, or operate and maintain the Facility in accordance with Seller's obligations hereunder, and in accordance with all existing agreements to which Seller is a party and all applicable Governmental Approvals and (b) shall continue to pay Monthly Capacity Payments to the extent otherwise required to be paid hereunder.

- 5.2 **Reimbursement of Buyer's Costs.** Seller shall reimburse, indemnify and hold harmless Buyer, within fifteen (15) days of submission of a reimbursement request by Buyer, for the reasonable and necessary costs and expenses incurred by Buyer or its designee in exercising Step-In Rights, including costs and expenses incurred in completing the licensing, permitting, construction, start-up, testing and commissioning of the Facility, or in the operation and maintenance of the Facility, on behalf of Seller, costs and expenses (including reasonable fees and expenses of counsel) in enforcing its Step-In Rights, and the cost of funds with respect to all such costs and expenses at Buyer's overall cost of capital, in each case supported by reasonable documentation. Buyer shall provide ten (10) days notice in reasonable detail to Seller of the need for any capital expenses, or any other extraordinary expenses in excess of Five Hundred Thousand Dollars (\$500,000.00) not approved by the Operating Representatives, and shall obtain the consent of Seller for such capital expenses or other extraordinary expenses, such consent not unreasonably to be withheld or delayed. Without limiting any other right or remedy of Buyer with respect thereto, Buyer shall be entitled to draw amounts to which it is entitled to be reimbursed for or indemnified or held harmless against under this Section 5.2 from the Performance Security or by set-off of amounts due to Seller hereunder; provided that any amounts due to Seller hereunder after payment of such amounts and Seller's debt service to the Lenders shall be remitted to Seller.
- 5.3 **Access upon Exercise of Step-In Rights.** In connection with the exercise of Step-In Rights, Buyer and its employees and representatives designated in writing to Seller shall be entitled to access Seller's agreements, books and records, operating manuals, and other documents relating to the Facility and the Facility Site, and shall have access to the Facility and the Facility Site, for the purpose of exercising Step-In Rights, subject to reasonable safety and confidentiality requirements. Buyer shall notify Seller of any documents or actions by Seller reasonably necessary for Buyer to exercise its Step-In Rights, which shall be subject to the consent of Seller, such consent not unreasonably to be withheld or delayed.
- 5.4 **Title.** During any period that Buyer or its designee is in possession of the Facility and the Facility Site upon exercise of Step-In Rights, Seller shall retain legal title to and ownership and risk of loss of the Facility and the Facility Site, and Buyer or its designee shall complete the licensing, permitting, construction, start-up, testing and commissioning of, or operate and maintain, the Facility as an agent of Seller in accordance with this Contract. Upon the termination of

Buyer's exercise of its Step-In Rights pursuant to Section 5.1.1, Buyer or its designee shall relinquish the Facility and the Facility Site to Seller.

- 5.5 **No Termination.** Buyer's exercise of its Step-In Rights shall not be deemed a termination of this Contract or an assumption, release, or waiver by Buyer of any liability of Seller to third parties or of any obligation or liability of Seller to Buyer or (except as expressly provided in Section 3.2 or Section 19.5) any right or remedy of Buyer with respect thereto; provided that this Section 5.5 shall not excuse any liability of Buyer expressly assumed in writing or incurred by Buyer in its own right and not in its capacity as Seller's agent or attorney-in-fact in acting in Seller's stead and on Seller's behalf in connection with the exercise of its Step-In Rights.
- 5.6 **Buyer as Attorney-in-Fact.** Seller hereby constitutes and appoints Buyer or its designee its agent and true and lawful attorney-in-fact to exercise Step-In Rights, and to act thereafter in Seller's stead and on Seller's behalf, as provided in this Section 5. This power is a power coupled with an interest and is irrevocable for the Contract Term.
- 5.7 **Permits and Contracts.** Seller shall (a) use all reasonable efforts to ensure that all Governmental Approvals and environmental emission allowances, credits or approvals required for the construction and operation of the Facility, and powers of attorney related to such Governmental Approvals and environmental emission allowances, credits or approvals, are transferable to Buyer or its designee or exercisable by Buyer or its designee upon exercise of Step-In Rights, (b) ensure that such Step-In Rights are recognized by Seller's Lenders, vendors, suppliers and subcontractors and are recognized in any employment or labor contract respecting the Facility's work force, and that Buyer's exercise thereof will not cause a breach, default, or lien under, or permit the termination of, any material contract relating to the Facility or the Facility Site, and (c) use its best efforts to effect the transfer of such Governmental Approvals, emissions allowances, credits, or approvals, powers of attorney, and contracts to Buyer or its designee upon such exercise to the extent requested by Buyer.

6. SALE OF ENERGY AND CAPACITY

- 6.1 **Test Energy.** Commencing on the Initial Synchronization Date and until the Capacity Delivery Date, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all Energy, but no Capacity, in excess of Seller's internal consumption of electric energy in accordance with Section 7, except to the extent that Buyer is not obligated to purchase such Energy under the terms of this Contract other than Section 6.3; provided that Buyer shall not be required to accept delivery of or purchase such Energy to the extent Buyer would be required to back down its own baseload generation or base load generation under firm contract to accommodate such deliveries, and Seller shall schedule all tests accordingly.

- 6.2 **Energy and Capacity.** Commencing on the Capacity Delivery Date, Seller shall sell to Buyer and Buyer shall purchase from Seller all Energy and Capacity in excess of Seller's internal consumption of energy and capacity, in accordance with Section 7, except to the extent that Buyer is not obligated to purchase such Energy and Capacity under the terms of this Contract.
- 6.3 **Purchase Obligation Excused.**
- 6.3.1 Buyer shall not be obligated to purchase, and may require interrupted or reduced deliveries of, Energy for any reason, or for no reason at all, whenever Buyer deems it appropriate, in its sole and absolute discretion.
- 6.3.2 Buyer shall not be obligated to purchase any Capacity in excess of the Committed Capacity for any reason.
- 6.3.3 Buyer in the exercise of its Dispatch and Control Rights shall not be obligated to accept delivery of any Energy or Capacity not dispatched by Buyer pursuant thereto, or to pay for such Energy if delivered.
- 6.4 **Exclusivity; Specific Performance.**
- 6.4.1 Except to the limited extent of unintentional sales of imbalance energy upon formation of an RTO or ISO or similar organization as contemplated by Section 13.19, or upon an Event of Default by Buyer under Section 19.2, Seller shall have no right to sell electrical Energy or Capacity or Ancillary Services from the Facility to anyone other than Buyer. Seller expressly agrees that it shall have no right to sell electrical Energy or Capacity or Ancillary Services from the Facility to anyone other than Buyer, except in the limited circumstances provided in this Section 6.4.1, notwithstanding any default by Buyer, any event of Force Majeure, or any other circumstances whatsoever.
- 6.4.2 Seller acknowledges that, throughout the term of this Contract, Buyer will have a need for the Capacity, Energy and Ancillary Services required to be provided by Seller hereunder, will be relying on the Facility to meet those needs and, notwithstanding the provisions of Section 4, would have no adequate remedy at law in the event Seller were to supply such Capacity, Energy or Ancillary Services to any Person other than Buyer in breach of this Contract; and Seller therefore agrees that, in such event, Buyer would be entitled to specific performance of Seller's obligations to supply Capacity, Energy and Ancillary Services to Buyer as provided herein.

7. PAYMENT BY BUYER

- 7.1 **Test Energy.** Prior to the Capacity Delivery Date, subject to Section 6.1, Buyer shall pay Seller for each MWh of Energy delivered by the Facility at the Receipt

Point and agreed to be accepted by Buyer at a rate equal to ninety percent (90%) of Buyer's Avoided Cost.

- 7.2 **Payments for Energy.** Beginning on the Capacity Delivery Date, and thereafter for the Contract Term, Buyer shall pay Seller for each MWh of Energy delivered and dispatched by Buyer pursuant to this Contract at the Receipt Point during each hour as provided in Appendix A; provided, that without limiting the generality of Section 6.3, Buyer shall not be required to accept delivery of or to pay Seller for any Energy produced by the Facility during any periods when Buyer has Decommited the Facility pursuant to Section 13.7.
- 7.3 **Payments for Capacity.**
- 7.3.1 Beginning on the Capacity Delivery Date, and thereafter for the Contract Term, Buyer shall pay to Seller the Monthly Capacity Payments for the Committed Capacity at rates set forth in Appendix A; provided that (i) Buyer shall have no obligation to make any Monthly Capacity Payments for the period(s), if any, in which an Event of Default by Seller has occurred and is continuing, and (ii) the Monthly Capacity Payment may be adjusted as a result of an event of Force Majeure affecting Seller, as provided in Section 18.4. Monthly Capacity Payments when applicable shall be prorated for the Monthly Billing Period.
- 7.3.2 For the Monthly Billing Period in which the Capacity Delivery Date occurs, the Monthly Capacity Payment shall be prorated by multiplying (a) the Monthly Capacity Payment calculated as set forth in Appendix A, times (b) the ratio calculated by dividing the number of hours from the commencement of the day after the Capacity Delivery Date through the end of the month by the total number of hours in the month.
- 7.4 **Start-up Costs.** Buyer shall pay Seller the Start-up Costs for each Successful Start-up in a Monthly Billing Period. [*Insert start-up costs from Seller's submission*]
- 7.5 **Ancillary Services.** The Energy and Capacity purchased by Buyer hereunder pursuant to Section 6 shall include all Ancillary Services produced or capable of being produced by or related to the Facility, and Seller shall be entitled to no separate payment with respect thereto. All financial or other benefits relating to such Ancillary Services shall accrue to and be the property of Buyer.
- 7.6 **Payment by Buyer.** The payment with regard to the sale and purchase of Capacity, Energy and Ancillary Services by Buyer pursuant to this Contract shall be computed based upon the components listed in Sections 7.1 through 7.5. Notwithstanding the itemization of these components, payment from Buyer

represents a combined charge solely for the sale and purchase of Capacity, Energy and Ancillary Services.

8. BILLING AND PAYMENT

- 8.1 **Timing and Method of Payment.** On or before the tenth (10th) day after the end of each Monthly Billing Period, Seller shall provide to Buyer a detailed written invoice ("Monthly Billing Statement"), on paper and by electronic media (in the original software file format with all formulas and calculations intact) of the amounts owed by Buyer pursuant to this Contract (and, if applicable, the amounts owed by Seller pursuant to this Contract). Buyer shall pay such Monthly Billing Statement on the later of the twentieth (20th) day of each month, or the tenth (10th) day after the day on which Buyer receives such invoice (the "Payment Due Date"). The Monthly Billing Statement shall detail the amount and calculation of the following: (a) the Energy Payment payable by Buyer for the preceding month; (b) the Capacity Payment payable by Buyer for the preceding month; (c) the number of Successful Start-ups occurring and the amount of Start-up Costs, if any, payable by Buyer for the preceding month; and (d) the adjustments (either a charge of a credit, as applicable), if any, as expressly provided pursuant to Appendix A. Payment shall be made on or before the Payment Due Date to Seller in accordance with the invoice in immediately available funds through wire transfer, or other mutually agreeable method. If the Payment Due Date falls on a day that is not a Business Day, the Payment Due Date shall be the next Business Day.
- 8.2 **Late Payments.** If either Party is late in making any payment due under this Contract, and the reason for such delay is solely and exclusively within the control of such Party, such payment shall accrue interest at a per annum rate equal to the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by applicable law. Interest shall be charged from and including the due date to but excluding the date the delinquent amount is paid in full.
- 8.3 **Disputed Billings.** In the event that either Party has a bona fide dispute with any invoice submitted hereunder, such Party shall inform the other Party in writing of its grounds for disputing such invoice. In the event of a disputed invoiced amount(s), the Party receiving the invoice shall be entitled to withhold the disputed amount if such Party first provides the invoicing Party with a detailed explanation of the basis for the dispute, including calculations demonstrating the disputing Party's position regarding the correct amount that should have been invoiced. Upon resolution of the dispute, any overpayment or underpayment shall be refunded or paid (as appropriate) with interest as calculated pursuant to Section 8.2 accruing from and after the date such

overpayment or underpayment was made until the date on which such refund or payment is made.

8.4 **Adjustments.** If any overcharge or undercharge in any form whatsoever shall at any time be found and the invoice therefor has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within thirty (30) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twelve (12) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated in accordance with Section 8.2 from the date that the undercharge or overcharge actually occurred.

8.5 **Taxes.**

8.5.1 **Taxes.** Except as otherwise provided in this Contract, in addition to all other amounts due and payable under this Contract, (a) Seller shall be responsible for all Taxes of any kind relating to the delivery of Energy, Capacity, and related services (including Ancillary Services) prior to and at the Receipt Point; and (b) Buyer shall be responsible for all Taxes of any kind relating to the delivery of Energy, Capacity, and related services (including Ancillary Services) after the Receipt Point (by way of clarification of the foregoing, Taxes include any taxes incurred in connection with downstream sales of the Energy). Each Party shall provide the other Party upon written request a certificate of exemption or other reasonably satisfactory evidence of exemption if any exemption from or reduction of any Tax is applicable. Each Party shall exercise commercially reasonable efforts to obtain and to cooperate in obtaining any exemption from or reduction of any Tax.

8.5.2 **Facility Taxes.** Except as specified in Section 8.5.1, the payment of any and all present or future Taxes on or respecting the Facility, in connection with the development, permitting, design, engineering, procurement, construction, testing, completion, ownership, leasing, operation or maintenance of the Facility or any related infrastructure, transmission or transportation facilities shall be the sole and exclusive responsibility and obligation of Seller. Buyer shall provide to Seller for payment by Seller any invoice or assessment for any such Tax received by Buyer from any Governmental Authority.

8.5.3 **Tax Indemnification.** Nothing in Section 21 or any other provision of this Contract will be deemed to limit the After-Tax Basis portion of the Indemnifications provided in Section 20.

- 8.5.4 Cooperation. The Parties agree to oppose by all reasonable lawful means any federal, state, county or municipal Tax that is sought to be imposed upon the purchase or sale of Energy, Committed Capacity, or Ancillary Services from the Facility.

9. TESTING AND CAPACITY RATING

9.1 Capacity Delivery Date; Available Capacity.

- 9.1.1 The Capacity Delivery Date shall not occur before the Scheduled Capacity Delivery Date. In addition, in order to achieve the Capacity Delivery Date, Seller shall (or shall cause the Facility to) satisfy the following conditions and the same shall have been accepted by Buyer:
- (a) Seller shall, at its expense, have constructed, or caused to be constructed, the Facility, which shall include the equipment and have the characteristics as described in Appendix G;
 - (b) Seller shall, at its expense, have constructed, or caused to be constructed, the interconnection facilities, and caused any transmission upgrades to be constructed and placed into service, such that the interconnection and transmission facilities are capable of delivering and accepting the Committed Capacity and associated Firm Energy;
 - (c) Seller shall, at its expense, have constructed, or caused to be constructed, the interconnection facilities as necessary to deliver the Primary Fuel to the Facility in volumes and at pressures necessary to enable the Facility to generate Energy at the Committed Capacity at all times, and caused such facilities to be placed into service;
 - (d) the Initial Synchronization Date shall have occurred, the Facility shall be in compliance with the Interconnection Agreement and shall have met Buyer's requirements for AGC, and the Facility shall have demonstrated the reliability of its communication systems with Buyer;
 - (e) the Facility shall have demonstrated a Continuous Capability equal to or greater than the Minimum Capacity in an Initial Test completed successfully in accordance with Section 9 prior to the Capacity Delivery Date, as set forth in Seller's certified test report;
 - (f) Seller shall have delivered to Buyer a certificate of a responsible officer of Seller certifying that Fuel Contracts meeting the requirements of Section 13.5 are in full force and effect as of the Capacity Delivery Date, such certificate to attach true and complete copies of such Fuel Contracts;

- (g) Seller shall have provided to Buyer certificates of insurance coverage, dated as of the Capacity Delivery Date, and copies of the insurance policies required to be maintained by Seller under Section 16;
- (h) each of the representations and warranties of Seller set forth in Section 23.1 shall be true and correct as of the Capacity Delivery Date, and Seller shall have provided to Buyer a certificate of a responsible officer of Seller to such effect;
- (i) no Event of Default by Seller, and no event which, with the passage of time or giving of notice would become an Event of Default, shall have occurred and be continuing;
- (j) Seller shall have provided to Buyer the Performance Security;
- (k) Seller shall have provided to Buyer a certificate dated no later than the Capacity Delivery Date from an independent, registered engineer, reasonably acceptable to Buyer, stating that the Facility has been designed, engineered and constructed in accordance with Good Engineering and Operating Practices and the terms of this Contract; and
- (l) a certificate of a responsible officer of Seller, dated no later than the Capacity Delivery Date, shall have been delivered to Buyer, certifying that Seller has obtained all Governmental Approvals (other than the Deferred Governmental Approvals) required under Applicable Law for the ownership, operation and maintenance of the Facility.

- 9.1.2 The initial Available Capacity and the initial Level 1 Available Capacity of the Facility shall be effective on the Capacity Delivery Date, and shall be determined by Seller upon completion of such Initial Test as provided in Section 9.2.
- 9.1.3 The Available Capacity and the Level 1 Available Capacity shall be designated upon completion of the Initial Test or of any Capacity Test to the nearest whole MW unit of Capacity, and shall be effective on the date of such test (or the Capacity Delivery Date, in the case of the Initial Test).
- 9.1.4 The maximum Capacity associated with each incremental mode of operation will be designated upon completion of the Initial Test or any other subsequent Capacity Test.

9.2 **Initial Test.**

- 9.2.1 Seller shall provide to Buyer a proposed Test Protocol not less than one hundred twenty (120) days before the Initial Test for Buyer's review and approval. Such Test Protocol shall be consistent with the capacity demonstration testing guidelines attached as Appendix J. The Parties shall meet promptly to address any Buyer concerns about the Test Protocol and shall endeavor to agree on the Test Protocol by the date that is forty-five (45) days prior to the Initial Test.
- 9.2.2 The Parties shall agree on the date and time when Seller will attempt the Initial Test for the Facility; provided that the date for such Initial Test shall be no earlier than the date [____ (____) days] prior to the Scheduled Capacity Delivery Date. [*Fill in date to be agreed.*] If the Initial Test for the Facility is completed successfully in accordance with this Section 9, Seller shall set the Available Capacity at any level not less than the Minimum Capacity and not greater than the lesser of (a) the Continuous Capability demonstrated by the most recent run of the Initial Test, or (b) the Committed Capacity. If such test is not completed successfully, Seller shall provide notice to Buyer as to when the Facility will be ready to reconduct the Initial Test. Subject to Section 9.4, Seller may perform the Initial Test any number of times prior to the Capacity Delivery Date until the Initial Test is completed successfully in accordance with this Section 9; provided that nothing in this Section 9 shall be construed to extend the Scheduled Capacity Delivery Date.
- 9.2.3 The Level 1 Available Capacity shall be the lesser of (a) the Level 1 Committed Capacity, or (b) the incremental Capacity associated with the Level 1 Mode of Operation demonstrated in the Initial Test.
- 9.2.4 The maximum Capacity associated with each incremental mode of operation will not exceed the maximum incremental Capacity demonstrated by the most recent run of Capacity Tests for each operating mode.

9.3 **Retesting.**

- 9.3.1 Subject to Section 9.4, after the Capacity Delivery Date, in order to establish a new level of Available Capacity, Seller may perform up to a maximum of four (4) Capacity Tests per Contract Year.
- 9.3.2 Buyer may require Seller to perform Capacity Tests:
- (a) once during each Summer Period and once during each Winter Period at Buyer's sole discretion;

- (b) At any time Seller claims it is unable to comply with any material obligation under this Contract for a period of thirty (30) days or more in the aggregate as a consequence of an event of Force Majeure;
- (c) At any time Seller fails two (2) consecutive times to meet the operating level prescribed by Buyer, as described in Section 13.11.

9.3.3 Upon completion of such Capacity Test(s), if any, Seller shall set the following:

- (a) the new Available Capacity, at a level not less than the Minimum Capacity and not greater than the lesser of (i) the Continuous Capability demonstrated by the most recent Capacity Test, or (ii) Committed Capacity. Seller may not establish a new level of Available Capacity except upon completion of a Capacity Test;
- (b) the Level 1 Available Capacity at the lesser of (i) the Level 1 Committed Capacity, or (ii) the incremental Capacity associated with Level 1 Mode of Operation demonstrated by the most recent Capacity Test; and
- (c) the maximum level of incremental Capacity associated with each Other Operating Mode at the maximum level demonstrated by the most recent Capacity Test for each applicable Other Operating Mode.

9.4 **Conduct of Tests.** Seller shall perform each Capacity Test at a time approved by Buyer (such approval not to be unreasonably withheld) not less than five (5) Business Days nor more than fourteen (14) calendar days after receipt of notice of such Capacity Test by the Party not requesting such test. Buyer may be present on-site to monitor each such Capacity Test. Seller shall provide to Buyer a complete written report of all results of each such Capacity Test certified by a responsible officer of Seller, for Buyer's review and verification, promptly upon becoming available to Seller (including all pertinent "raw" data (written and electronic) and all pertinent calibration records of test instrumentation). Each Capacity Test shall be performed in compliance with all Environmental Requirements and in accordance with the capacity demonstration testing guidelines in Appendix J and the Test Protocol agreed under Section 9.1.

9.5 **Buyer's Right to Observe Testing.** Buyer shall have the right to observe all Capacity Tests and the right to receive copies of the results of such tests. Buyer may have representative(s) attend and be present during such testing.

9.6 **Effectiveness of Capacity Tests.**

9.6.1 No Capacity Test shall be deemed to be successful unless such Capacity Test demonstrates a Continuous Capability equal to or greater

than the Minimum Capacity. At any time, the last Capacity Test performed (whether or not successful and whatever the Continuous Capability demonstrated) shall be the effective test as of such time.

- 9.6.2 If any Capacity Test demonstrates a Continuous Capability less than the Minimum Capacity, then Seller shall promptly take corrective action to restore the Continuous Capability to a level equal to or greater than the Minimum Capacity and shall reschedule a Capacity Test to demonstrate such Continuous Capability at a time approved by Buyer (such approval not to be unreasonably withheld) as soon thereafter as practicable but in any event not less than five (5) Business Days nor more than fourteen (14) calendar days after receipt of notice of such rescheduled test by Buyer. Any period following an unsuccessful Capacity Test until a successful Capacity Test is completed as provided herein shall be deemed to be an Unscheduled Outage.

10. INTERCONNECTION, DELIVERY OF ENERGY, COMMITTED CAPACITY, ANCILLARY SERVICES, METERING

10.1 Interconnection.

- 10.1.1 Seller shall make all arrangements necessary to interconnect the Facility to the system of a third party or to the Buyer's transmission system, as applicable.
- 10.1.2 Without limiting the generality of Section 10.1.1, and as necessary in order to comply with Seller's obligations thereunder, at Seller's expense, Seller shall cause to be acquired, constructed, owned, operated and maintained, all facilities, infrastructures and property interests that are necessary for Seller to safely and reliably interconnect with and deliver all Energy and Capacity required to be delivered hereunder to the Receipt Point.
- 10.1.3 As between Buyer and Seller, Seller shall (a) be solely responsible for all costs of interconnection to a third party transmission system, (b) be solely responsible for obtaining any credits against transmission charges available from the third party related to such interconnection costs, and (c) retain all rights to any such credits.
- 10.1.4 If the Facility is directly interconnected to Buyer's transmission system, the costs of such interconnection, including any transmission credits for such costs, shall be determined in accordance with Buyer's open-access transmission tariff or an RTO or ISO or a similar organization open-access transmission tariff, as applicable.

10.2 Delivery of Energy, Committed Capacity.

10.2.1 This Section 10.2.1 shall apply (a) if the Facility is directly interconnected with the Buyer system prior to the date service over the Buyer transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff, or (b) if the Facility is not directly interconnected with the Buyer system prior to the date service over the Buyer transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff:

10.2.1.1 Seller shall deliver all Energy and Capacity required to be provided by Seller hereunder to the Receipt Point. Seller shall be responsible for all costs (including losses pursuant to Section 10.2.1.2, balancing energy pursuant to Section 13.19 and congestion costs) associated with the delivery of such Energy and Capacity to the Receipt Point.

10.2.1.2 Seller shall be paid hereunder based upon the amount of Capacity and Energy delivered to the Receipt Point. Seller shall be responsible for all losses incurred to deliver such Energy and Capacity to the Receipt Point.

10.2.2 This Section 10.2.2 shall apply (a) if the Facility is directly interconnected with the Buyer system beginning on the date service over the Buyer transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff, or (b) if the Facility is not directly interconnected with the Buyer system beginning on the date service over the Buyer transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff:

10.2.2.1 Buyer shall designate the Facility as a network resource or its replacement or equivalent under the RTO or ISO or a similar organization open-access transmission tariff, and shall pay the applicable access charge under the RTO or ISO or a similar organization open-access transmission tariff; provided that Buyer only shall be responsible for such charge to the extent it recovers the applicable transmission owner's or owners' transmission revenue requirements. If an access charge includes costs over and above the amount Buyer is responsible for because of the Facility, such costs shall be allocated to Seller.

10.2.2.2 Seller shall deliver all Energy and Capacity required to be provided by Seller hereunder to the Receipt Point. Seller shall be responsible for all costs (including losses pursuant to Section 10.2.2.2, balancing energy pursuant to Section 13.19 and

congestion costs) associated with the delivery of such Energy and Capacity to the Receipt Point.

10.2.2.3 Seller shall be paid hereunder based upon the amount of Capacity and Energy delivered to the Receipt Point. Seller shall be responsible for all losses incurred to deliver such Energy and Capacity to the Receipt Point.

10.3 **Third Party TSA.** If the Facility is not directly interconnected with the Buyer system:

10.3.1 Seller shall within seven (7) days of the date this Contract is executed apply for any firm point-to-point transmission service required on a third party system to deliver all Energy and Capacity required to be provided by Seller hereunder to the Receipt Point. Seller shall use best efforts to enter into an agreement with such third party transmission provider for such firm point-to-point transmission service (the "Firm TSA"), and to obtain or have the third party transmission provider obtain any necessary Governmental Approvals of the Firm TSA, within one year of the date this Contract is executed. Prior to executing the Firm TSA, or seeking or requesting the third party transmission provider to seek any necessary Governmental Approval of the Firm TSA, Seller shall seek Buyer approval of the Firm TSA in the form to be executed or filed, such approval not to be unreasonably withheld. Prior to execution or filing, Seller shall use best efforts to revise the Firm TSA in such manner specified by Buyer in its reasonable discretion, as provided in writing by Buyer to Seller, provided that Seller shall not execute the Firm TSA or consent to any filing of the Firm TSA until such time as Buyer grants approval of such execution or filing, such approval not to be unreasonably withheld. The Firm TSA shall provide Seller a right to terminate the Firm TSA effective on such date that transmission service over the third party's transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff.

10.3.2 Upon execution of the Firm TSA, Seller shall assign all scheduling, dispatch, and operational rights under the Firm TSA to Buyer, including all rights to transmit all Energy and Capacity required to be provided by Seller hereunder to alternate points of delivery, pursuant to the Assignment of Firm TSA. As between Buyer and Seller, Buyer shall have the right to resell any unused transmission rights under the Firm TSA, and shall retain all revenues associated with any such sale.

10.3.3 Seller shall be responsible for all payment obligations under the Firm TSA and any additional payment obligations incurred for transmission service on the third party transmission system. Subject to Section 10.3.3, Seller shall have the right to charge Buyer for all costs

incurred under the Firm TSA. Seller shall separately invoice Buyer for all such costs charged to Buyer for inclusion on the monthly invoice prepared by Buyer pursuant to Section 7.

10.3.4 Upon receiving notice from Buyer, Seller shall terminate the Firm TSA on such date that transmission service over the Buyer transmission system or the third party transmission system is available under an RTO or ISO or a similar organization open-access transmission tariff, or any other subsequent date specified by Buyer. Upon the termination of the Firm TSA, (a) Seller shall not charge, and Buyer shall not pay, any costs subsequently incurred by Seller for transmission service on the third party system, and (b) Buyer shall retain all scheduling, dispatch, and operational rights associated with the Facility under the RTO or ISO or a similar organization open-access transmission tariff.

10.4 **Metering**. Metering equipment necessary for determining the Energy and Capacity (real and reactive) for billing purposes shall comply with the metering requirements for the Facility under the Interconnection Agreement, or the provisions of this Contract, as applicable. Metering equipment shall include, but not be limited to, MWh and kvar meters, metering cabinets, metering panels, conduits, cabling, metering units, current transformers and potential transformers directly or indirectly providing input to meters or transducers, meter recording devices, telephone circuits, signal or pulse dividers, transducers, pulse accumulators and any other equipment necessary to implement the provisions of this Contract. All Energy meters for billing purposes will be revenue billing grade devices that meet Good Engineering and Operating Practices standards. All instrument transformers used for metering will be metering class devices with an accuracy of at least +/- 0.3%. Current transformer ratios will be chosen to measure minimum power within the devices accuracy range. Buyer shall, at Seller's expense, design, own, purchase, install and maintain such metering equipment unless Buyer agrees in writing to allow another party to design, own, purchase, install or maintain the metering equipment. Buyer shall have approval rights over design and location of such installations. Seller shall be responsible for securing adequate space for such installations and shall assure Buyer reasonable access to all metering equipment if installed at a facility other than a facility owned by Buyer. *[Applicability may vary based on location of Seller's facility and whether directly interconnected to Buyer's transmission system.]*

10.4.1 A primary meter and associated recording device shall measure and record the flow of Energy and Capacity (real and reactive) associated with the Facility. The meter shall measure the unidirectional watt-hour and var-hour quantities (or other quantities required by Buyer) and shall be used to determine the amount of Energy and Capacity received by Buyer from Seller.

10.4.2 A complete set of equivalent continuously operating redundant, back-up metering and recording devices shall be installed, at Seller's

expense, and used for billing purposes only if the primary meters fail or are out of service for any reason.

- 10.4.3 Buyer shall test, at Seller's expense, all metering equipment used to measure and record the receipt by Buyer of Energy and Capacity for payment purposes. In those cases where Buyer is not the owner of metering equipment used for measurement of Energy and Capacity for payment purposes, Seller shall test all such equipment in the presence of a Buyer representative.
- 10.4.4 All metering equipment used by Buyer for billing purposes pursuant to this Contract shall be sealed and shall be opened only by Buyer in the presence of a representative of Seller; provided Seller elects to be present pursuant to Section 10.4.6.
- 10.4.5 Seller shall be responsible for the costs incurred by Buyer in maintaining and upgrading the metering equipment required pursuant to this Contract.
- 10.4.6 At least every twelve (12) months and, in addition, upon reasonable prior notice by Seller or Buyer, meter tests will be conducted in accordance with the provisions for meter testing in Buyer's approved meter testing protocol. Seller may have a representative present during any metering inspection, test, or adjustment made by Buyer. Buyer shall provide Seller reasonable notice prior to such test, inspection, or adjustment. When, as a result of such a test, a meter is found to be no more than three tenths of one percent (0.3%) fast or slow because of incorrect calibration, no adjustment will be made in the amount paid to Seller for Energy and Capacity delivered to Buyer. If the meter is found to be more than three tenths of one percent (0.3%) fast or slow, Buyer will calculate the correct amount delivered to Buyer for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) months. The previous payments by Buyer for this period shall be subtracted from the amount of payments that were calculated to have been owed under this Contract. The difference shall be offset against or added to the next payment to either Party as appropriate under this Contract.
- 10.5 **Transmission Rights**. Seller shall be entitled to any financial transmission rights allocated by an RTO or ISO or a similar organization associated with any transmission rights Seller obtained from a third party transmission provider for the delivery of Energy and Capacity from the Facility to the Receipt Point. Buyer shall be entitled to all other physical or financial transmission rights allocated by an RTO or ISO or a similar organization associated with the delivery of Energy and Capacity.

11. OPERATING REPRESENTATIVES

- 11.1 **Operating Representatives.** At least twelve (12) months prior to the Scheduled Capacity Delivery Date, each Party shall appoint a member and an alternate member as Operating Representatives, and provide notice of such appointments to the other Party. Such appointments may be changed at any time by similar notice. The respective Operating Representatives shall meet as necessary at a mutually agreeable time and place upon prior notice. Each Operating Representative and alternate shall be a responsible individual working with the day-to-day operations of each respective power system. Seller's Operating Representative shall be in direct contact with the Facility Site if the Facility's operator is a different entity than Seller. The Operating Representatives shall represent the Parties in all matters arising under this Contract which may be delegated to them by mutual agreement of the Parties.
- 11.2 **Duties.** The duties of the Operating Representatives shall include those specifically identified elsewhere in this Contract, plus the following consistent with the provisions of this Contract:
- 11.2.1 Coordinate operation outage schedules;
 - 11.2.2 Establish control and operating procedures;
 - 11.2.3 Provide a list of Operating Representatives of each Party; and
 - 11.2.4 Such other duties as may be conferred upon them by mutual agreement of the Parties.
- 11.3 **Decisions/Disputes.** Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be referred by the Operating Representatives to their principals for decision. All decisions and agreements made by the Operating Representatives or principals shall be evidenced in writing. The Operating Representatives shall have no authority to amend, modify, or waive this Contract, and no such decision or agreement of the Operating Representatives shall be considered an amendment, modification or waiver of this Contract, which may only be amended, modified, or waived as provided in Section 24.2.

12. PRE-OPERATION PERIOD

- 12.1 **Design, Engineering, Procurement, and Construction of Facility.** Seller shall design, engineer, procure, and construct the Facility in accordance with Good Engineering and Operating Practices, including Environmental Requirements, and shall ensure that all equipment to be installed in the Facility shall be suitable for the use intended, and shall meet the requirements of applicable codes and standards. During the design, engineering, procurement and construction of the

Facility, Seller shall provide to Buyer such information as Buyer may reasonably request regarding the design, engineering, procurement, and construction of the Facility.

12.2 **Provision of Information.**

- 12.2.1 Seller shall update and maintain the CPM Schedule as a detailed, integrated schedule for the development, permitting, design, engineering, procurement, construction, testing, and completion of the Facility, which shall identify key milestone dates and activities consistent with the Milestones and Milestone Dates set forth on Appendix N.
- 12.2.2 Seller shall submit to Buyer a start-up and test schedule for the Facility, at least twelve (12) months prior to start-up and testing of the Facility, identifying key start-up and testing dates and activities, and proposed energy schedules.
- 12.2.3 Promptly after becoming aware that a Milestone Date reasonably could be expected to be missed, and in any event no later than five (5) Business Days after any missed Milestone Date, Seller shall notify Buyer and shall submit to Buyer for its review and comment a written recovery plan setting forth in reasonable detail, and with reasonable supporting documentation (a) the causes and expected duration of the delay, and (b) Seller's plan to recover lost time and achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date.
- 12.2.4 Each calendar month until the Capacity Delivery Date, Seller shall submit progress reports in a form reasonably satisfactory to Buyer, attaching reasonable supporting documentation and including an updated CPM Schedule, indicating percentage completion of each major task, including each Milestone, and reporting on any potentially significant developments that may delay the construction schedule, including the achievement of any Milestone (including the Capacity Delivery Date) and, if Seller shall have missed a Milestone Date and Buyer shall not have exercised Step-In Rights or, with respect to a Major Milestone, terminated this Contract, updating Buyer on Seller's progress in returning to the Milestone Date schedule set forth on Appendix N and in achieving the Capacity Delivery Date by the Scheduled Capacity Delivery Date.

- 12.3 **Development of Operating Procedures.** Seller and Buyer shall mutually develop written system operating procedures no later than sixty (60) days prior to the Initial Synchronization Date. The operating procedures shall be consistent with the requirements of this Contract and will be intended as a guide for how to integrate the Facility's Energy and Capacity into Buyer's electrical system. Topics covered shall include, but not necessarily be limited to, dispatch

procedures, including dispatch procedures during system emergencies; deliveries of Energy during start-up and testing of the Facility; the method of day-to-day communications between the Facility operators and the Buyer system operators; key personnel lists for both Seller and Buyer operating centers; clearance and switching practices; outage scheduling; daily Available Capacity and Energy reports; and Facility operations log and reactive power output. The Operating Representatives, designated pursuant to Section 11.1, shall develop, and from time to time modify, these operating procedures in writing to reflect agreed upon changes.

- 12.4 **Submission of Operation and Maintenance Plans.** Prior to the Initial Synchronization Date, Seller shall deliver an initial schedule and operation and maintenance plan covering the first five (5) Contract Years. Such plan shall address ongoing maintenance, reliability, environmental compliance, spare parts inventory, and shall include an operation and maintenance plan for less frequent major overhaul work when required on the Facility's generator, turbine, boilers and auxiliary equipment, including spare parts replacements. Seller shall, at Seller's expense, cause an independent Person with recognized experience in the electrical generation industry as may be chosen by Seller and approved by Buyer (which approval shall not be unreasonably withheld) to conduct a review of the proposed operation and maintenance plan to ascertain whether such plan is (a) effective and consistent with Good Engineering and Operating Practices and (b) adequate to allow the Facility to operate reliably in accordance with this Contract. Seller shall provide Buyer an updated plan meeting the requirements of this Section 12.4 by the last day of each May with respect to the succeeding five (5) Contract Years or the remaining Contract Term, if less.
- 12.5 **Approval of Operation and Maintenance Plan.** The evaluation of the initial operation and maintenance plan by the independent Person specified in Section 12.4 shall be provided to Buyer, in writing, at least sixty (60) days prior to the Initial Synchronization Date. Seller shall make all changes to the proposed operation and maintenance plan developed pursuant to Section 12.4, which the independent Person determines are necessary for such plan to be (a) effective and consistent with Good Engineering and Operating Practices, (b) consistent with the requirements of this Contract, and (c) adequate to allow the Facility to operate as specified in this Contract unless (i) Seller disagrees with such determination(s), (ii) Seller provides Buyer with a written explanation of the basis for such disagreement and the basis for Seller's belief that the proposed change is not needed to assure the reliable operation of the Facility as specified in Section 12.4 or is inconsistent with Good Engineering and Operating Practices or this Contract, and (iii) (A) Buyer concurs, or (B) a second qualified independent engineering firm which shall be chosen by Seller and approved by Buyer (which approval shall not be unreasonably withheld) concludes, and provides a reasonable explanation thereof, that the change recommended by the first qualified independent engineering firm (x) is not needed under Good Engineering and Operating Practices, (y) is inconsistent with this Contract, or (z) is not needed to assure the reliable operation of the Facility as specified in

this Contract. Seller shall perform Facility maintenance in accordance with such plan; provided that Seller may vary from such plan when necessary due to changed circumstances, if said variance is required by Good Engineering and Operating Practices. Seller shall notify Buyer within five (5) Business Days of any such change, including a detailed explanation of the change, the reasons for the change, and the expected impact on Facility operations or maintenance, and shall provide to Buyer such supporting documentation as Buyer reasonably may require.

12.6 **Initial Synchronization Date.** Seller shall provide notice to Buyer confirming the Initial Synchronization Date no less than six (6) calendar months prior to such date, which synchronization shall not occur before the date on which all protective equipment shall have been installed and tested and is operating as required by this Contract or the Interconnection Agreement. Buyer shall have the right to have representatives present and witness the synchronization at such time. Seller shall notify Buyer immediately upon any change in the Initial Synchronization Date, and in no event shall synchronization occur without Buyer's prior approval, which shall not be unreasonably withheld or delayed.

12.7 **Public Notice and Outreach:**

12.7.1 Seller shall use commercially reasonable efforts to undertake public outreach activities with the local community. Such outreach activities shall be designed to enhance, and implemented in a manner which reasonably could be expected to enhance, the likelihood that the Facility will receive all local Governmental Approvals required to construct, test, operate and maintain the Facility in a timely manner. Buyer, in its sole and absolute discretion, may elect to review and assist with such outreach activities, but such assistance, if undertaken, shall not be construed to limit Seller's obligations hereunder or to create any liability on the part of Buyer.

12.7.2 Seller shall comply with all public notice and publication requirements under Applicable Laws.

13. **DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY**

13.1 **Technical Requirements.** Power supplied by Seller hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of [___ kV] and power factor dispatchable and controllable in the range of 85% lagging to 90% leading as measured at the high side of the generator step-up transformer to maintain system operating parameters, as specified by Buyer, with a net generation Capacity equal to the Committed Capacity. [*Insert voltage appropriate to interconnection point.*]

- 13.2 **System Protection.** Seller shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, Buyer's system. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal operation, testing and repair. Seller shall have qualified personnel test and calibrate all system protective equipment at regular intervals not to exceed twenty-four (24) months. A unit functional trip test shall be performed after each overhaul of a turbine, generator or boilers prior to returning the equipment to service. The specifics of the unit functional trip test shall be as recommended by the manufacturers, in accordance with applicable codes and standards (e.g., NFPA 85) and otherwise consistent with Good Engineering and Operating Practices and as agreed by the Parties. If, at any time, Buyer has reason to doubt the integrity of the Facility's system protective equipment and reasonably suspects that such loss of integrity would in any way jeopardize the reliability of the Buyer system or Buyer's supply of electric energy to its customers, Seller shall be required to demonstrate to Buyer's satisfaction the correct calibration and operation of the equipment in question.
- 13.3 **Additions, Deletions and Alterations.** Seller shall not, without prior written approval of Buyer, make or cause to be made any additions, deletions or alterations to the Facility's protective equipment, which equipment is necessary for or would affect the safety, reliability or integrity of Buyer's system or Buyer's supply of electric energy to its customers.
- 13.4 **Reconnection with Buyer System.** If the Facility is separated from the Buyer system for any reason, under no circumstances shall Seller reclose into Buyer's system without first obtaining Buyer's specific approval in each instance, in the appropriate form, as determined by the Operating Representatives. Seller has no right of connection to the Buyer system absent Buyer's express direction to do so.
- 13.5 **Fuel Supply and Transportation.**
- 13.5.1 Subject to the provisions of this Contract, Seller shall, commencing on the Milestone Date set forth on Appendix N and until the expiration of the Contract Term, execute and maintain (and shall deliver copies to Buyer within [()] days of execution) long-term contract(s) for the firm transportation and associated service contract(s) for the Primary Fuel between Seller and its Primary Fuel supplier and transporter, which: (a) have a term of at least until the end of the Contract Term, (b) provide for firm transportation of at least ninety percent (90.0%) of the Facility's daily design maximum Fuel requirements during such term, and (c) include remedies (reasonably acceptable to Buyer) for Seller to address protracted inadequate deliverability or poor quality performance of such suppliers and transporters (such contracts, collectively, the "Fuel Contracts").

13.5.2 Seller shall maintain at all times in on-site storage facilities at the Facility Site sufficient quantities of Back-up Fuel to operate the Facility solely on Back-up Fuel for a minimum of seventy-two (72) continuous hours at the Committed Capacity. Seller shall replace any Back-up Fuel so consumed promptly and in any event within seventy-two (72) hours. Seller acknowledges that failure to comply with this Section 13.5.2 shall constitute a material breach of this Contract.

13.5.3 At Seller's expense, Seller shall cause to be acquired, constructed, owned, operated and maintained, all facilities, infrastructures and property interests that are necessary for Seller to receive and use Primary Fuel delivered by its Fuel transporters, so as to enable the Facility to produce Energy and Capacity as committed to Buyer under this Contract (including, without limitation, incurring all costs associated with the construction and operation of the gas pipeline lateral(s) necessary to connect the Facility to the gas pipeline(s) of Seller's Fuel suppliers and transporters).

13.6 **Control of Facility.**

13.6.1 Seller shall operate the Facility consistent with Buyer's Dispatch and Control Rights. Control of the Facility will either be by Seller's manual control under the direction of Buyer (whether orally or in writing), or by Automatic Generation Control by Buyer's system control center, as determined by Buyer. Buyer shall have Dispatch and Control Rights to control the Facility within the Facility Operating Capabilities up to [___ MW] above the Level 1 Available Capacity so as to be able to receive the Level 1 Available Capacity on an integrated hourly basis and to schedule the voltage desired by Buyer for the Facility to maintain. *[Insert number of MW appropriate to Seller's facility.]*

13.6.2 Buyer may from time to time request that the real power output be equal to the Peaking Capability of the Facility, but shall not require the real power output of the Facility to be below the Minimum Load without Decommitting the Facility. Seller shall meet this request or, within ten(10) days, notify Buyer of the engineering or operational circumstances which prevented Seller from complying with Buyer's request. Buyer's request shall be made orally with as much prior notice to Seller as practicable. Failure to operate at any point above the highest operating level specified in Appendix A pursuant to such request shall not be deemed to be an Unscheduled Outage.

13.6.3 Buyer's exercise of its rights under this Section 13.6 shall not give rise to any liability on the part of Buyer, including any claim for breach of contract or for breach of any covenant of good faith and fair dealing.

- 13.7 **Notice of Shutdown.** Seller shall Decommit the Facility whenever directed to do so by Buyer, whether orally or in writing. For purposes of exercising its Dispatch and Control Rights, Buyer agrees that the minimum notice period between a Buyer request to Decommit and the time at which the Facility shall have completed shutdown shall be [___ hours] and the minimum run time between Successful Start-up and shutdown shall be [___ hours] *[Insert minimum shutdown notice and minimum run time from Seller's submission.]* Such notice and timing limitations shall not apply (a) to the extent determined by Buyer to be necessary for safe and reliable operation and maintenance of any part of Buyer's system, or (b) if Buyer determines that a failure to interrupt or reduce deliveries of Energy is likely to endanger life or property, or result in significant disruption of electric service to Buyer's customers. In the event Buyer requests Seller to Decommit the Facility with less than [___ hours] *[Insert minimum notice and minimum run time from Seller's submission]*, Seller shall make all reasonable efforts to comply with such request.
- 13.8 **Startup of Facility.** Seller shall Commit the Facility whenever directed to do so by Buyer, whether orally or in writing. For purposes of exercising its Dispatch and Control Rights, Buyer agrees that the minimum notice period between a Buyer request to Commit and the time at which the Facility shall have met its assigned Ready for Control shall be [___ hours] and the minimum run time between Successful Start-up and shutdown shall be [___ hours] *[Insert minimum shutdown notice and minimum run time from Seller's submission.]* Such notice and timing limitations shall not apply (a) to the extent determined by Buyer to be necessary for safe and reliable operation and maintenance of any part of Buyer's system, or (b) if Buyer determines that a failure to start up the Facility is likely to endanger life or property, or result in significant disruption of electric service to Buyer's customers. In the event Buyer requests Seller to Commit the Facility with less than [___ hours] *[Insert minimum startup notice and minimum shutdown time from Seller's submission.]*, Seller shall make all reasonable efforts to comply with such request.
- 13.9 **Projections of Available Capacity.** During the term of this Contract, Seller shall provide Buyer, on a daily basis, projections of the Available Capacity, Level 1 Available Capacity, and the Capacity associated with any Other Operating Mode, for each hour of the current day and the next six (6) days. Such estimates shall be furnished by 8:00 A.M. EPT each day, unless otherwise agreed in writing by the Parties, and shall be updated on a daily basis by 3:00 P.M. EPT each day. Notwithstanding the above, Seller shall keep Buyer informed at all times, including periods of Decommitment, as to any change in the generation capability of the Facility, including Available Capacity, Level 1 Available Capacity, any Unscheduled Outages, including Level 1 Unscheduled Outages, or any unscheduled outages associated with any Other Operating Mode and applicable Scheduled Outages, as well as any Fuel-related operating or maintenance concerns that could affect the generation capability of the Facility.

- 13.10 **Estimated Schedule of Operations**. Buyer shall, by 10:00 A.M. EPT each day, provide Seller with an estimated schedule of operations for the next day, consistent with the Facility Operating Capabilities, including a Ready for Control, if applicable. Notwithstanding such estimated schedule, Buyer shall have the exclusive right to schedule the Facility for the delivery of any of the Products at any time, including on a day-ahead, hour-ahead and real-time basis within the Facility Operating Capabilities. If the Facility fails to meet the Ready for Control specified by Buyer, Seller shall declare the difference between the scheduled Ready for Control and the actual Ready for Control an **Unscheduled Outage** of the Facility; **provided** the specified Ready for Control was within the Facility Operating Capabilities of the Facility and consistent with **Section 13.7** and **Section 13.8**.
- 13.11 **Failure to Achieve Operating Levels**.
- 13.11.1 For purposes of calculating the Capacity payment for each instance where Seller fails, after oral notification from Buyer, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the operating level requested by Buyer up to the Available Capacity, the difference between Available Capacity and the actual operating level shall be designated an **Unscheduled Outage** for the Facility for the previous twenty-four (24) hour period.
- 13.11.2 For purposes of calculating the Capacity payment for each instance where Seller fails, after oral notification from Buyer, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the Level 1 Available Capacity, the difference between the Level 1 Available Capacity and the actual incremental Capacity provided above the Base Operation Mode shall be designated an **Unscheduled Outage** for the Facility for the previous twenty-four (24) hour period.
- 13.11.3 For purposes of calculating the Energy payment during each hour where Seller fails, after oral notification from Buyer, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the operating level requested by Buyer, the heat rate adjustment factor shall be equal to 1.0.
- 13.12 **Outages**. No later than [] of the calendar year prior to the Scheduled Capacity Delivery Date, and no later than April 1 of each calendar year thereafter during the Contract Term, Seller shall submit to Buyer, in writing, Seller's preliminary desired scheduled outages for the following five (5) calendar years and a detailed maintenance plan for the first calendar year of the five (5) calendar year schedule ("**Scheduled Outages**"); **provided** that under no circumstances shall Seller be permitted to request **Scheduled Outages** during the Peak Months. Following the Capacity Delivery Date, Seller may request Buyer's approval for additional outages for the purpose of performing work on

specific components of the Facility that would limit the Facility's output and which should not, in the reasonable opinion of Seller, be postponed until the next Scheduled Outage (a "Maintenance Outage"). In no event shall the total of requested Scheduled Outage Hours and Maintenance Outage Hours exceed the total number of Planned and Maintenance Outage Hours included in (and as defined in) Appendix H in any calendar year. The preliminary outage schedule submitted by April of each calendar year may be revised by Seller until August 15 of each calendar year. By October 31 of each calendar year, Buyer shall notify Seller whether the requested Scheduled Outages are acceptable. If Buyer cannot accept any of the requested Scheduled Outages or Maintenance Outages, Buyer shall advise Seller of the time period closest to the requested period(s) when the outage(s) can be scheduled. Buyer's approval of Scheduled Outages and Maintenance Outages shall not be withheld unreasonably. In the event Buyer requests Seller to change a Scheduled Outage to occur in the following calendar year after Buyer has approved Seller's outage schedule for such year, Seller shall make all reasonable efforts to comply with such request. Except as may be specified within this Section 13.12, Seller shall perform Facility maintenance in accordance with the outage schedule and maintenance plan as approved by Buyer. Buyer shall have the right, upon giving twelve (12) months prior notice to Seller, to change the months that shall be treated as Peak Months; provided, however, the total number of Peak Months in a calendar year shall never be greater than seven (7).

- 13.13 **Maintenance of Records**. Each Party, respectively, shall keep and maintain complete and accurate records and all other data required by each of them and by applicable Governmental Authorities for the purposes of proper administration of this Contract.
- 13.13.1 Seller shall maintain an accurate and up-to-date operating log at the Facility with records of (a) real and reactive power production for each clock hour (b) changes in operating status, Scheduled Outages, Maintenance Outages and any other outages and deratings using the latest version of the NERC operating guidelines and (c) any unusual conditions found during inspections.
- 13.13.2 Seller shall maintain accurate maintenance records showing work history and schedule for all scheduled and unscheduled maintenance work performed.
- 13.13.3 Starting with the second (2nd) month immediately following the Initial Synchronization Date, Seller shall provide a report to Buyer by the fifteenth (15th) calendar day of each month, utilizing the format detailed in Appendix E, as may be revised by Buyer from time to time.
- 13.13.4 Either Party shall have the right from time to time, and upon at least fourteen (14) calendar days notice to the other Party, to examine the

records and data of the other Party relating to this Contract during the period the records are required to be maintained.

- 13.14 **Reports, Etc.** During the financing term and to the extent that Seller has access, Seller will ensure that Buyer receives copies of any construction progress reports, maintenance evaluations or maintenance reports and environmental compliance reports to be provided to any third party with a financial security interest in or lien on the Facility, including evaluations or reports generated at the request of such third party or performed by a consultant engaged by such third party.
- 13.15 **Compliance with Reliability Requirements.** The Parties recognize that Buyer is a member of NERC and FRCC, and that, to ensure continuous and reliable electric service, Buyer operates its system in accordance with the operating criteria and guidelines of NERC and FRCC or, to the extent applicable, an RTO or ISO or a similar organization. If an emergency is declared by Buyer, Buyer shall verbally notify Seller's personnel and, if requested by Buyer, Seller's personnel shall place the Capacity of the Facility within exclusive control of Buyer or its designee for the duration of such emergency.
- 13.16 **Emergency Plans.** Seller shall cooperate with Buyer in establishing emergency plans, including recovery from a local or widespread electrical blackout, or a voltage reduction, in order to effect load curtailment, and other plans which may be necessary. Seller shall make technical references available concerning Start-up Times, black-start capabilities, black stop capabilities and minimum load carrying ability. In addition, Seller shall develop a hurricane preparedness plan. Such plan shall include operation of the Facility before, during and after experiencing hurricane conditions. Buyer shall have the right to approve such hurricane preparedness plan prior to its implementation, which approval shall not be unreasonably withheld. Seller agrees that Buyer's approval of such hurricane preparedness plan shall in no way create any liability for Buyer nor shall such approval eliminate the need for Seller to perform its own due diligence to determine the adequacy of its hurricane preparedness plans.
- 13.17 **Cooperation During Emergency.** During an emergency, Seller shall supply Energy to Buyer as required by Buyer orally or in writing up to the Peaking Capability that Buyer is able to receive. If the Facility has any Unscheduled Outages or Scheduled Outages during such an emergency, Seller shall make all good faith efforts to reschedule the outage(s) or, if the outage(s) has begun, expedite the completion thereof.
- 13.18 **Operation of Facility.**
- 13.18.1 Seller shall operate and maintain the Facility in accordance with Good Engineering and Operating Practices, including Environmental Requirements, and shall ensure that all equipment to be installed in the

Facility shall be suitable for the intended purpose, and shall meet the requirements of applicable codes and standards.

13.18.2 Seller shall operate the Facility with all automatic controls (except the Automatic Generation Control) and protection equipment, speed governors and voltage regulators and safety interlock controls at the Facility in service whenever the Facility is connected to, or operated in parallel with, the Buyer system. The Automatic Generation Control shall be operated pursuant to Buyer's Dispatch and Control Rights.

13.18.3 In no event shall Seller be entitled to compensation from Buyer for any Energy generated by the Facility in excess of the level requested by Buyer during any hour that the Facility's actual output exceeds the output level requested by Buyer. All Energy payments shall be in accordance with Section 7.

13.19 **Responsibility for Imbalance Payments under RTO or ISO or a similar organization or Standard Electric Market Rules.** In the event that (a) an RTO or ISO or a similar organization is established that owns or exercises operational control over Buyer's transmission system; or (b) FERC establishes or approves electric market rules ("Market Rules") that apply to Buyer's system, then responsibility for imbalance or other payments associated with imbalances required to be paid by or to the RTO or ISO or a similar organization or under the Market Rules shall be as follows:

13.19.1 Seller shall be responsible for imbalance payments associated with Seller's failure to follow Buyer's dispatch instructions issued pursuant to Section 13 or dispatch instructions of an RTO or ISO or a similar organization, in an amount equal to the sum of (a) the product of (i) the difference between Facility's actual output during each applicable hour and the output level requested by Buyer or an RTO or ISO or a similar organization, multiplied by (ii) the positive difference, if any, of (x) price required to be paid by Buyer to the RTO or ISO or a similar organization for any imbalance during such hour, minus (y) the price Buyer would have paid Seller for the energy that Seller failed to deliver which caused the imbalance, plus (b) any other associated penalties, amounts or costs to Buyer.

13.19.2 If Seller operates at the levels specified in Buyer's dispatch instructions issued pursuant to Section 13, then Seller shall not be responsible for any imbalance payments.

13.20 **Seller as Operator.** Except with the prior written consent of Buyer, Seller or an affiliate thereof shall be the sole operator of the Facility; provided that Seller shall be entitled to appoint a qualified third party operator in its place, with Buyer's consent, such consent not to be unreasonably withheld. No appointment

of an affiliate or third party operator by Seller shall relieve Seller of any obligation or liability under this Contract.

- 13.21 **Dispatch, Control, Operation and Maintenance of the Facility.** With respect to control, operation, and maintenance of the Facility, it is agreed by the Parties that Seller and not Buyer is solely responsible for implementation of all control, operating and maintenance procedures which relate to the possession, control, use or custody of the Facility.
- 13.22 **Peak Hours.** Buyer shall have the right to change the Peak Hours by providing Seller a minimum ninety (90) days notice. The total number of Peak Hours shall not exceed [] percent ([]%) of the total hours during a calendar year.

14. DATA ACQUISITION

- 14.1 **Installation of Equipment.** Except as may be provided in this Section 14.1 and Section 14.3, Seller shall, at its own expense, design, engineer, purchase, install, connect, operate, repair, maintain and own all telemetering equipment, the generator control unit and the generator control panel for the Facility as may reasonably be required in compliance with the specifications for such equipment and software set forth in Appendix K or as updated from time to time by Buyer by notice to Seller in order to receive telemetry and to control the Energy and Capacity from the Facility as required to dispatch the Facility and to provide for the safe and reliable operation of Buyer's electric system. Such equipment shall meet Buyer's reasonable specifications for transmission of telemetered data to and from locations specified by Buyer. Telemetering equipment shall include, but not be limited to, transducers, meters, test switches for transducers and meters, alternating current and direct current sources, telephone lines and interconnecting wiring with proper identification for supervisory and communication equipment. Buyer shall, at Seller's expense, own, design, engineer, purchase, install, connect, terminate, repair, maintain, replace, relocate and remove a work station or, if required by Buyer, a remote terminal unit ("RTU") to link the Facility and Buyer's system control center ("Plant RTU"). With respect to Buyer's work station or Plant RTU, as the case may be, Seller shall (i) provide adequate space for, (ii) coordinate planning and installation of, and (iii) provide Buyer twenty-four hour access each day to, such Buyer's work station or Plant RTU.
- 14.2 **Data Acquisition Equipment.** The data acquisition equipment shall monitor analog and digital signals deemed necessary and shall meet Buyer specifications set forth in Appendix K or otherwise reasonably determined as necessary from time to time by Buyer to implement the provisions of this Contract. Such data acquisition equipment and software shall be state-of-the-art at the time it is purchased, be compatible at all times with the computer master equipment and software receiving the telemetry signals (including Automatic Generation Control) and supply status information, MWh, voltage, MW and MVAR analog information, certified site data (at locations as agreed to by Buyer) including dry

bulb, wet bulb, or relative humidity and barometric pressure, as well as any other data reasonably required by Buyer or Seller from time to time, with respect to the Facility. Such data acquisition equipment and software shall be separate from, or capable of operating independently of, any equipment and software of any Person other than Seller or any equipment and software of Seller other than the Facility located at the Facility Site. Data available on such data acquisition equipment shall not be accessible to any Person other than Seller without the prior written approval from Buyer. Seller agrees to treat as proprietary to Buyer and confidential any and all data available on such data acquisition equipment.

- 14.3 **Buyer Switchyard RTU.** If required by Buyer, the Buyer switchyard RTU shall be installed by Buyer to provide interconnection telemetry exclusively to the Buyer system control center. The Buyer switchyard RTU shall be in addition to the Plant RTU provided for in Section 14.1, and any other RTUs which may be installed in the future to supply data to or from Buyer. The Buyer switchyard RTU shall, at Seller's expense, be owned, designed, engineered, purchased, installed, repaired, maintained, replaced, relocated or removed by Buyer, subject to Seller approval.

15. RECORDS AND AUDITS

- 15.1 **Books and Records.** Seller's books, records and accounts, correspondence, accounting procedures and practices and any other supporting evidence pertaining to the Facility or this Contract (all the foregoing hereinafter referred to as "Records") shall be open to inspection, audit and reproduction, during normal working hours by Buyer or its authorized representative on three (3) Business Days prior notice, to the extent necessary to permit adequate evaluation and verification of any invoices, payments or claims based on Seller's actual costs incurred. For the purpose of evaluating or verifying such actual or claimed costs incurred or units expended, Buyer and its authorized representatives shall have access to said Records from the Commencement Date until five (5) calendar years after the close of each Contract Year to which such Records relate.

15.2 **Inspection; Construction; Environmental and Operating Records.**

- 15.2.1 Subject to Seller's reasonable safety and security requirements, Buyer employees or its agents shall have the right to monitor the licensing, permitting, construction, start-up, testing, and commissioning of the Facility, either onsite or off-site. Seller shall comply with all reasonable requests of Buyer for information resulting therefrom.
- 15.2.2 Buyer-authorized representatives may, from time to time during normal business hours and with reasonable advance written or verbal notice, have access to the Facility to inspect the environmental and operation and maintenance records of the Facility or for other purposes necessary to determine Seller's performance under the terms of this Contract;

provided that Buyer's inspections do not unreasonably interfere with Seller's operation and maintenance of the Facility.

- 15.3 **Buyer Audit Rights.** Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by Buyer during and after completion of construction of the Facility. Buyer or its authorized representative shall have access during normal working hours to all necessary facilities of Seller, and shall be provided adequate and appropriate work space, in order to conduct the audits in compliance with the provisions of this Section 15.
- 15.4 **Buyer Access to Records.** Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require Buyer to evaluate whether Seller must be consolidated, as a variable interest entity (as defined in FIN 46R), in the financial statements of Buyer. Seller agrees to fully cooperate with Buyer and make available to Buyer all financial data and other information, as deemed necessary by Buyer, to perform that evaluation on a timely basis upon execution of this Contract and periodically as required by FIN 46R.

If the result of the evaluation under FIN 46R indicates that Seller must be consolidated in the financial statements of Buyer, Seller agrees to provide financial statements, together with other required information, as determined by Buyer, for inclusion in disclosures contained in the footnotes to the financial statements and in Buyer's required filings with the Securities and Exchange Commission (SEC). This information must be received by Buyer in a timeframe consistent with Buyer's earnings release and SEC filing schedules, to be determined at the sole discretion of Buyer. Additionally, Seller agrees to fully cooperate with Buyer and its independent auditors in completing an assessment of Seller's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of Buyer.

16. INSURANCE

- 16.1 **Liability Insurance.** Seller shall procure or cause to be procured a policy or policies of liability insurance issued by an insurer satisfactory to Buyer on a standard "Insurance Services Office" commercial general liability form, or an Associated Electric and Gas Insurance Services ("AEGIS") form or other industry form acceptable to Buyer. Said policy(ies) shall cover liabilities which might arise under, or in the performance or nonperformance of, this Contract. A Certificate of Insurance shall be delivered to Buyer at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, said policy(ies) shall contain (i) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (ii) a broad form contractual liability endorsement for Buyer Entities. Effective at least fifteen (15) calendar days prior to the Initial Synchronization

Date, the policy(ies) shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards.

- 16.2 **Coverage Required.** The policy(ies) described in Section 16.1 shall have a limit of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, combined single limit, for personal injury, bodily injury (including death), and property damage; provided, that in the event that such insurance becomes totally unavailable or procurement becomes commercially impracticable, such unavailability or impracticability shall not constitute an Event of Default under this Contract, but Buyer and Seller shall enter into negotiations to develop substitute protection for Buyer Entities which Buyer, in its reasonable judgment, deems adequate. Any premium assessment or deductible shall be for the account of Seller and not Buyer Entities.
- 16.3 **Conditions of Coverage:** In the event that the policy(ies) is on a "claims made" basis, the retroactive date(s) of the policy(ies) shall be the Commencement Date or such other date as to protect the interests of Buyer Entities. Furthermore, if the policy(ies) is on a "claims made" basis, Seller's duty to provide such coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort; if coverage is on an "occurrence" basis, such insurance shall be maintained by Seller during the entire period of interconnection and performance by the Parties under this Contract. The policy(ies) shall not be canceled or materially altered without at least thirty (30) calendar days' written notice from the insurer to Buyer. Coverage must be reasonably acceptable to Buyer.
- 16.4 **Buyer as Additional Insured, Etc.:** Depending on the policy procured by Seller, and with Buyer's concurrence, Buyer Entities shall be designated either as an additional named insured or as an additional insured for all policies specified in Section 16.1, and each policy(ies) shall be endorsed to be primary to any insurance which may be maintained by, or on behalf of, Buyer Entities. All policies shall include waivers of subrogation in favor of Buyer Entities.
- 16.5 **Property Insurance:** Seller shall procure or cause to be procured "All Risk" property insurance, including boiler and machinery insurance, in an amount equal to the replacement cost of the Facility to provide comprehensive coverage for the Facility. Such policy(ies) shall include waivers of subrogation in favor of Buyer Entities.
- 16.6 **Environmental Pollution Liability Insurance:** Seller shall procure or cause to be procured environmental pollution liability insurance, which shall include clean up, bodily injury and property damage for existing and new pollution conditions both on and offsite. Such insurance shall be in an amount of no less than Ten Million Dollars (\$10,000,000.00) per occurrence and in the policy aggregate and contain a deductible of no more than One Million Dollars (\$1,000,000.00) per occurrence. Environmental pollution liability may be

written on claims made form. Buyer Entities shall be designated as an additional insured for such policy(ies), and such policy(ies) shall be endorsed to be primary to any insurance which may be maintained by, or on behalf of, Buyer Entities. Such policy(ies) shall include waivers of subrogation in favor of Buyer Entities.

- 16.7 **Copies of Policies:** Certificates of insurance or a copy of the policy(ies) referenced in Sections 16.1, 16.5, and 16.6 shall be made available for inspection by Buyer at Seller's offices upon reasonable advance notice to Seller.

17. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

- 17.1 **Compliance with Applicable Laws.** Seller shall operate and maintain the Facility in compliance with all Applicable Laws.
- 17.2 **Governmental Approvals.** Seller agrees to seek, obtain, maintain, comply with and, as necessary, renew, replace, or modify from time to time, and in a timely manner, any and all Governmental Approvals, including Environmental Licenses, which are required by Applicable Laws as prerequisites to engaging in the activities envisioned by this Contract. The cost of compliance with all Governmental Approvals, including Environmental Licenses, which are required by Applicable Laws is Seller's sole responsibility.

17.3 **Design and Permitting.**

- 17.3.1 Seller shall design, engineer, procure, construct, operate and maintain the Facility, and shall obtain and maintain Governmental Approvals and environmental emission allowances, credits or approvals on terms and conditions, such that Seller will be in compliance with, and the Facility will be designed, engineered, constructed, procured, operated and maintained in accordance with, the requirements of this Contract (including pursuant to Buyer's Dispatch and Control Rights) without violating Applicable Laws, including Environmental Requirements, and Seller shall not be excused from any obligation under this Contract nor shall any right of Buyer (including Buyer's Dispatch and Control Rights) be limited because of any conflict between the requirements hereof and the requirements of Applicable Laws, including Environmental Requirements, or because of any failure to obtain or maintain any Governmental Approval or environmental emissions allowance, credit or approvals. Seller shall notify Buyer in writing of any Governmental Approvals that cannot be transferred due to sale or transfer of ownership.

17.3.2 Without limiting the generality of Section 17.1, 17.2, or 17.3.1, Seller shall design, engineer, procure, construct, test, operate and maintain the Facility, and shall obtain and maintain Governmental Approvals on terms and conditions, such that:

- (a) at the point in time when the Facility is Ready for Control, the Facility shall have full load-following capability equal to the Maximum Sustained Rate;
- (b) the Peaking Capability shall be not less than [___ MW] in the Winter Period and [___ MW] in the Summer Period [*Insert numbers of MW from Seller's submission*]; and
- (c) the Facility shall operate in accordance with the Facility Operating Capabilities.

17.3.3 Seller shall use commercially reasonable efforts to obtain and maintain all Governmental Approvals required to allow that, and shall design, engineer, procure, construct, and, subject to receipt of such Governmental Approvals, test, operate and maintain the Facility, such that:

- (a) the Facility shall be capable of operating on Back-up Fuel at the Committed Capacity for up to five hundred (500) hours per calendar year;
- (b) the Facility shall be capable of operating for a minimum of one hundred and eight (108) continuous hours at the Committed Capacity using Back-up Fuel stored at the Facility Site without replenishment;
- (c) the Facility shall be capable of achieving Successful Start-up operating solely on Back-up Fuel; and
- (d) the Facility shall be capable of switching from the Primary Fuel to the Back-up Fuel without interruption or diminution in output and without disconnecting from the transmission system.

17.4 Environmental Reporting.

17.4.1 Seller shall submit to Buyer an annual environmental summary report describing the Facility's status and stating whether or not Seller is in compliance with all applicable Environmental Requirements and Environmental Licenses, including certification conditions under the Florida Electrical Power Plant Siting Act and the National Environmental Policy Act, if necessary. Such report shall be submitted annually, on or before the anniversary of the Commencement Date, or coincident with periodic reports to Governmental Authorities.

17.4.2 Seller shall notify Buyer within five (5) Business Days of any violations or alleged violations of Environmental Requirements (as evidenced by agency warning letters, notices of violations, or similar written or verbal communications to or from any environmental agency), describing the matter in reasonable detail, including the anticipated resolution, and attaching copies of such communications and Seller's responses, if any.

17.5 **Environmental Allowances.** Seller shall be responsible for obtaining, at its expense, all applicable environmental allowances, offsets or credits, if any, necessary under Applicable Laws and Governmental Approvals required as of [] [NOTE; INSERT DUE DATE OF SUBMISSIONS] for the construction or operation of the Facility as required by this Contract. Seller shall be responsible for obtaining, at its expense, all applicable environmental allowances, offsets or credits, if any, necessary under new Applicable Laws and Governmental Approvals (*i.e.*, Applicable Laws and Governmental Approvals that have been enacted after the date stated in the previous sentence of this paragraph).

17.6 **Rate Regulation.**

17.6.1 Notwithstanding anything to the contrary in this Contract, if Buyer, at any time during the term of this Contract, fails to obtain or is denied the authorization of the FPSC, or the authorization of any other legislative, administrative, judicial or regulatory body which now has, or in the future may have, jurisdiction over Buyer's rates and charges, to recover from its customers all of the payments required to be made to Seller under the terms of this Contract or any subsequent amendment hereto, Buyer may, at its sole option, adjust the payments made under this Contract to the amount(s) which Buyer is authorized to recover from its customers. In the event that Buyer so adjusts the payments to which Seller is entitled under this Contract, then, Seller may, at its sole option, terminate this Contract upon one hundred eighty (180) days notice to Buyer. If such determination of disallowance is ultimately reversed and such payments previously disallowed are recovered, Buyer shall pay Seller all withheld payments. Seller acknowledges that any amounts initially received by Buyer from its customers, but for which recovery is subsequently disallowed and charged back to Buyer, may be offset or credited, against subsequent payments to be made by Buyer to Seller under this Contract.

17.6.2 If, at any time, Buyer receives notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or will seek to prevent full recovery by Buyer from its customers of all payments required to be made under the terms of this Contract or any subsequent amendments to this Contract, then Buyer shall, within thirty (30) days of such notice, give notice thereof to Seller. Buyer shall use

reasonable efforts to defend and uphold the validity of this Contract and its right to recover from its customers all payments required to be made by Buyer hereunder, and will cooperate in any effort by Seller to intervene in any proceeding challenging, or to otherwise be allowed to defend, the validity of this Contract and the right of Buyer to recover from its customers all payments to be made by it hereunder.

The Parties do not intend this Section 17.6 to grant any rights or remedies to any third party(ies) or to any legislative, administrative, judicial or regulatory body; and this Section 17.6 shall not operate to release any Person from any claim or cause of action which Seller may have relating to, or to preclude Seller from asserting, the validity or enforceability of any obligation undertaken by Buyer under this Contract.

- 17.7 **No Application to FERC.** This Contract may be amended or modified only by an instrument in writing signed by both Parties. Unless the Parties mutually agree in writing, neither Party nor any affiliate thereof may make application to FERC, or any other Governmental Authority having jurisdiction over this Contract, seeking any change in this Contract pursuant to the provisions of Sections 205 or 206 of the Federal Power Act or under any other statute, regulation or other provision promulgated by a Governmental Authority, nor support any such application by a third party. Absent the agreement of the Parties to any proposed change, the standard of review for changes to any Section of this Contract, whether proposed by a Party, a non-Party or FERC actions sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine). The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Contract and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.

The Parties agree that, if and to the extent that FERC adopts a final Mobile-Sierra policy statement in Docket No. PL02-7-000 (“Final Policy Statement”), which requires that, in order to exclude application of the “just and reasonable” standard under the Mobile-Sierra doctrine, the Parties must agree to language which varies from that set forth in this Section 17.7, then, without further action of either Party, such Section shall be deemed amended to incorporate the specific language in the Final Policy Statement that requires the “public interest” standard of review.

18. FORCE MAJEURE

18.1 **Force Majeure Relief.** Except as otherwise provided in this Contract, each Party shall be excused, pursuant to the procedures set forth in this Section 18, from performance to the extent its nonperformance is caused by Force Majeure; provided, however, that Seller's failure to perform during hurricane conditions shall not be excused as Force Majeure in the event Seller has not acted in a diligent and prudent manner to adopt and implement a hurricane preparedness plan.

18.2 **Notice of Force Majeure, Etc.**

18.2.1 In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall notify the other of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) for performance may be affected thereby. Such notice shall be given to the other Party as soon as practicable but in no event later than five (5) Business Days after the claiming Party's awareness of the Force Majeure, *i.e.*, the effect of such event or circumstance, and in no event later than fifteen (15) days after the occurrence of such event or circumstance, and shall provide such substantiating documentation as may be required to verify such event or circumstances and its effects within fifteen (15) days of such notice. The Party claiming Force Majeure shall notify the other Party of the status of its efforts to remove or recover from such Force Majeure in such form and with such frequency as the other Party reasonably may request under the circumstances (but not less than weekly). When the Party claiming Force Majeure is able to resume performance of its obligations under this Contract, such claiming Party shall give the other Party prompt notice to such effect.

18.2.2 The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. Prior to the Capacity Delivery Date, no event of Force Majeure shall be deemed to extend, or to excuse failure of Seller to achieve, any Milestone under Section 3, to extend the Scheduled Capacity Delivery Date, or to excuse failure to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date, except to the extent such event of Force Majeure (a) substantially impairs a critical-path item on the CPM Schedule, and (b) cannot be overcome by revising, rearranging, expediting, or accelerating such CPM Schedule or by the payment of money to expedite or accelerate such CPM Schedule.

18.3 **Mitigation of Force Majeure.** Any Party suffering an occurrence of Force Majeure shall use commercially reasonable efforts to remedy the cause(s) preventing its performance of this Contract as promptly as possible.

18.4 **Effect of Force Majeure on Capacity Payments.** If in any month the Available Capacity of the Facility is decreased with respect to any hour or Peak Hour as a result of Force Majeure, then:

18.4.1 Without limiting the generality of Section 18.3, Seller shall endeavor diligently to cause the Available Capacity of the Facility to be restored promptly to a level not less than the Minimum Capacity, and Seller shall cause a Capacity Test to be conducted as promptly thereafter as possible as provided in Section 9. Any whole or partial interruption or reduction in the Facility's Capacity to a level below Committed Capacity until the conclusion of such Capacity Test shall be deemed to be an Unscheduled Outage.

18.4.2 Upon conclusion of the Capacity Test, if the Continuous Capability is less than the Minimum Capacity, and if Seller provides to Buyer evidence reasonably satisfactory to Buyer that such shortfall is a direct consequence of such event of Force Majeure, and that Seller, notwithstanding Seller's efforts to mitigate the effects of such Force Majeure, has not been able to restore the Facility, then, until the earlier of the demonstration by Seller in a Capacity Test that the Continuous Capability is not less than the Minimum Capacity or the expiration of the Force Majeure Aggregate Allowance:

- (a) the Committed Capacity shall be deemed to be equal to the Continuous Capability demonstrated by the most recent Capacity Test;
- (b) Seller shall set the Available Capacity at a level not more than such Continuous Capability; and
- (c) Buyer's Dispatch and Control Rights, and its payment obligations hereunder, shall be prorated accordingly.

18.5 **Limitation.** Buyer at its option may terminate this Contract as provided in Section 19.3 to the extent that (a) performance by Seller of its obligations hereunder shall have been excused pursuant to this Section 18 for a period in excess of the Force Majeure Aggregate Allowance, or (b) Seller shall have been excused pursuant to this Section 18 from achieving the Capacity Delivery Date by the Final Capacity Delivery Date.

19. DEFAULT AND TERMINATION

19.1 **Seller Events of Default.** Each of the following shall constitute an Event of Default by Seller:

19.1.1 Seller abandons construction or operation of the Facility;

- 19.1.2 Seller fails to achieve a Major Milestone by the corresponding Milestone Date (other than failure to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date) and Seller has failed to cure such failure within thirty (30) days of such Milestone Date;
- 19.1.3 Seller (a) fails to achieve the Capacity Delivery Date by the Scheduled Capacity Delivery Date and fails to pay delay liquidated damages or otherwise fails to comply with the provisions of Section 3.2.3; or (b) fails to achieve the Capacity Delivery Date by the Final Capacity Delivery Date;
- 19.1.4 After the Capacity Delivery Date, the Facility fails to maintain a Capacity Billing Factor of at least sixty-four percent (64%);
- 19.1.5 The Facility fails to demonstrate a Continuous Capability at least equal to the Minimum Capacity in three successive Capacity Tests after the Capacity Delivery Date;
- 19.1.6 Seller sells electrical Energy, Capacity or Ancillary Services from the Facility to a third party other than as expressly provided in Section 6.4.1;
- 19.1.7 Seller fails to make a payment to Buyer, including payment of any liquidated damages, that is not subject to a good-faith dispute within ten (10) days after notice from Buyer that such payment is due under this Contract;
- 19.1.8 If (a) a receiver or liquidator or trustee is appointed by order of a court of competent jurisdiction with respect to Seller or Seller's Guarantor, or a substantial portion of the assets of Seller or Seller's Guarantor; (b) Seller or Seller's Guarantor is adjudicated bankrupt or insolvent or a substantial portion of the assets of Seller or Seller's Guarantor are sequestered by decree of a court of competent jurisdiction; (c) a petition to declare bankruptcy or to reorganize Seller or its Guarantor pursuant to any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to Seller or Seller's Guarantor, as now or hereafter in effect, is filed against Seller or Seller's Guarantor; (d) Seller or Seller's Guarantor files a voluntary petition to declare bankruptcy or to reorganize pursuant to any bankruptcy law or insolvency law, or consents to the filing of any bankruptcy or reorganization petition against it under any similar law; or (e) without limitation of the generality of the foregoing, Seller or Seller's Guarantor files a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to

Seller or Seller's Guarantor, as now or hereafter in effect, or Seller or Seller's Guarantor files an answer admitting the material allegations of a petition filed against it in such a proceeding;

- 19.1.9 Seller is in default of any material provision of this Contract not otherwise specifically mentioned in this Section 19.1 and Seller has failed to cure such default within thirty (30) days after notice of such default from Buyer to Seller; provided that so long as such default of Seller is not a failure to pay money, (a) if it is not feasible to correct such default within thirty (30) days after Buyer has delivered notice of such default to Seller, but it remains feasible to correct within sixty (60) days, and (b) if within ten (10) days after said notice from Buyer, Seller provides Buyer notice of its intention to cure such default and evidence that it remains feasible to correct such default within sixty (60) days after such notice from Buyer, it shall not constitute an Event of Default hereunder until the earliest feasible date within such sixty (60) day period when a cure could be effected so long as (w) corrective action by Seller is instituted within ten (10) days following the notice from Buyer, (x) such corrective action is diligently pursued, (y) Seller provides Buyer bi-weekly written reports as to the nature and progress of such corrective action, and (z) such cure is effected within sixty (60) days of the notice from Buyer;
- 19.1.10 Seller fails to comply with the requirements of Section 15.4 of this Contract;
- 19.1.11 Seller fails to comply with the requirements of Section 16 of this Contract;
- 19.1.12 Failure by Seller or its Guarantor to comply with or perform any agreement or obligation to be complied with or performed by it under Section 4 if such failure is continuing after any applicable grace period has elapsed;
- 19.1.13 The expiration or termination of any Guaranty, or any disaffirmation, disclaimer, repudiation or rejection, in whole or in part, or any challenge to the validity, of such Guaranty by Seller or its Guarantor, or any other set of circumstances whereby such Guaranty fails or ceases to be in full force and effect for the purpose of this Contract (in each case, other than in accordance with such Guaranty's terms) prior to the satisfaction of all obligations of Seller without the written consent of Buyer;
- 19.1.14 (i) The issuer of an outstanding letter of credit delivered to Buyer pursuant to this Contract fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) the issuer of such letter of credit fails to comply with or perform its obligations under such letter of

credit if such failure is continuing after the lapse of any applicable grace period; (iii) the issuer of such letter of credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such letter of credit; or (iv) such letter of credit expires or terminates, or fails or ceases to be in full force and effect at any time during the term of this Contract;

- 19.1.15 Seller fails to provide, on a timely basis, information requested by Buyer as required in Section 4.3.2; or
- 19.1.16 Any representation or warranty made by Seller herein is false or misleading in any material respect when made or when deemed made or repeated.

19.2 **Buyer Events of Default.** Each of the following shall constitute an Event of Default by Buyer:

- 19.2.1 Buyer fails to make a payment due to Seller that is not subject to a good-faith dispute within ten (10) days after notice from Seller that such payment is due under this Contract;
- 19.2.2 If (a) a receiver or liquidator or trustee of Buyer or of a substantial part of the assets of Buyer is appointed by order of a court of competent jurisdiction; (b) by decree of such a court, Buyer is adjudicated bankrupt or insolvent or a substantial part of the assets of Buyer are sequestered; (c) a petition to declare bankruptcy or to reorganize Buyer pursuant to any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to Buyer, as now or hereafter in effect, is filed against Buyer; (d) Buyer files a voluntary petition to declare bankruptcy or to reorganize pursuant to any bankruptcy law or insolvency law, or consents to the filing of any bankruptcy or reorganization petition against it under any similar law; or (e) without limitation of the generality of the foregoing, Buyer files a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal bankruptcy laws, as they now exist or may hereafter be amended, or pursuant to any other similar state statute applicable to Buyer, as now or hereafter in effect, or Buyer files an answer admitting the material allegations of a petition filed against it in such a proceeding; or
- 19.2.3 Any representation or warranty made by Buyer herein is false or misleading in any material respect when made or when deemed made or repeated.

19.3 **Termination for Prolonged Force Majeure.** To the extent any event or events of Force Majeure (a) excuse Seller from achieving the Capacity Delivery Date

by the Final Capacity Delivery Date pursuant to the provisions of Section 18, or (b) after the Capacity Delivery Date, excuse Seller from performing any of its material obligations hereunder pursuant to the provisions of Section 18 for four thousand, three hundred twenty (4,320) hours in the aggregate (whether resulting from the same or multiple events or circumstance and whether or not continuous) (the "Force Majeure Aggregate Allowance"), (i) Buyer may terminate this Contract without penalty or further liability for either Party upon thirty (30) days notice to Seller and (ii) upon such termination, Buyer shall return any undrawn Performance Security within ninety (90) days of the effective date of such termination.

19.4 **Remedies.** Upon the occurrence of any Event of Default, the non-defaulting Party may, at its option:

- 19.4.1 Terminate this Contract without penalty or further obligation by the non-defaulting Party, by notice to the defaulting Party, and, if prior to the Capacity Delivery Date, Seller shall pay Buyer liquidated damages as provided in Section 3;
- 19.4.2 Offset from any payment(s), due from the non-defaulting Party to the defaulting Party, any amount otherwise due from the defaulting Party to the non-defaulting Party;
- 19.4.3 In the case of an Event of Default by Seller, draw on the Performance Security in the amount of the non-defaulting Party's damages (including liquidated damages payable under Section 3);
- 19.4.4 In the case of an Event of Default by Seller, Buyer, at its option, may apply to any court of competent jurisdiction for the appointment of a receiver to take charge of, manage, preserve, protect, complete construction of, and operate the Facility, to make all necessary and needed repairs to the Facility; and to pay all taxes and assessments against the Facility and insurance premiums for insurance thereof, it being hereby agreed that, upon occurrence of an Event of Default, (a) Buyer shall be entitled to such appointment; (b) upon application by Buyer, the court may forthwith appoint such receiver with the usual powers and duties thereof; (c) Seller consents, and Seller shall not object to such appointment; and (d) appointment of a receiver under this Section 19.4 shall not in and of itself terminate this Contract;
- 19.4.5 In the case of an Event of Default by Buyer, then, notwithstanding the exclusivity requirement set forth in Section 6.4, Seller may cover Buyer's obligations to pay for Capacity under this Contract by selling such Capacity to a third party, in which event Buyer shall pay to Seller, within twenty (20) days after Seller's invoice (with such supporting documentation as may be required to verify such failure and the amounts set forth on such invoice), an amount equal to the amount, if

any, by which the amount received by Seller from reselling such Capacity at the Receipt Point, acting in a commercially reasonable manner, is less than the amount required to be paid by Buyer to Seller hereunder with respect to such Capacity ("Seller's Cost of Cover");

19.4.6 In the case of default by Seller under Section 19.1.6, Buyer will receive the higher of the profits from such unauthorized sale or Buyer's costs to cover; or

19.4.7 Exercise any other right or remedy available to it in equity or, subject to Section 19.5, any other right or remedy available to it hereunder or at law or in equity.

19.5 **Liquidated Damages**. The Parties acknowledge and agree that the damages which Buyer would actually suffer as a result of (a) delay by Seller in achieving the Capacity Delivery Date by the Scheduled Capacity Delivery Date, or (b) termination of this Contract upon Seller's failure to achieve a Major Milestone under Section 3, including failure to achieve the Capacity Delivery Date as provided therein, or upon any other Seller Event of Default prior to the Capacity Delivery Date, are now, and will in the future remain, incapable of determination with any mathematical precision or certainty, and that the mutually agreed liquidated damages required to be paid upon such failure hereunder (i) are in the nature of liquidated damages, (ii) are not unconscionable, (iii) do and will not constitute a conversion by or unjust enrichment of Buyer, (iv) are unequivocal, fair and reasonable under the circumstances and not a penalty, (v) shall constitute Buyer's sole and exclusive damages upon such delay or termination (Buyer hereby waiving, in consideration of the right to such liquidated damages in such events, any rights it may have to seek damages in excess of such agreed delay or termination liquidated damages), and (vi) were bargained for and derived through mutual negotiations and agreement between Seller and Buyer and constitute a material and integral part of the agreement between the Parties; provided that nothing herein shall limit Buyer's rights to seek any equitable remedies otherwise available to Buyer; provided, further, that such liquidated damages shall not be Buyer's sole and exclusive damages with respect to any default or Event of Default not expressly described in Section 3.2, with respect to which Buyer shall continue to have all rights and remedies described herein; and provided, further, that during any period in which Buyer has exercised Step-In Rights as provided in Section 5.1 and has not relinquished possession of the Facility and the Facility Site to Seller or terminated this Contract pursuant to Section 19.3, Seller shall not be obligated to pay such liquidated damages.

19.6 **Buyer's Cost of Cover**.

19.6.1 If Energy, Capacity or Ancillary Services are not delivered or made available from the Facility at the Receipt Point due to Unscheduled Outage(s) or for any reason in breach of Seller's obligations hereunder

and Buyer in its absolute and sole discretion, for any reason it deems appropriate, or for no reason at all, elects to cover Seller's obligations under this Contract from a third party:

- (a) unless Seller's failure is excused pursuant to Section 18, Seller shall pay to Buyer, within ten (10) Business Days of Seller's submission to Buyer of the Monthly Billing Statement, an amount equal to the amount, if any, by which the cost to Buyer of obtaining such deliveries at the Receipt Point, acting in a commercially reasonable manner (including, without duplication, brokerage or other transaction costs, generation charges, fuel charges, reservation charges, start-up costs, transmission charges, transmission losses, and charges for ancillary services) exceeds the amount required to be paid by Buyer to Seller hereunder with respect to such Energy or Capacity ("Buyer's Cost of Cover");
- (b) any capacity used in the production of such replacement capacity or energy shall not be treated as Committed Capacity or Available Capacity for purposes of this Contract unless purchased by Buyer from an entity with an Investment Grade Credit Rating (or which has provided security equivalent to the security required to be provided by Seller hereunder) pursuant to a firm contract with a term not less than the remaining portion of the Contract Term, which means, in any hour or Peak Hour, that neither such capacity nor the energy delivered by such entity in replacement of Energy or Capacity shall be treated as Committed Capacity, Available Capacity or as Energy delivered in such hour or Peak Hour hereunder, including for purpose of clauses (a)(i) of the definition of "Hourly Capacity Factor" or "Hourly Peak Capacity Factor"; and
- (c) Buyer shall not have any obligation to obtain or continue such deliveries.

19.7 **Survival of Rights; Remedies Cumulative.** No termination under this Section 19 (or otherwise under this Contract) shall affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Contract. Except as expressly provided in Section 19.5, the rights and remedies of the Parties hereunder shall not be exclusive of any other right or remedy available hereunder or at law or in equity and shall be cumulative.

20. INDEMNIFICATION

20.1 **INDEMNIFICATION.** EACH PARTY (THE "INDEMNITOR") SHALL FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS ON AN AFTER-TAX BASIS THE OTHER PARTY AND EACH OF THE OTHER PARTY'S

SUBSIDIARIES AND AFFILIATES, AND THE PARTNERS, MEMBERS, PARTICIPANTS, PRINCIPALS, REPRESENTATIVES, SHAREHOLDERS, DIRECTORS, TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS OF EACH OF THEM (THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL LOSSES, COSTS, DAMAGES, INJURIES, LIABILITIES, CLAIMS, DEMANDS, PENALTIES AND INTEREST, INCLUDING REASONABLE ATTORNEY'S FEES ("DAMAGES"), DIRECTLY RELATED TO THIS CONTRACT, TO THE EXTENT CAUSED OR CONTRIBUTED TO BY (A) THE FAULT, INTENTIONAL ACT, NEGLIGENCE OR STRICT LIABILITY OF THE INDEMNITOR OR ITS SUBSIDIARIES, AFFILIATES, CONTRACTORS OR SUBCONTRACTORS OR ANY OF THE OFFICERS, PARTNERS, MEMBERS, PARTICIPANTS, SHAREHOLDERS, PRINCIPALS, DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS OF ANY OF THEM, OR (B) BREACH BY THE INDEMNITOR OF THIS CONTRACT.

20.2 **ENVIRONMENTAL INDEMNITY.** WITHOUT LIMITING THE GENERALITY OF SECTION 20.1, SELLER AGREES TO HOLD BUYER'S INDEMNITEES HARMLESS ON AN AFTER-TAX BASIS FROM ANY LIABILITY ASSOCIATED WITH ON-SITE OR OFF-SITE CONTAMINATION OR OTHER ENVIRONMENTAL DAMAGE RESULTING FROM ANY PRIOR USES OR FROM CONSTRUCTION AND OPERATING ACTIVITIES EXCEPT AS AND TO THE EXTENT SUCH CONTAMINATION OR OTHER ENVIRONMENTAL DAMAGE WAS THE DIRECT RESULT OF BUYER ACTIONS, OTHER THAN ACTIONS PERFORMED PURSUANT TO BUYER'S RIGHTS UNDER THIS CONTRACT.

20.3 **Notice of Claim.**

20.3.1 **Notice of Claim.** Subject to the terms of this Contract and upon obtaining knowledge of a claim for which it is entitled to indemnity under this Section 20, the Indemnitee will promptly notify the Indemnitor in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Section 20.1 or 20.2. (The written notice is referred to as a "Notice of Claim"). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim.

20.3.2 **Notice of Third Party Claim.** If an Indemnitee receives notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Contract, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) days after such Indemnitee's receipt of notice of such Third Party Claim. Such Notice of Claim will describe the Third Party

Claim in reasonable detail and will indicate, if reasonably practicable the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving written notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor's own expense and by such Indemnitor's own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

20.3.3 **Direct Claim.** Any Direct Claim must be asserted by giving the Indemnitor written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of thirty (30) days from receipt of such notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such thirty (30) day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Contract.

20.3.4 **Failure to Provide Notice.** A failure to give timely notice or to include any specified information in any notice as provided in this Section 20.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure; provided, further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any claim which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

20.4 **Defense of Third Party Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 20.3.2, an Indemnitee receives written notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 20.3.2, the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) days after receiving written notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all *Indemnifiable Losses relating to the matter*, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any

financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice.

20.5 **Subrogation of Rights.** Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Contract in respect of such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

20.6 **Rights and Remedies Cumulative.** The rights and remedies of a Party pursuant to this Section 20 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Contract.

21. LIMITATIONS OF LIABILITY

21.1 **LIMITATION ON DAMAGES.** NEITHER PARTY NOR ITS SUBSIDIARIES OR AFFILIATES NOR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPANTS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS, TRUSTEES, SUCCESSORS OR ASSIGNS OF ANY OF THEM SHALL IN ANY EVENT BE LIABLE TO THE OTHER PARTY OR ITS SUBSIDIARIES OR AFFILIATES OR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPANTS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS OR TRUSTEES OF ANY OF THEM FOR CLAIMS FOR PUNITIVE, CONSEQUENTIAL, SPECIAL, MULTIPLE, OR INDIRECT DAMAGES OF ANY NATURE, ARISING AT

ANY TIME, FROM ANY CAUSE WHATSOEVER, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW OR OTHERWISE, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE UNDER THIS CONTRACT. NOTHING IN THIS SECTION 21.1 SHALL BE DEEMED TO AFFECT OR LIMIT THE RIGHT OF AN INDEMNITEE TO CLAIM INDEMNIFICATION FROM THE INDEMNITOR UNDER SECTION 20 IN RESPECT OF A THIRD PARTY CLAIM AGAINST THE INDEMNITEE FOR PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM THE INDEMNITOR'S NEGLIGENCE OR WILLFUL MISCONDUCT. NOTHING IN THIS SECTION 21.1 SHALL BE CONSTRUED TO PRECLUDE THE RECOVERY BY BUYER OF ANY PAYMENT DUE BUYER IN ACCORDANCE WITH THIS CONTRACT.

21.2 **LIMITED RECOURSE.** NO PARTNER, SHAREHOLDER, MEMBER, PARENT COMPANY OR OTHER AFFILIATE OF EITHER PARTY (OR ANY OFFICER OR DIRECTOR OF ANY THEREOF), NOR ANY PARTNER, SHAREHOLDER, MEMBER, PARENT COMPANY OR OTHER AFFILIATE OR SUCCESSOR-IN-INTEREST OF SUCH PARTNER, SHAREHOLDER, MEMBER, PARENT COMPANY OR OTHER AFFILIATE (OR ANY OFFICER OR DIRECTOR OF ANY THEREOF), SHALL HAVE ANY PERSONAL LIABILITY OR RESPONSIBILITY FOR, RELATING TO OR IN CONNECTION WITH SAID PARTY'S FAILURE TO PROPERLY PERFORM ANY TERM, COVENANT, CONDITION OR PROVISION OF THIS CONTRACT, EXCEPT AS MAY BE EXPRESSLY UNDERTAKEN BY SEPARATE WRITTEN AGREEMENT.

21.3 **Effect of Security.** The liability of Seller hereunder shall not be affected by the existence, amount, waiver, or release of, or exercise or failure to exercise remedies with respect to, Step-In Rights, any Performance Security, or any other security for Seller's obligations hereunder. Buyer may draw on or exercise other rights or remedies with respect to, all or any part of such security to the extent available hereunder, and from all such forms, and in any sequence, as Buyer in its sole discretion may elect, except as such rights are specifically limited in the express provisions of this Contract.

21.4 **Cost of Cover.** Seller and Buyer acknowledge and agree that among other things, Buyer's Cost of Cover and Seller's Cost of Cover constitute direct damages and shall not be limited by Section 21.1.

22. NOTICES

22.1 **Notices.** All notices required under this Contract shall be in writing unless expressly specified otherwise herein, and shall be delivered in person, by certified mail or by a nationally recognized overnight courier, return receipt

requested, or by facsimile transmission with confirmation by voice or automatic answer-back service, as specified below:

To Seller:

Fax _____
Telephone _____

To Buyer:

Fax _____
Telephone _____

22.2 **Notices Effective.** Notices shall be effective upon receipt; provided that in the event a Party fails to notify the other of the correct Person and address for notices pursuant to Section 22.3 below, any notice to that Party shall be deemed effective on the third day following the date such notice is sent to the Person and address last provided by such Party.

22.3 **Designation of New Notice Recipients.** Either Party may, at any time, by notice designate any different Person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

23. REPRESENTATIONS AND WARRANTIES

23.1 **Seller's Representations and Warranties.** Seller hereby represents and warrants as follows:

23.1.1 Seller is a [*type of entity*] duly organized, validly existing and in good standing under the laws of the State of [*State*] and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Contract.

23.1.2 The execution, delivery, and performance of its obligations under this Contract by Seller have been duly authorized by all necessary [*corporate, company, partnership*] company action, and do not and will not:

- (a) Require any consent or approval of Seller's [*governing body or owners*], other than that which has been obtained and is in full force and effect;

- (b) Violate any provision of Applicable Laws or violate any provision in any [*constitutive documents*] of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Contract;
- (c) Result in a breach or constitute a default under Seller's [*constitutive documents*], or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Contract; or
- (d) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligation under this Contract.

23.1.3 This Contract is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, or by general principles of equity).

23.1.4 The execution, delivery, and performance of this Contract will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

23.1.5 All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery, and performance under this Contract have been duly obtained and are in full force and effect, except for those approvals described in Section 2.1 or the Deferred Governmental Approvals.

23.2 **Buyer's Representation and Warranties.** Buyer hereby represents and warrants the following:

23.2.1 Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer; and Buyer has all requisite power and authority to conduct its business, to

own its properties, and to execute, delivery, and perform its obligations under this Contract.

- 23.2.2 The execution, delivery, and performance of its obligations under this Contract by Buyer have been duly authorized by all necessary corporate action, and do not and will not:
- (a) Require any consent or approval of Buyer's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect;
 - (b) Result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Contract; or
 - (c) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Contract) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligation under this Contract.
 - (d) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Contract;
- 23.2.3 This Contract is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors or by general principles of equity).
- 23.2.4 The execution, delivery, and performance of this Contract will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.
- 23.2.5 Except for those approvals described in Section 2.1, all Governmental Approvals required by any Governmental Authority to authorize Buyer's execution, delivery, and performance under this Contract have been duly obtained and are in full force and effect.

24. MISCELLANEOUS

24.1 Assignment or Sale.

- 24.1.1 Seller may not (a) assign any of its rights or obligations under this Contract (whether directly or through the assignment, sale, lease, transfer or other disposition of any direct or indirect interest in Seller by any direct or indirect owner of Seller), or (b) sell, lease, assign, transfer or otherwise dispose of all or a portion of the Facility (whether directly or through the assignment, sale, lease, transfer or other disposition of any direct or indirect interest in Seller by any direct or indirect owner of Seller) without the prior written consent of Buyer; provided that without the prior consent of Buyer, Seller may assign its rights and interests under this Contract to the Lenders as collateral security, or create a security interest in favor of the Lenders over its rights and interests in this Contract; provided, further, that it shall be a condition to any such assignment, sale, lease, transfer, or other disposition (including any collateral assignment or any exercise of remedies by the Lenders pursuant thereto) that all security required under Section 4 or Section 5, as applicable, shall be, or shall remain, in place notwithstanding such disposition, or that replacement security in form, substance and amount reasonably satisfactory to Buyer shall have been provided prior to such disposition.
- 24.1.2 Prior to any assignment, sale, lease, transfer, or other disposition (a) by Seller of all or any portion of the Facility (other than sales of surplus or used equipment no longer required for operation of the Facility in accordance with this Contract), or (b) any assignment, sale, lease, transfer, or other disposition by any direct or indirect owner of Seller of its direct or indirect ownership interest in Seller, Seller shall (or shall cause such owner to) give Buyer at least thirty (30) days prior written notice of the complete, material proposed terms and conditions of such disposition. Buyer at its sole and absolute option shall have the exclusive right to acquire the Facility or such portion thereof, or such direct or indirect ownership interest, proposed to be transferred for the same consideration and on terms and conditions no less favorable to Seller than those offered by the proposed transferee. To give effect to this right of first refusal, Buyer shall notify Seller of its intent to purchase (together with a proposed purchase contract) within ten (10) Business Days after the expiration of the thirty (30) day notice of proposed terms and conditions required above, and the resulting transaction shall close within thirty (30) days after such notice of intent to purchase from Buyer; provided that failure by Buyer to give the notice of intent to purchase within ten (10) Business Days shall be deemed to be an election by Buyer not to exercise such right. In the event Buyer notifies Seller that regulatory approval is useful or required for the close of the transaction, Buyer shall take all actions

required to seek approval of such closing within the second thirty (30) day period including the submittal of all necessary applications, and the second thirty (30) day period shall be extended for the period of time necessary to obtain final and non-appealable approvals. Seller shall cause all contracts, agreements, or other understandings with respect to any such assignment, sale, lease, transfer or other disposition described in this Section 24.1 to specifically set forth and acknowledge Buyer's exclusive right of first refusal set forth in this Section 24.1.2. Seller immediately shall notify (or shall cause such direct or indirect owner to notify) Buyer of any material change to the terms or conditions set forth in Seller's notice to Buyer of such proposed disposition, and upon receipt of such notice the time periods set forth in this Section 24.1.2 shall be extended and shall be deemed to have begun on the effective date of such second notice from Seller or such owner.

- 24.1.3 Seller shall not be released from its obligations hereunder by virtue of any assignment, sale, lease, transfer, or other disposition described in this Section 24.1 unless such release is expressly agreed upon by Buyer in writing.
- 24.1.4 Any attempt by Seller to make any assignment, sale, lease, transfer or other disposition described in this Section 24.1 in violation of this Section 24.1 shall be void *ab initio* and shall not be effective.
- 24.2 **Amendments.** This Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by the Parties and, if requested by Buyer, approved by the FPSC. This Contract, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and permitted assigns.
- 24.3 **Conflict in Provisions.** In case of conflict between this Contract's Sections 1 through 24 and appendices to this Contract, Sections 1 through 24 shall take precedence.
- 24.4 **Survival.** The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Contract, shall survive such termination and inure to the benefit of the Parties.
- 24.5 **No Waiver.** Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Contract, or with respect to any other matters arising in connection with this Contract, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Contract or to exercise any rights under this Contract shall not be construed as a waiver or relinquishment to any extent of

such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

- 24.6 **Section Headings**. Section headings appearing in this Contract are inserted for convenience only and shall not be construed as interpretations of text.
- 24.7 **Service Agreement**. This Contract is intended to strictly provide services which are not subject to Florida sales or use Tax and is not intended and shall not be construed, interpreted, or applied to create a lease, license or similar arrangement for the use, possession, custody or control of property.
- 24.8 **Review, Approval, Etc. by Buyer**. The Parties explicitly acknowledge and agree that Buyer's reviews, agreement, comment, approvals, disapprovals and authorizations pursuant to this Contract are administrative in nature and do not relieve Seller of its obligations for the design, engineering, procurement, construction, operation, or maintenance of the Facility including Environmental Licensing and compliance with Environmental Requirements or other Applicable Laws or Governmental Approvals, or impose any such obligations on Buyer, and that Buyer's technical review and inspections of the Facility, or of drawings, plans, or other technical data, whether before or after the Capacity Delivery Date, and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility or relieve Seller of any of its obligations, duties or responsibilities hereunder.
- 24.9 **Construction of Contract**. The Parties expressly agree that no provision of this Contract should be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having been deemed to have structured or dictated such provision.
- 24.10 **Complete Agreement**. This Contract is intended as the complete and exclusive statement of the agreement between the Parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Contract and recourse may not be had to alleged prior drafts, negotiations, prior dealings, usage of trade, course of dealing or course of performance to explain or supplement the express terms of this Contract.
- 24.11 **Counterparts**. This Contract may be executed and delivered in counterparts, and may be delivered by facsimile transmission.
- 24.12 **Severability**. In the event that any provision of this Contract shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract or the application of the provisions hereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
- 24.13 **Good Faith**. The Parties agree to act in accordance with the principles of good faith and fair dealing in the performance of this Contract.

- 24.14 **Disclaimer of Third Party Beneficiary Rights.** Nothing in this Contract shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- 24.15 **No Partnership.** Nothing contained in this Contract shall be construed to create an association, trust, partnership or joint venture between Seller and Buyer or, except as expressly set forth in Section 5, an agency relationship between Seller and Buyer. Each Party shall be individually and severally liable for its own obligations under this Contract.
- 24.16 **Governing Law.** This Contract 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 without regard to conflicts of law rules.
- 24.17 **Jurisdiction.** With respect to any suit, action or proceedings relating to this Contract, each Party irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida in connection with any action or proceeding relating to this Contract, and waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have any jurisdiction over such Party.
- 24.18 **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS CONTRACT.
- 24.19 **Confidentiality.** Neither Party shall disclose directly or indirectly without the prior written consent of the other Party the terms of this Contract to a third party (other than to the employees, lenders, counsel, accountants and other agents of the disclosing Party, or prospective purchasers of all or substantially all of a Party's assets or of any rights under this Contract, provided such Persons shall have agreed to keep such terms confidential) except (i) in order to comply with any Applicable Laws, order, regulation, or exchange rule, or (ii) to the extent necessary for the enforcement of this Contract. Each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure of the terms of this Contract (other than as permitted herein) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Notwithstanding Section 21.1, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The terms of this Contract shall be kept confidential by the Parties hereto for two (2) years from the expiration hereof.
- 24.20 **Forward Contract.** The Parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code

and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

[Remainder of page intentionally left blank. Signature page follows.]

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

[SELLER]

PROGRESS ENERGY FLORIDA, INC.
a Florida corporation

By: _____

By: _____

Date: _____

Date: _____

**APPENDIX A
MONTHLY CAPACITY AND ENERGY PAYMENT CALCULATION**

I. Monthly Capacity Payment (MCPTotal)

The Monthly Capacity Payment for each Monthly Billing Period shall be determined according to the following formula:

$$\text{MCPTotal} = \text{MCPBase} \pm \text{MCPother}$$

A. Calculation of MCPBase

In the event that the CBF < 50%, then no MCP shall be due

$$\text{MCPBase} = 0$$

In the event that the CBF is greater than or equal to 50% but less than 90%, then

$$\text{MCPBase} = \text{CC} * [\text{B } \$/\text{MW-Month}] * [(95 - 2*(90-\text{CBF}))/100]$$

In the event that the CBF is equal to or greater than 90% but less than 95%, then

$$\text{MCPBase} = \text{CC} * [\text{B } \$/\text{MW-Month}] * [(100 - 0.5*(95 - \text{CBF}))/100]$$

In the event that the CBF is equal to or greater than 95%, then

$$\text{MCPBase} = \text{CC} * [\text{B } \$/\text{MW-Month}]$$

Where:

CC = Committed Capacity, expressed in MW

B = \$/MW-Month [*Insert the adjusted price of the capacity, measured in \$/MW-Month, taking into account the Mode of Operation*]

CBF = Capacity Billing Factor for such Monthly Billing Period

B. Calculation Of Payments Associated With Other Modes Of Operation (MCPother)

[Payments for incremental capacity provided from other operating modes included in Seller's submission, which include additional operating limitations or are not able to be placed under Buyer's AGC, to be inserted here, taking account of the following:

1. *The amount of the incremental capacity associated with the specific operating mode proposed in the Submittal.*
2. *The availability of the incremental capacity.*

3. *The operating limitations associated with supplying the incremental level of capacity (e.g., notice period, continuous capability, limitations per cycle etc.).*
4. *Actual measured performance associated with incremental capacity.*
5. *The incremental heat rate will be taken into account for the pricing of energy.*

Corresponding changes will be made to definitions and to substantive provisions of PPA, to address such matters as testing, dispatch, etc.]

II. Monthly Energy Payment

The Monthly Energy Payment for each Monthly Billing Period shall be determined according to the following formula:

$$EP = [\sum_{k=1}^n (NEO1_k * GHR1_k * HAF1_k * FP1)] + [\sum_{k=1}^n (NEO2_k * GHR2_k * HAF2_k * FP2)] + [\sum_{k=1}^n (NEO1_k + NEO2_k) * VOM] + SP$$

Where:

- EP = the Monthly Energy Payment, expressed in dollars, for the Monthly Billing Period;
- NEO1 = the hourly Net Energy Output generated using the Primary Fuel for hour k of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;
- NEO2 = the hourly Net Energy Output generated using the Back-up Fuel for hour k of the Monthly Billing Period, expressed in MWh, not to exceed the Capacity level of dispatch in any hour during such Monthly Billing Period;
- GHR1 = guaranteed heat rate, expressed in mmBtu/MWh, equal to *[To be inserted from Seller's submission based on heat rate data associated with the Primary Fuel]*;
- GHR2 = guaranteed heat rate, expressed in mmBtu/MWh, equal to *[To be inserted from Seller's submission based on heat rate data associated with the Back-up Fuel]*;
- HAF1 = heat rate adjustment factor associated with the Primary Fuel for hour k of the Monthly Billing Period, calculated pursuant to Exhibit 1 to Appendix A

- HAF2 = heat rate adjustment factor associated with the Back-up Fuel for hour k of the Monthly Billing Period, calculated pursuant to Exhibit 1 to Appendix A
- FP1 = Fuel (commodity and transportation) price, expressed in dollars per mmBtu, equal to *[To be inserted from Seller's submission¹ based on the Facility's Primary Fuel type];*
- FP2 = Fuel (commodity and transportation) price, expressed in dollars per mmBtu, equal to *[To be inserted]rom Seller's submission¹ based on the Facility's Back-up Fuel type];*
- VOM = variable operations and maintenance charge, expressed in dollars per MWh, equal to *[To be inserted from Seller's submission.];*
- n = number of hours in the Monthly Billing Period;
- k = each hour, for the Monthly Billing Period; and
- SP= any Start-up Cost(s) for such Monthly Billing Period for which Seller is entitled to payment.

¹ Fuel Prices may be as guaranteed in the proposal or indexed to a mutually acceptable benchmark.

**Exhibit 1
to Appendix A**

HEAT RATE ADJUSTMENT FACTOR TABLE FOR PRIMARY FUEL

NEO/CC Range	HAF1 ^{1,2}
> 1.0	1.x
0.81-1.0	1.0
0.61 – 0.8	1.x
0.41 – 0.6	1.xx
0.21 – 0.4	1.xxx

HEAT RATE ADJUSTMENT FACTOR TABLE FOR BACK-UP FUEL

NEO/CC Range	HAF1 ^{1,2}
> 1.0	1.x
0.81-1.0	1.0
0.61 – 0.8	1.x
0.41 – 0.6	1.xx
0.21 – 0.4	1.xxx

¹ Anytime there is an Unscheduled Outage the heat rate adjustment factor shall be equal to 1.0.

² *[The heat rate adjustment factors to be calculated based on a weighted average of the guaranteed baseload heat rate and the guaranteed heat rate for other Operating Modes based on Seller's submission]*

APPENDIX B
DEFERRED GOVERNMENTAL APPROVALS

[To be provided]

**APPENDIX C
FORM OF GUARANTY**

This Guaranty (the "Guaranty") is given as of this ____ day of _____, 20____, by [Seller's Guarantor,] a _____ [type of entity] ("Guarantor") to Progress Energy Florida, Inc., a Florida corporation ("PEF").

WHEREAS, Guarantor [owns, directly or indirectly, [all] of the outstanding [shares of capital stock]] of [Seller] ("Seller");

WHEREAS, Seller [wishes to enter][has entered] into [a Contract] with PEF, [dated as of _____, 20____] for the purchase and sale of electrical energy and capacity from Seller's [Facility] located at [_____] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Contract");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Contract;

WHEREAS, [PEF is willing to enter into the Contract on the condition that Guarantor enters into this Guaranty] [pursuant to the terms of the Contract, Seller is required, under the circumstances set forth therein, to provide Performance Security to PEF, which security may include a guaranty from Seller's Guarantor, substantially in the form of this Guaranty];

WHEREAS, Guarantor will benefit from the transactions contemplated by the Contract;

NOW, THEREFORE, in consideration of the foregoing, [and as an inducement to PEF to enter into the Contract,] Guarantor hereby agrees as follows:

1. **Guaranty:** Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to PEF, as primary obligor and not merely as a surety, the due and punctual payment and performance by Seller of all obligations to be paid or performed by Seller under the Contract, all as and when required to be paid or performed under the Contract, in all respects strictly in accordance with the terms, conditions and limitations contained in the Contract (the "Obligations"). This Guaranty is a continuing guarantee of the full and punctual payment and performance of the Obligations and is in no way conditioned upon any requirement that PEF first attempt to enforce any of the Obligations against Seller, any other guarantor of the Obligations, or any other person or entity, or resort to any other means of obtaining payment or performance of any of the Obligations. This Guaranty is a guarantee of performance and payment and not of collection.
2. **Guaranty Absolute:** This Guaranty shall continue in full force and effect until Seller or Guarantor shall have performed or discharged all of the Obligations in full. Further, this Guaranty shall remain in full force and effect without regard to, and shall not be affected or impaired by, any of the following:
 - (a) any invalidity, irregularity or unenforceability in whole or in part of this Guaranty or the Contract;

- (b) the existence of any claim, setoff, defense or other right which Guarantor or Seller may have against PEF or any other person or entity;
- (c) any release or discharge (whether by operation of law or otherwise) of Seller, Guarantor, or any other person or entity from its obligations under the Contract;
- (d) the occurrence or continuance of any event of bankruptcy, reorganization or insolvency with respect to Seller, Guarantor, or any other person or entity, or the dissolution, liquidation or winding up of Seller, Guarantor, or any other person or entity;
- (e) any amendment, supplement, reformation or other modification of the Contract;
- (f) the exercise, non exercise or delay in exercising, by PEF or any other person or entity of any of its rights or remedies under this Guaranty or the Contract;
- (g) any assignment or other transfer of this Guaranty by PEF, or any assignment or other transfer of the Contract in whole or in part;
- (h) any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in Seller;
- (i) the absence of any notice to, or knowledge by, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses; or
- (j) any other event, occurrence or circumstance that might otherwise constitute or give rise to a defense to performance by a surety or a guarantor.

3. **Waivers by Guarantor:** In addition to waiving any defenses to which clauses (a) through (j) of Section 2 may refer, Guarantor hereby unconditionally and irrevocably waives, as a condition precedent to the performance of its obligations hereunder, (a) notice of acceptance hereof, (b) notice of any action taken or omitted to be taken by PEF in reliance hereon, (c) any requirement that PEF be diligent or prompt in making demands hereunder or giving notice to Guarantor of any default by Seller, (d) any requirement that PEF exhaust any right, power or remedy or proceed against Seller under the Contract or any other agreement or instrument referred to therein, or against any other person or entity under any other guarantee of any of the Obligations, and (e) any claim or defense that PEF shall have impaired any right of Guarantor against Seller, any other guarantor of any of the Obligations, or any other person or entity, by way of reimbursement, subrogation or otherwise. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
 - (ii) any of the acts mentioned in any of the provisions of the Contract or any other agreement or instrument referred to therein shall be done or omitted; or
 - (iii) any of the Obligations shall be modified, supplemented or amended in any respect in accordance with the terms of the Contract with or without notice to Guarantor.
4. **Limit:** The liability of Guarantor hereunder shall not exceed at any time the sum of (a) the amount payable by Guarantor pursuant to Section 11, plus (b) an amount equal to the difference equal to the Performance Security Amount, minus the amount of Liquid Security provided by Seller to PEF at such time.
5. **Bankruptcy; Reinstatement; Subrogation:**
- (a) Guarantor shall not commence or join with any other person or entity in commencing any bankruptcy, reorganization or insolvency proceedings of or against Seller. Guarantor understands and acknowledges that by virtue of this Guaranty, Guarantor specifically has assumed any and all risks of a bankruptcy or reorganization case or similar proceeding with respect to Seller. As an example and not in any way a limitation, a subsequent modification of the Obligations or any rejection or disaffirmance thereof by any trustee, receiver or liquidating agency of Seller or of any of its respective properties, or any settlement or compromise of any claim made in any such case, in any reorganization case concerning Seller, shall not affect the obligations of Guarantor to pay and perform the Obligations in accordance with their original terms.
 - (b) The obligations of Guarantor under this Guaranty automatically shall be reinstated if and to the extent that for any reason any payment by or on behalf of Seller in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.
 - (c) Subrogation. Guarantor hereby agrees that until the performance and satisfaction in full of all Obligations and the expiration and termination of all Obligations, it shall not exercise any right or remedy arising by reason of the performance of any of its obligations under this Guaranty, whether by reimbursement, subrogation or otherwise, against Seller, or any other guarantor of any of the Obligations, or any security for any of the Obligations.
6. **Representations and Warranties:** Guarantor represents and warrants as follows:

- (a) Due Organization. Guarantor is a [corporation] duly organized and validly existing under the laws of the state of its formation.
- (b) Power and Authority. Guarantor has full [corporate] power, authority and legal right to enter into this Guaranty and to perform its obligations hereunder.
- (c) Due Authorization. This Guaranty has been duly authorized, executed and delivered by Guarantor.
- (d) Enforceability. This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally and except as enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).
- (e) No Conflicts. The execution and delivery by Guarantor of this Guaranty and the performance by Guarantor of its obligations hereunder will not (i) violate the provisions of Guarantor's [certificate of incorporation or bylaws]; (ii) violate the provisions of any Applicable Law; or (iii) result in a breach of or constitute a default under any agreement to which Guarantor is a party or by which it or its assets or property are bound.
- (f) No Proceedings. There is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending or, to the best knowledge of Guarantor, threatened against Guarantor which reasonably could be expected to have a material adverse effect on Guarantor's ability to perform its obligations under this Guaranty.
- (g) Financial Condition. The balance sheet of Guarantor as of _____, 20__, and the related statement of income for the 12 month period ending on such date, heretofore furnished by Guarantor to PEF, present fairly the financial condition and results of operations of Guarantor as of such date and for such period in conformity with generally accepted accounting principles and practices applied on a consistent basis. Guarantor on such date did not have any material contingent liabilities, liabilities for Taxes, unusual forward or long term commitments, swap obligations or guarantee obligations, or unrealized or anticipated losses from any unfavorable commitments that are not reflected or provided for in said financial statements as of such date. Since such date, there has been no material adverse change in the financial condition, operations or properties of Guarantor. Guarantor was solvent immediately after the execution and delivery of this Guaranty and since that time no winding up order has been made or any resolution passed for the winding up of Guarantor and no administration order has been made and no receiver, administrative receiver, administrator or liquidator has been appointed in respect of

7. **Affirmative Covenants:**

- (a) **Existence.** Guarantor shall preserve and maintain its [corporate] existence.
- (b) **Rights, Franchises.** Guarantor shall preserve and maintain all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business, except where the failure to maintain any such right, privilege, or franchise could not reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations hereunder.
- (c) **Compliance with Law.** Guarantor shall comply with the requirements of Applicable Law, except where the failure to comply could not reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations hereunder.
- (d) **Interest in Seller.** Guarantor shall cause to be maintained and preserved the [corporate] existence of Seller, and Guarantor shall maintain, directly or indirectly, legal and beneficial ownership (free and clear of any lien or encumbrance of any kind) of at least fifty percent (50%) of the ownership interests in Seller.
- (e) **Financial Status.** Guarantor at all times shall have an Investment Grade Credit Rating .

8. **Independent and Separate Obligations:** The obligations of Guarantor hereunder are independent of the obligations of Seller with respect to all or any part of the Obligations and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not any other such obligations exist, whether or not Guarantor is the alter ego of Seller, and whether or not Seller is joined therein or a separate action or actions are brought against Seller.

9. **Payment:** All payments hereunder shall be made in the currency and type of funds specified for payments in the Contract. Any and all payments made hereunder shall be made free and clear of and without deduction for any and all present or future Taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, or any set off or counterclaim.

10. **Full Recourse:** The obligations of Guarantor set forth herein constitute the full recourse obligations of Guarantor, enforceable against Guarantor to the full extent of all the assets and properties of Guarantor.

11. **Indemnification:** Guarantor shall indemnify and hold harmless on an After-Tax Basis PEF from and against any and all loss, liability and expense (including reasonable fees and disbursements of counsel to PEF) which may be sustained or

incurred by or on behalf of PEF in enforcing any obligations of Guarantor hereunder.

12. **Amendments; Waivers; Etc.:** Neither this instrument nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by PEF and Guarantor. No delay or failure by PEF to exercise any remedy against Seller or Guarantor will be construed as a waiver of that right or remedy. No failure on the part of PEF to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder against Guarantor preclude any exercise of such right against or any other or further exercise thereof against Guarantor or the exercise of any other right against Guarantor. The remedies herein provided are cumulative and not exclusive of any remedies provided at law or in equity.
13. **Severability:** In the event that the provisions of this Guaranty should be claimed or held to be inconsistent with any other instrument evidencing or securing the Obligations, the terms of this Guaranty shall remain fully valid and effective. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective.
14. **Assignment:**
 - (a) **Assignability.** Guarantor shall not assign any of its rights or obligations under this Guaranty. PEF may, at any time and from time to time, assign, in whole or in part, the rights of PEF hereunder to any person or entity to whom PEF may assign all or any of its rights or obligations under the Contract, whereupon such assignee shall succeed to the rights of PEF hereunder to the extent so assigned.
 - (b) **Successors and Assigns.** Subject to Section 14(a) hereof, this instrument shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of PEF and its successors and assigns.
15. **Address for Notices:** All notices and other communications provided for hereunder shall be given in accordance with the notice requirements of the Contract, and if to Guarantor, at the address specified below the space for its execution of this Guaranty.
16. **JURISDICTION:**
 - (a) **SERVICE OF PROCESS.** GUARANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF ANY PROCESS, PLEADING, NOTICE OR OTHER PAPERS BY THE MAILING OF COPIES THEREOF BY REGISTERED, CERTIFIED OR FIRST CLASS MAIL, POSTAGE PREPAID, TO GUARANTOR AT ITS ADDRESS SPECIFIED BELOW THE SPACE FOR ITS EXECUTION OF THIS GUARANTY OR BY ANY OTHER METHOD PROVIDED OR PERMITTED UNDER NEW YORK LAW.

(b) **NON-EXCLUSIVE JURISDICTION.** GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY: (i) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF THIS GUARANTY SHALL BE CONDUCTED IN THE COURTS OF THE STATE OF NEW YORK OR IN FEDERAL COURTS SITUATED IN NEW YORK AND THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS; PROVIDED, THAT IF A NEW YORK COURT OR FEDERAL COURT SITUATED IN NEW YORK SHALL HAVE DETERMINED THAT IT CANNOT ACCEPT JURISDICTION OVER ANY ACTION BECAUSE OF THE FAILURE TO JOIN AN INDISPENSABLE PARTY, THEN PEF MAY BRING AN ACTION IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION; (ii) CONSENTS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION, OR PROCEEDING; AND (iii) WAIVES ANY OBJECTION WHICH GUARANTOR MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION, OR PROCEEDING IN ANY SUCH COURT. GUARANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. GUARANTOR AT PEF'S OPTION MAY BE JOINED IN ANY PROCEEDING AGAINST SELLER.

17. **GOVERNING LAW:** THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CHOICE OF LAW (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).
18. **WAIVER OF JURY TRIAL:** GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR THE CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN), OR ACTION OF GUARANTOR, SELLER, OR PEF.
19. **Entire Agreement:** This Guaranty contains the complete agreement of Guarantor with respect to the matters contained herein and supersedes all other negotiations or agreements, whether written or oral, with respect to the subject matter hereof.
20. **Section Headings:** Section headings contained herein are for convenience of reference only and shall not be considered in the interpretation or enforcement of the provisions hereof.

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guaranty effective as of _____, 20__.

[SELLER'S GUARANTOR]	
By:	
Name:	
Title:	
Address:	
Attn:	
Telephone:	
Facsimile:	

APPENDIX D
ASSIGNMENT OF FIRM TSA

[To be provided.]

**APPENDIX E
FACILITY ACTUAL NET GENERATION AND PERFORMANCE DATA**

[To be provided]

**APPENDIX F
START-UP COSTS**

Type of Start-up	Cost (Dollars) per Successful Start-up	Guaranteed Maximum Fuel Consumption (MMBtu)
Hot (0-4 hours offline)		
Warm/Hot (4-12 hours offline)		
Warm/Cold (12-48 hours offline)		
Cold (Greater than 48 hours offline)		

[Insert Dollars and MMBtu's from Seller's submission]

APPENDIX G
FACILITY DESCRIPTION AND OPERATING CAPABILITIES

[To be provided]

**APPENDIX H
PLANNED OUTAGE HOURS**

[To be provided]

**APPENDIX I
RECEIPT POINT**

[To be provided]

APPENDIX J
CAPACITY DEMONSTRATION TESTING GUIDELINES

[To be provided]

APPENDIX K TELEMETERING SPECIFICATIONS

Each installation shall be evaluated separately for SCADA requirements because of the many possible agreements and interconnection configurations. Generally, equipment will be specified capable of supporting the following data points:

- Megawatt-hours received
- Megawatt-hours delivered
- KQ-hours received
- KQ-hours delivered
- Voltage
- Current
- +/- Megawatts, instantaneous value and limits
- +/- Megavars, instantaneous value and limits
- Control indication and current Maximum Sustained Rating (MSR)
- Fuel Volumes
- Fuel Quality if Installed
- Breaker and Switch positions
- Equipment Trouble Alarms
- Generator Voltage Regulator Status, and
- other Generator Parameters.

Quantities shall be provided to various Parties through various information or communication systems. Specific designs will be developed to meet those requirements. Multi-ported remote terminal units (RTUs) accessible by all appropriate Parties shall be used, provided the appropriate security levels are implemented. Equipment control of breakers, switches and other devices via SCADA shall be provided to only one responsible Party.

Power for SCADA or metering communication equipment shall be provided by the station battery. Office power systems and switching networks are not acceptable.

**APPENDIX L
DESCRIPTION OF FACILITY SITE**

[To be provided]

**APPENDIX M
REFERENCE CONDITIONS**

[To be provided]

**APPENDIX N
MILESTONES**

[To be provided]

**APPENDIX O
CPM SCHEDULE**

[To be provided]

Progress Energy Florida, Inc. Ten-Year Site Plan

April 2008

2008-2017

**Submitted to:
Florida Public Service Commission**



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CODE IDENTIFICATION SHEET

Generating Unit Type

ST - Steam Turbine - Non-Nuclear
NP - Steam Power - Nuclear
GT - Gas Turbine
CT - Combustion Turbine
CC - Combined cycle
SPP - Small Power Producer
COG - Cogeneration Facility

Fuel Type

NUC - Nuclear (Uranium)
NG - Natural Gas
RFO - No. 6 Residual Fuel Oil
DFO - No. 2 Distillate Fuel Oil
BIT - Bituminous Coal
MSW - Municipal Solid Waste
WH - Waste Heat
BIO - Biomass

Fuel Transportation

WA - Water
TK - Truck
RR - Railroad
PL - Pipeline
UN - Unknown

Future Generating Unit Status

A - Generating unit capability increased
D - Generating unit capability decreased
FC - Existing generator planned for conversion to another fuel or energy source
P - Planned for installation but not authorized; not under construction
RP - Proposed for repowering or life extension
RT - Existing generator scheduled for retirement
T - Regulatory approval received but not under construction
U - Under construction, less than or equal to 50% complete
V - Under construction, more than 50% complete

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INTRODUCTION

Section 186.801 of the Florida Statutes requires electric generating utilities to submit a Ten-Year Site Plan (TYSP) to the Florida Public Service Commission (FPSC). The TYSP includes historical and projected data pertaining to the utility's load and resource needs as well as a review of those needs. Florida Power Corporation d/b/a Progress Energy Florida, Inc. TYSP is compiled in accordance with FPSC Rules 25-22.070 through 22.072, Florida Administrative Code.

Progress Energy Florida, Inc.'s (PEF) TYSP is based on the projections of long-term planning requirements that are dynamic in nature and subject to change. These planning documents should be used for general guidance concerning PEF's planning assumptions and projections, and should not be taken as an assurance that particular events discussed in the TYSP will materialize or that particular plans will be implemented. Information and projections pertinent to periods further out in time are inherently subject to greater uncertainty.

This TYSP document contains four (4) chapters as indicated below:

- **CHAPTER 1 DESCRIPTION OF EXISTING FACILITIES**

This chapter provides an overview of PEF's generating resources as well as the transmission and distribution system.

- **CHAPTER 2 FORECAST OF ELECTRICAL POWER DEMAND AND ENERGY CONSUMPTION**

Chapter 2 presents the history and forecast for load and peak demand as well as the forecast methodology used. DSM savings and fuel requirement projections are also included.

- **CHAPTER 3 FORECAST OF FACILITIES REQUIREMENTS**

The resource planning forecast, transmission planning forecast as well as the proposed generating facilities and bulk transmission line additions status are discussed in Chapter 3.

- **CHAPTER 4 ENVIRONMENTAL AND LAND USE INFORMATION**

Preferred and potential site locations along with any environmental and land use information are presented in this chapter.

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CHAPTER 1

***DESCRIPTION OF
EXISTING FACILITIES***



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CHAPTER 1
DESCRIPTION OF EXISTING FACILITIES

EXISTING FACILITIES OVERVIEW

OWNERSHIP

Florida Power Corporation d/b/a Progress Energy Florida, Inc. (PEF or the Company) is a wholly owned subsidiary of Progress Energy, Inc. (Progress Energy). Congress enacted legislation in 2005 repealing the Public Utilities Holding Company Act of 1935 (PUHCA) effective February 8, 2006. Subsequent to that date, Progress Energy is no longer subject to regulation by the Securities and Exchange Commission as a public utility holding company.

AREA OF SERVICE

PEF has an obligation to serve approximately 1.7 million customers in Florida. Its service area covers approximately 20,000 square miles in west central Florida and includes the densely populated areas around Orlando, as well as the cities of Saint Petersburg and Clearwater. PEF is interconnected with twenty-two (22) municipal and nine (9) rural electric cooperative systems. PEF is subject to the rules and regulations of the Federal Energy Regulatory Commission (FERC), the Nuclear Regulatory Commission (NRC), and the FPSC. PEF's Service Area is shown in Figure 1.1.

TRANSMISSION/DISTRIBUTION

The Company is part of a nationwide interconnected power network that enables power to be exchanged between utilities. The PEF transmission system includes approximately 5,000 circuit miles of transmission lines. The distribution system includes approximately 18,000 circuit miles of overhead distribution conductors and approximately 13,000 miles of underground distribution cable.

ENERGY MANAGEMENT and ENERGY EFFICIENCY

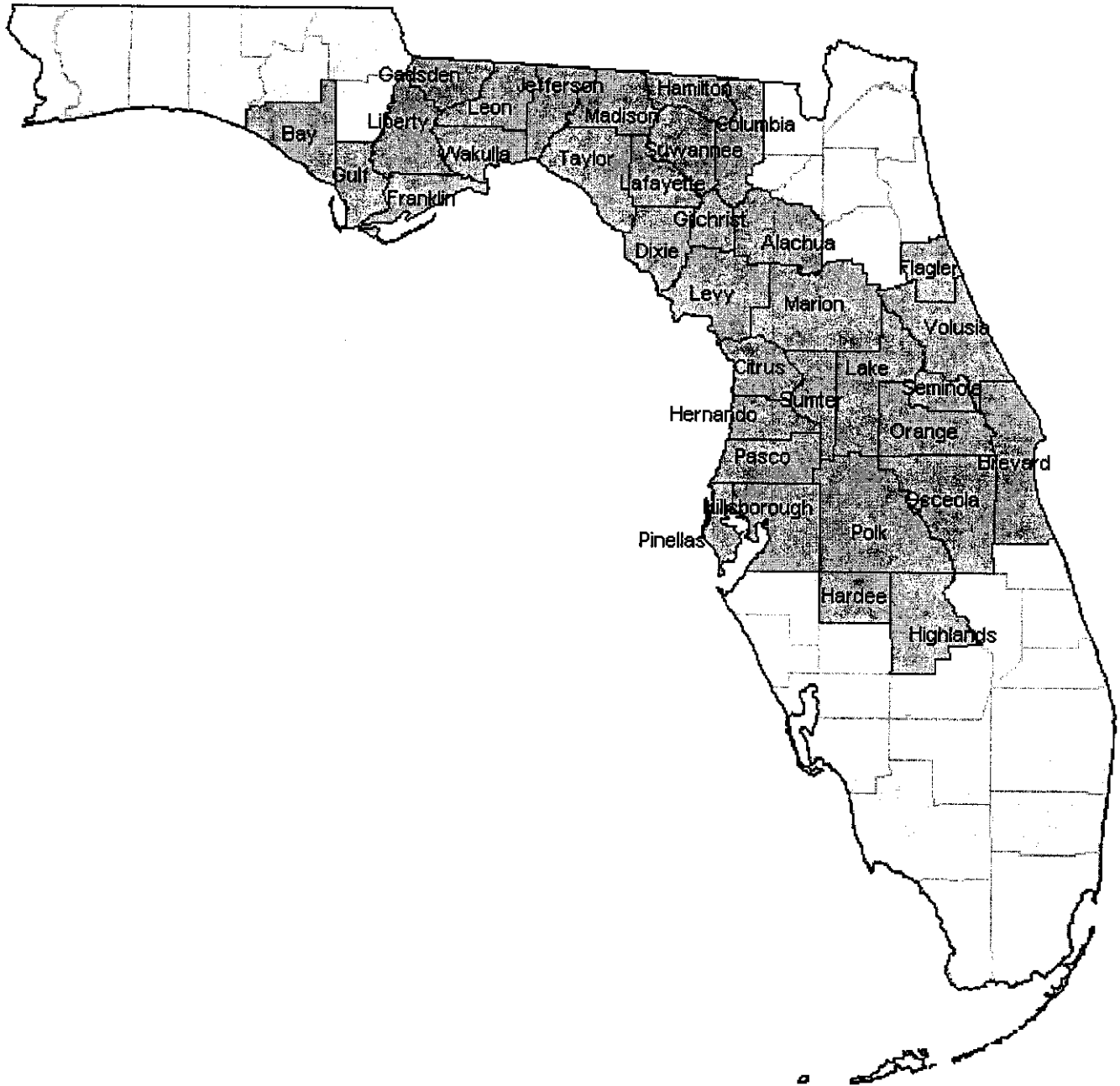
PEF customers participating in the company's residential Energy Management program help to manage future growth and costs. At the close of 2007, approximately 390,000 customers participating in the Energy Management program contributed about 760,500 kW of winter peak-shaving capacity while 273,414 participants contributed about 290,042 kW of summer peak-shaving capacity for use during high load periods.

PEF's DSM Plan currently consists of seven (7) residential programs, eight (8) commercial and industrial programs, and one (1) research and development program. This includes the thirty-nine (39) additional DSM measures and two (2) new residential programs approved by the FPSC on January 5, 2007 (Docket 060647: Consummating Order PSC-07-0017-CO-EG making Order PSC-0601018-TRG-EG effective and final). Megawatt (MW) contributions to the TYSP have increased as a result of these changes to conservation, standby, and residential load management programs.

TOTAL CAPACITY RESOURCE

As of December 31, 2007, PEF had total summer capacity resources of approximately 11,215 MW consisting of installed capacity of 9,293 MW (excluding Crystal River Unit 3 joint ownership) and 1,922 MW of firm purchased power. Additional information on PEF's existing generating resources can be found in Schedule 1 and Table 3.1.

FIGURE 1.1
PROGRESS ENERGY FLORIDA
Service Area Map



PROGRESS ENERGY FLORIDA
SCHEDULE I
EXISTING GENERATING FACILITIES
AS OF DECEMBER 31, 2007

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	
EIA PLANT CODE	PLANT NAME STEAM	UNIT NO.	LOCATION (COUNTY)	UNIT TYPE	FUEL FRL	FUEL ALT.	FUEL TRANSPORT FRL	ALT. FUEL ALT.	ALT. FUEL DAYS USE	COMPL. IN- SERVICE MO./YEAR	EXPECTED RETIREMENT MO./YEAR	GEN. MAX. NAMEPLATE KW	NET CAPABILITY SUMMER MW	NET CAPABILITY WINTER MW
8048	ANCLOTE	1	PASCO	ST	RFO	NG	PL	PL		10/74		556,200	499	522
8048	ANCLOTE	2	PASCO	ST	RFO	NG	PL	PL		10/78		556,200	507	526
634	BARTOW	1	PINELLAS	ST	RFO		WA			09/58	6/2009	127,500	121	125
634	BARTOW	2	PINELLAS	ST	RFO		WA			08/61	6/2009	127,500	119	124
634	BARTOW	3	PINELLAS	ST	RFO	NG	WA	PL		07/63	6/2009	239,360	204	215
628	CRYSTAL RIVER	1	CITRUS	ST	BIT		RR	WA		10/66		440,550	372	386
628	CRYSTAL RIVER	2	CITRUS	ST	BIT		RR	WA		11/69		523,800	494	496
628	CRYSTAL RIVER	3 *	CITRUS	NP	NUC		TK			03/77		890,460	769	788
628	CRYSTAL RIVER	4	CITRUS	ST	BIT		WA	RR		12/82		739,260	722	734
628	CRYSTAL RIVER	5	CITRUS	ST	BIT		WA	RR		10/84		739,260	722	734
638	SUWANNEE RIVER	1	SUWANNEE	ST	RFO	NG	TK/RR	PL		11/53	6/2013	34,500	30	33
638	SUWANNEE RIVER	2	SUWANNEE	ST	RFO	NG	TK/RR	PL		11/54	6/2013	31,500	28	31
638	SUWANNEE RIVER	3	SUWANNEE	ST	RFO	NG	TK/RR	PL		10/56	6/2013	75,000	71	82
												4,658	42	4,796
COMBINED-CYCLE														
7302	HINES ENERGY COMPLEX	1	POLK	CC	NG	DFO	PL	TK	2***	04/99		546,500	466	528
7302	HINES ENERGY COMPLEX	2	POLK	CC	NG	DFO	PL	TK		12/03		548,250	490	562
7302	HINES ENERGY COMPLEX	3	POLK	CC	NG	DFO	PL	TK		11/05		561,000	499	570
7302	HINES ENERGY COMPLEX	4	POLK	CC	NG	DFO	PL	TK		12/07		610,000	475	517
7699	TIGER BAY	1	POLK	CC	NG		PL			08/97		278,100	204	225
													2,134	2,402
COMBUSTION TURBINE														
624	AVON PARK	P1	HIGHLANDS	CT	NG	DFO	PL	TK	3***	12/68	*****	33,790	24	34
624	AVON PARK	P2	HIGHLANDS	CT	DFO		TK			12/68	*****	33,790	25	36
634	BARTOW	P1, P3	PINELLAS	CT	DFO		WA			05/72, 06/72		111,400	86	112
634	BARTOW	P2	PINELLAS	CT	NG	DFO	PL	WA	8	06/72		55,700	43	56
634	BARTOW	P4	PINELLAS	CT	NG	DFO	PL	WA	8	06/72		55,700	47	58
627	BAYBORO	P1-P4	PINELLAS	CT	DFO		WA			04/73		226,800	178	232
6046	DEBARY	P1-P6	VOLUSIA	CT	DFO		TK			12/75-04/76		401,220	313	393
6046	DEBARY	P7-P9	VOLUSIA	CT	NG	DFO	PL	TK	8	10/92		345,000	247	287
6046	DEBARY	P10	VOLUSIA	CT	DFO		TK			10/92		115,000	82	99
630	HIGGINS	P1-P2	PINELLAS	CT	NG	DFO	PL	TK		03/69, 04/69	*****	67,580	53	68
630	HIGGINS	P3-P4	PINELLAS	CT	NG	DFO	PL	TK	1	12/70, 01/71	*****	85,850	60	65
8049	INTERCESSION CITY	P1-P6	OSCEOLA	CT	DFO		PL,TK			05/74		340,200	280	369
8049	INTERCESSION CITY	P7-P10	OSCEOLA	CT	NG	DFO	PL	PL,TK	5	10/93		460,000	329	376
8049	INTERCESSION CITY	P11 **	OSCEOLA	CT	DFO		PL,TK			01/97		165,000	143	161
8049	INTERCESSION CITY	P12-P14	OSCEOLA	CT	NG	DFO	PL	PL,TK	5	12/00		345,000	232	278
637	RIO PINAR	P1	ORANGE	CT	DFO		TK			11/70	*****	19,290	12	16
638	SUWANNEE RIVER	P1, P3	SUWANNEE	CT	NG	DFO	PL	TK	9****	10/80, 11/80		122,400	103	133
638	SUWANNEE RIVER	P2	SUWANNEE	CT	DFO		TK			10/80		61,200	50	66
629	TURNER	P1-P2	VOLUSIA	CT	DFO		TK			10/70	*****	38,580	22	32
629	TURNER	P3	VOLUSIA	CT	DFO		TK			08/74		71,200	63	85
629	TURNER	P4	VOLUSIA	CT	DFO		TK			08/74		71,200	63	84
7345	UNIV. OF FLA.	P1	ALACHUA	CT	NG		PL			01/94		43,000	46	47
													2,501	3,007
TOTAL RESOURCES (MW)												9,293	10,285	

* REPRESENTS APPROXIMATELY 91.5% PRF OWNERSHIP OF UNIT
 ** SUMMER CAPABILITY (RUNS THROUGH SEPTEMBER) OWNED BY GEORGIA POWER COMPANY
 *** FOR STARTS PLANT
 **** P1 REQUIRES A 1-4 DAY OUTAGE IN ORDER TO SWITCH BETWEEN NG & DFO
 ***** PEAKERS @ AVON PARK, HIGGINS, RIO PINAR, TURNER ARE ESTIMATED TO BE PUT IN COLD STAND-BY OR RETIRED BY 6/2016

CHAPTER 2

**FORECAST OF
ELECTRIC POWER DEMAND
AND ENERGY CONSUMPTION**



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CHAPTER 2
FORECAST OF ELECTRIC POWER DEMAND
AND
ENERGY CONSUMPTION

OVERVIEW

The information presented in the following Schedules 2, 3 and 4 represent PEF's history and forecast of customers, energy sales (GWh), and peak demand (MW). High and low scenarios are also presented for sensitivity purposes.

The base case was developed using assumptions to predict a forecast with a 50/50 probability, or most likely scenario. The high and low scenarios, which have a 90/10 probability of occurrence or an 80 percent probability of an outcome falling between the high and low cases, employed a Monte Carlo simulation procedure that studied 1,000 possible outcomes of retail demand and energy.

PEF's customer growth is expected to average 1.8 percent between 2008 and 2017, which is less than the ten-year historical average of 2.2 percent. Slower population growth, based on the latest projection from the University of Florida's Bureau of Economic and Business Research, and economic conditions less favorable for the housing/construction industry (including, for example, tighter mortgage credit availability as well as higher property insurance rates and property taxes) result in a lower base case customer projection when compared to the higher historical growth rate. This translates into lower projected energy and demand growth rates from historic rate levels.

Net energy for load (NEL), which had grown at an average of 2.6 percent between 1998 and 2007, is expected to increase by 2.5 percent per year from 2008 to 2017 in the base case, 2.7 percent in the high case and 2.2 percent in the low case. A lower contribution from the wholesale jurisdiction, which grew an average of 10.2 percent between 1998 and 2007, results in lower expected system growth going forward than the historic rate. Retail NEL, which grew at a 1.8 percent average rate historically, is expected to grow 2.2 percent over the next ten-year

period. The higher projected growth rate is solely due to the hottest summer weather in over thirty-two (32) years in 1998 as well as extremely mild winter weather conditions in 2007. Both conditions work to hold down the historical average growth rate. The projected growth rate for NEL assumes normal weather. Wholesale NEL is expected to average 2.4 percent between 2008 and 2017.

Summer net firm demand is expected to grow at an average of 1.9 percent per year during the next ten (10) years. This is lower than the 3.5 percent growth rate experienced throughout the last ten (10) years. Again, lower contribution from the wholesale jurisdiction is expected going forward and a higher load management capability for the projected period. High and low summer growth rates for net firm demand are 2.2 percent and 1.6 percent per year, respectively. Winter net firm demand is projected to grow at 2.4 percent per year after having increased by 2.7 percent per year from 1998 to 2007. High and low winter net firm demand growth rates are 2.7 percent and 1.7 percent, respectively.

Summer net firm retail demand is expected to grow at an average of 2.0 percent per year during the next ten (10) years; this is lower than the 3.2 percent average annual growth rate experienced throughout the last ten-year period. The historical growth percentage is driven by a period of declining load management capability while the projection period has a return to higher capability. High and low summer growth rates for net firm retail demand are 2.3 percent and 1.6 percent per year, respectively. Winter net firm retail demand is projected to grow at approximately 1.6 percent per year after having grown by 2.1 percent from 1998 to 2007. Again, higher load control capability is incorporated in the projection period. High and low winter net firm retail demand growth rates are 2.0 percent and 1.3 percent, respectively.

ENERGY CONSUMPTION AND DEMAND FORECAST SCHEDULES

<u>SCHEDULE</u>	<u>DESCRIPTION</u>
2.1, 2.2 and 2.3	History and Forecast of Energy Consumption and Number of Customers by Customer Class
3.1.1, 3.1.2 and 3.1.3	History and Forecast of Base, High and Low Summer Peak Demand (MW)
3.2.1, 3.2.2 and 3.2.3	History and Forecast of Base, High, and Low Winter Peak Demand (MW)
3.3.1, 3.3.2 and 3.3.3	History and Forecast of Base, High and Low Annual Net Energy for Load (GWh)
4	Previous Year Actual and Two-Year Forecast of Peak Demand and Net Energy for Load by Month

PROGRESS ENERGY FLORIDA

SCHEDULE 2.1
HISTORY AND FORECAST OF ENERGY CONSUMPTION AND
NUMBER OF CUSTOMERS BY CUSTOMER CLASS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
RURAL AND RESIDENTIAL						COMMERCIAL		
YEAR	PEF POPULATION	MEMBERS PER HOUSEHOLD	GWh	AVERAGE NO. OF CUSTOMERS	AVERAGE KWh CONSUMPTION PER CUSTOMER	GWh	AVERAGE NO. OF CUSTOMERS	AVERAGE KWh CONSUMPTION PER CUSTOMER
1998	2,959,331	2.502	16,526	1,182,786	13,972	9,999	136,345	73,336
1999	3,047,023	2.511	16,245	1,213,470	13,387	10,327	140,897	73,295
2000	3,044,983	2.467	17,116	1,234,286	13,867	10,813	143,475	75,368
2001	3,142,066	2.465	17,604	1,274,672	13,810	11,061	146,983	75,251
2002	3,210,839	2.467	18,754	1,301,515	14,409	11,420	150,577	75,842
2003	3,287,164	2.468	19,429	1,331,914	14,587	11,553	154,294	74,876
2004	3,368,023	2.468	19,347	1,364,677	14,177	11,734	158,780	73,898
2005	3,449,223	2.469	19,894	1,397,012	14,240	11,945	161,001	74,190
2006	3,533,542	2.468	20,021	1,431,743	13,983	11,975	162,774	73,568
2007	3,579,718	2.481	19,912	1,442,853	13,800	12,184	162,837	74,821
2008	3,639,414	2.477	21,089	1,469,283	14,354	12,556	165,924	75,672
2009	3,711,633	2.479	21,766	1,497,230	14,538	12,880	169,772	75,866
2010	3,782,417	2.480	22,362	1,525,168	14,662	13,165	173,623	75,824
2011	3,854,891	2.482	23,027	1,553,139	14,826	13,450	177,480	75,784
2012	3,927,313	2.484	23,718	1,581,044	15,002	13,750	181,327	75,828
2013	4,000,049	2.486	24,396	1,609,030	15,162	14,041	185,185	75,824
2014	4,072,642	2.488	25,056	1,636,914	15,307	14,347	189,028	75,900
2015	4,142,978	2.489	25,723	1,664,515	15,454	14,659	192,832	76,022
2016	4,209,895	2.491	26,369	1,690,042	15,603	14,990	196,351	76,344
2017	4,275,767	2.493	27,059	1,715,109	15,777	15,351	199,807	76,832

PROGRESS ENERGY FLORIDA

SCHEDULE 2.2

HISTORY AND FORECAST OF ENERGY CONSUMPTION AND
NUMBER OF CUSTOMERS BY CUSTOMER CLASS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	INDUSTRIAL						
YEAR	GWh	AVERAGE NO. OF CUSTOMERS	AVERAGE KWh CONSUMPTION PER CUSTOMER	RAILROADS AND RAILWAYS GWh	STREET & HIGHWAY LIGHTING GWh	OTHER SALES TO PUBLIC AUTHORITIES GWh	TOTAL SALES TO ULTIMATE CONSUMERS GWh
1998	4,375	2,707	1,616,180	0	27	2,459	33,386
1999	4,334	2,629	1,648,536	0	27	2,509	33,442
2000	4,249	2,535	1,676,134	0	28	2,626	34,832
2001	3,872	2,551	1,517,836	0	28	2,698	35,262
2002	3,835	2,535	1,512,821	0	28	2,822	36,859
2003	4,001	2,643	1,513,810	0	29	2,946	37,958
2004	4,069	2,733	1,488,840	0	28	3,016	38,194
2005	4,140	2,703	1,531,632	0	27	3,171	39,176
2006	4,160	2,697	1,542,455	0	27	3,249	39,432
2007	3,819	2,668	1,431,409	0	26	3,341	39,282
2008	4,066	2,655	1,531,450	0	27	3,470	41,208
2009	4,143	2,650	1,563,396	0	27	3,580	42,396
2010	4,159	2,645	1,572,401	0	27	3,695	43,408
2011	4,247	2,645	1,605,671	0	27	3,812	44,563
2012	4,278	2,645	1,617,391	0	27	3,935	45,708
2013	4,359	2,645	1,648,015	0	27	4,061	46,885
2014	4,379	2,645	1,655,577	0	27	4,190	48,000
2015	4,381	2,645	1,656,333	0	27	4,322	49,113
2016	4,401	2,645	1,663,894	0	27	4,457	50,245
2017	4,436	2,645	1,677,127	0	27	4,595	51,469

PROGRESS ENERGY FLORIDA

SCHEDULE 2.3
HISTORY AND FORECAST OF ENERGY CONSUMPTION AND
NUMBER OF CUSTOMERS BY CUSTOMER CLASS

(1)	(2)	(3)	(4)	(5)	(6)
YEAR	SALES FOR RESALE GWh	UTILITY USE & LOSSES GWh	NET ENERGY FOR LOAD GWh	OTHER CUSTOMERS (AVERAGE NO.)	TOTAL NO. OF CUSTOMERS
1998	2,340	2,037	37,763	19,013	1,340,851
1999	3,267	2,451	39,160	19,601	1,376,597
2000	3,732	2,678	41,242	20,004	1,400,299
2001	3,839	1,832	40,933	20,752	1,444,958
2002	3,173	2,535	42,567	21,155	1,475,783
2003	3,359	2,594	43,911	21,665	1,510,516
2004	4,301	2,773	45,268	22,437	1,548,627
2005	5,195	2,507	46,878	22,701	1,583,417
2006	4,220	2,389	46,041	23,182	1,620,396
2007	5,598	2,753	47,633	24,010	1,632,368
2008	4,798	2,728	48,734	24,463	1,662,325
2009	4,527	2,845	49,768	25,035	1,694,687
2010	5,238	2,969	51,615	25,619	1,727,055
2011	5,363	2,987	52,913	26,205	1,759,469
2012	5,892	3,095	54,695	26,794	1,791,810
2013	6,032	3,128	56,045	27,380	1,824,240
2014	5,708	3,197	56,905	27,966	1,856,553
2015	5,795	3,258	58,166	28,552	1,888,544
2016	5,874	3,329	59,448	29,140	1,918,178
2017	5,953	3,414	60,836	29,723	1,947,284

PROGRESS ENERGY FLORIDA

**SCHEDULE 3.1.1
HISTORY AND FORECAST OF SUMMER PEAK DEMAND (MW)
BASE CASE**

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	RESIDENTIAL		COMM. / IND.		OTHER DEMAND REDUCTIONS	NET FIRM DEMAND	
				LOAD	MANAGEMENT	LOAD	CONSERVATION			
1998	8,367	943	7,424	291	438	100	42	151	182	7,163
1999	9,039	1,326	7,713	292	505	115	45	156	183	7,743
2000	8,916	1,319	7,597	277	455	129	48	158	75	7,774
2001	8,847	1,117	7,730	283	414	142	48	159	75	7,726
2002	9,426	1,203	8,223	305	390	156	43	161	75	8,296
2003	8,886	887	7,999	300	354	172	44	164	75	7,778
2004	9,589	1071	8,518	531	320	188	39	166	110	8,235
2005	10,356	1118	9,238	448	309	206	38	169	110	9,076
2006	10,153	1257	8,896	329	292	226	37	172	66	9,031
2007	10,938	1544	9,394	290	294	243	43	179	110	9,778
2008	10,647	1,343	9,304	305	308	259	52	189	110	9,424
2009	10,742	1,191	9,551	306	326	275	61	198	125	9,451
2010	11,026	1,265	9,762	297	347	292	70	207	125	9,689
2011	11,272	1,282	9,990	302	368	308	79	217	125	9,873
2012	11,659	1,439	10,220	310	389	325	89	226	125	10,195
2013	11,912	1,464	10,449	316	403	342	98	235	125	10,393
2014	12,132	1,463	10,670	316	413	360	107	244	125	10,568
2015	12,361	1,475	10,886	316	417	367	112	248	125	10,776
2016	12,578	1,491	11,087	317	424	380	115	256	125	10,961
2017	12,797	1,510	11,287	318	429	393	119	263	125	11,150

Historical Values (1998 - 2007):

Col. (2) = recorded peak + implemented load control + residential and commercial/industrial conservation and customer-owned self-service cogeneration.

Cols. (5) - (9) = Represent total cumulative capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

Projected Values (2008 - 2017):

Cols. (2) - (4) = forecasted peak without load control, conservation, and customer-owned self-service cogeneration.

Cols. (5) - (9) = cumulative conservation and load control capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

PROGRESS ENERGY FLORIDA

SCHEDULE 3.1.2
HISTORY AND FORECAST OF SUMMER PEAK DEMAND (MW)
HIGH LOAD FORECAST

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	INTERRUPTIBLE	RESIDENTIAL	RESIDENTIAL	COMM. / IND.	COMM. / IND.	OTHER	NET FIRM DEMAND
					LOAD	CONSERVATION	LOAD	CONSERVATION	DEMAND REDUCTIONS	
1998	8,367	943	7,424	291	438	100	42	151	182	7,163
1999	9,039	1,326	7,713	292	505	115	45	156	183	7,743
2000	8,916	1,319	7,597	277	455	129	48	158	75	7,774
2001	8,847	1,117	7,730	283	414	142	48	159	75	7,726
2002	9,426	1,203	8,223	305	390	156	43	161	75	8,296
2003	8,886	887	7,999	300	354	172	44	164	75	7,778
2004	9,589	1,071	8,518	531	320	188	39	166	110	8,235
2005	10,356	1,118	9,238	448	309	206	38	169	110	9,076
2006	10,153	1,257	8,896	329	292	226	37	172	66	9,031
2007	10,938	1,544	9,394	290	294	243	43	179	110	9,778
2008	10,780	1,343	9,437	305	308	259	52	189	110	9,557
2009	10,894	1,191	9,703	306	326	275	61	198	125	9,603
2010	11,206	1,265	9,941	297	347	292	70	207	125	9,868
2011	11,468	1,282	10,186	302	368	308	79	217	125	10,069
2012	11,890	1,439	10,451	310	389	325	89	226	125	10,426
2013	12,163	1,464	10,699	316	403	342	98	235	125	10,644
2014	12,416	1,463	10,953	316	413	360	107	244	125	10,851
2015	12,696	1,475	11,221	316	417	367	112	248	125	11,111
2016	12,951	1,491	11,460	317	424	380	115	256	125	11,334
2017	13,220	1,510	11,710	318	429	393	119	263	125	11,573

Historical Values (1998 - 2007):

Col. (2) = recorded peak + implemented load control + residential and commercial/industrial conservation and customer-owned self-service cogeneration.

Cols. (5) - (9) = Represent total cumulative capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

Projected Values (2008 - 2017):

Cols. (2) - (4) = forecasted peak without load control, conservation, and customer-owned self-service cogeneration.

Cols. (5) - (9) = cumulative conservation and load control capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

PROGRESS ENERGY FLORIDA

SCHEDULE 3.1.3
HISTORY AND FORECAST OF SUMMER PEAK DEMAND (MW)
LOW LOAD FORECAST

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	RESIDENTIAL		COMM. / IND.		OTHER DEMAND REDUCTIONS	NET FIRM DEMAND	
				LOAD	RESIDENTIAL	LOAD	COMM. / IND.			
1998	8,367	943	7,424	291	438	100	42	151	182	7,163
1999	9,039	1,326	7,713	292	505	115	45	156	183	7,743
2000	8,916	1,319	7,597	277	455	129	48	158	75	7,774
2001	8,847	1,117	7,730	283	414	142	48	159	75	7,726
2002	9,426	1,203	8,223	305	390	156	43	161	75	8,296
2003	8,886	887	7,999	300	354	172	44	164	75	7,778
2004	9,589	1,071	8,518	531	320	188	39	166	110	8,235
2005	10,356	1,118	9,238	448	309	206	38	169	110	9,076
2006	10,153	1,257	8,896	329	292	226	37	172	66	9,031
2007	10,938	1,544	9,394	290	294	243	43	179	110	9,778
2008	10,512	1,343	9,169	305	308	259	52	189	110	9,289
2009	10,598	1,191	9,407	306	326	275	61	198	125	9,307
2010	10,867	1,265	9,602	297	347	292	70	207	125	9,529
2011	11,082	1,282	9,800	302	368	308	79	217	125	9,683
2012	11,440	1,439	10,001	310	389	325	89	226	125	9,976
2013	11,657	1,464	10,193	316	403	342	98	235	125	10,138
2014	11,841	1,463	10,378	316	413	360	107	244	125	10,276
2015	12,027	1,475	10,552	316	417	367	112	248	125	10,442
2016	12,208	1,491	10,717	317	424	380	115	256	125	10,591
2017	12,366	1,510	10,856	318	429	393	119	263	125	10,719

Historical Values (1998 - 2007):

Col. (2) = recorded peak + implemented load control + residential and commercial/industrial conservation and customer-owned self-service cogeneration.

Cols. (5) - (9) = Represent total cumulative capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

Projected Values (2008 - 2017):

Cols. (2) - (4) = forecasted peak without load control, conservation, and customer-owned self-service cogeneration.

Cols. (5) - (9) = cumulative conservation and load control capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

PROGRESS ENERGY FLORIDA

SCHEDULE 3.2.1
HISTORY AND FORECAST OF WINTER PEAK DEMAND (MW)
BASE CASE

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	INTERRUPTIBLE	RESIDENTIAL	RESIDENTIAL	COMM. / IND.	COMM. / IND.	OTHER	NET FIRM
					LOAD	CONSERVATION	LOAD	CONSERVATION	DEMAND	
1997/98	7,752	941	6,811	318	663	166	17	114	168	6,306
1998/99	10,473	1,741	8,732	305	874	200	18	119	187	8,770
1999/00	10,047	1,728	8,319	225	849	234	20	121	182	8,416
2000/01	11,458	1,984	9,474	255	826	259	23	123	187	9,785
2001/02	10,685	1,624	9,061	285	819	285	24	123	188	8,961
2002/03	11,555	1,538	10,017	271	793	313	27	124	198	9,829
2003/04	9,325	1,167	8,158	498	786	343	26	125	262	7,286
2004/05	10,833	1,600	9,233	575	777	371	26	125	282	8,676
2005/06	10,700	1,467	9,233	298	768	413	26	126	239	8,830
2006/07	9,899	1,576	8,323	248	758	454	27	128	262	8,022
2007/08	12,125	2,035	10,090	312	774	495	37	135	297	10,075
2008/09	12,002	1,715	10,288	305	791	538	47	142	299	9,881
2009/10	12,515	1,999	10,516	292	809	580	57	149	318	10,311
2010/11	12,819	2,073	10,747	302	827	623	67	155	321	10,524
2011/12	13,351	2,382	10,969	304	844	666	76	162	325	10,974
2012/13	13,721	2,518	11,203	316	862	710	86	169	328	11,250
2013/14	13,873	2,448	11,425	317	880	754	96	176	332	11,318
2014/15	14,182	2,538	11,644	315	897	798	105	183	335	11,549
2015/16	14,484	2,628	11,855	316	906	837	110	189	339	11,786
2016/17	14,771	2,716	12,054	317	914	876	115	195	342	12,011
2017/18	15,059	2,807	12,253	318	921	913	118	201	345	12,242

Historical Values (1998 - 2007):

Col. (2) = recorded peak + implemented load control + residential and commercial/industrial conservation and customer-owned self-service cogeneration.

Cols. (5) - (9) = Represent total cumulative capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Voltage reduction and customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

Projected Values (2008 - 2018):

Cols. (2) - (4) forecasted peak without load control and conservation.

Cols. (5) - (9) = Represent cumulative conservation and load control capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Voltage reduction and customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

PROGRESS ENERGY FLORIDA

SCHEDULE 3.2.2
HISTORY AND FORECAST OF WINTER PEAK DEMAND (MW)
HIGH LOAD FORECAST

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	RESIDENTIAL		COMM. / IND.		OTHER DEMAND REDUCTIONS	NET FIRM DEMAND	
				LOAD INTERRUPTIBLE	RESIDENTIAL CONSERVATION	LOAD MANAGEMENT	COMM. / IND. CONSERVATION			
1997/98	7,752	941	6,811	318	663	166	17	114	168	6,306
1998/99	10,473	1,741	8,732	305	874	200	18	119	187	8,770
1999/00	10,047	1,728	8,319	225	849	234	20	121	182	8,416
2000/01	11,458	1,984	9,474	255	826	259	23	123	187	9,785
2001/02	10,685	1,624	9,061	285	819	285	24	123	188	8,961
2002/03	11,555	1,538	10,017	271	793	313	27	124	198	9,829
2003/04	9,325	1,167	8,158	498	786	343	26	125	262	7,286
2004/05	10,833	1,600	9,233	575	777	371	26	125	282	8,676
2005/06	10,700	1,467	9,233	298	768	413	26	126	239	8,830
2006/07	9,899	1,576	8,323	248	758	454	27	128	262	8,022
2007/08	12,267	2,035	10,232	312	774	495	37	135	297	10,217
2008/09	12,165	1,715	10,451	305	791	538	47	142	299	10,044
2009/10	12,704	1,999	10,704	292	809	580	57	149	318	10,499
2010/11	13,026	2,073	10,954	302	827	623	67	155	321	10,731
2011/12	13,593	2,382	11,210	304	844	666	76	162	325	11,215
2012/13	13,982	2,518	11,464	316	862	710	86	169	328	11,511
2013/14	14,168	2,448	11,720	317	880	754	96	176	332	11,613
2014/15	14,530	2,538	11,992	315	897	798	105	183	335	11,897
2015/16	14,870	2,628	12,242	316	906	837	110	189	339	12,173
2016/17	15,208	2,716	12,492	317	914	876	115	195	342	12,449
2016/17	15,568	2,807	12,761	318	921	913	118	201	345	12,751

Historical Values (1998 - 2007):

Col. (2) = recorded peak + implemented load control + residential and commercial/industrial conservation and customer-owned self-service cogeneration.

Cols. (5) - (9) = Represent total cumulative capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Voltage reduction and customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

Projected Values (2008 - 2018):

Cols. (2) - (4) forecasted peak without load control and conservation.

Cols. (5) - (9) = Represent cumulative conservation and load control capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Voltage reduction and customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

PROGRESS ENERGY FLORIDA

SCHEDULE 3.2.3
HISTORY AND FORECAST OF WINTER PEAK DEMAND (MW)
LOW LOAD FORECAST

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	INTERRUPTIBLE	RESIDENTIAL	RESIDENTIAL	COMM. / IND.	COMM. / IND.	OTHER	NET FIRM
					LOAD	CONSERVATION	LOAD	CONSERVATION	DEMAND	
					MANAGEMENT	MANAGEMENT	MANAGEMENT	MANAGEMENT	REDUCTIONS	DEMAND
1997/98	7,752	941	6,811	318	663	166	17	114	168	6,306
1998/99	10,473	1,741	8,732	305	874	200	18	119	187	8,770
1999/00	10,047	1,728	8,319	225	849	234	20	121	182	8,416
2000/01	11,458	1,984	9,474	255	826	259	23	123	187	9,785
2001/02	10,685	1,624	9,061	285	819	285	24	123	188	8,961
2002/03	11,555	1,538	10,017	271	793	313	27	124	198	9,829
2003/04	9,325	1,167	8,158	498	786	343	26	125	262	7,286
2004/05	10,833	1,600	9,233	575	777	371	26	125	282	8,676
2005/06	10,700	1,467	9,233	298	768	413	26	126	239	8,830
2006/07	9,899	1,576	8,323	248	758	454	27	128	262	8,022
2007/08	11,981	2,035	9,946	312	774	495	37	135	297	9,931
2008/09	11,851	1,715	10,137	305	791	538	47	142	299	9,730
2009/10	12,346	1,999	10,346	292	809	580	57	149	318	10,141
2010/11	12,620	2,073	10,548	302	827	623	67	155	321	10,325
2011/12	13,121	2,382	10,738	304	844	666	76	162	325	10,743
2012/13	13,454	2,518	10,936	316	862	710	86	169	328	10,983
2013/14	13,568	2,448	11,120	317	880	754	96	176	332	11,013
2014/15	13,835	2,538	11,297	315	897	798	105	183	335	11,202
2015/16	14,099	2,628	11,471	316	906	837	110	189	339	11,402
2016/17	14,326	2,716	11,610	317	914	876	115	195	342	11,567

Historical Values (1998 - 2007):

Col. (2) = recorded peak + implemented load control + residential and commercial/industrial conservation and customer-owned self-service cogeneration.

Cols. (5) - (9) = Represent total cumulative capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Voltage reduction and customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

Projected Values (2008 - 2018):

Cols. (2) - (4) forecasted peak without load control and conservation.

Cols. (5) - (9) = Represent cumulative conservation and load control capabilities at peak. Col. (8) includes commercial load management and standby generation.

Col. (OTH) = Voltage reduction and customer-owned self-service cogeneration.

Col. (10) = (2) - (5) - (6) - (7) - (8) - (9) - (OTH).

PROGRESS ENERGY FLORIDA

**SCHEDULE 3.3.1
HISTORY AND FORECAST OF ANNUAL NET ENERGY FOR LOAD (GWh)
BASE CASE**

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
YEAR	TOTAL	RESIDENTIAL CONSERVATION	COMM. / IND. CONSERVATION	OTHER ENERGY REDUCTIONS*	RETAIL	WHOLESALE	UTILITY USE & LOSSES	NET ENERGY FOR LOAD	LOAD FACTOR (%) **
1998	38,949	289	333	564	33,387	2,340	2,036	37,763	53.9
1999	40,375	312	339	564	33,441	3,267	2,452	39,160	50.0
2000	42,486	334	345	565	34,832	3,732	2,678	41,242	50.5
2001	42,200	354	349	564	35,263	3,839	1,831	40,933	47.5
2002	43,860	377	352	564	36,859	3,173	2,535	42,567	50.0
2003	45,233	402	357	564	37,957	3,359	2,595	43,911	47.7
2004	46,833	426	360	780	38,193	4,301	2,774	45,268	56.5
2005	48,474	455	363	779	39,177	5,195	2,506	46,878	52.3
2006	47,399	484	365	509	39,432	4,220	2,389	46,041	52.1
2007	49,306	511	383	779	39,282	5,598	2,753	47,633	52.3
2008	50,467	552	401	780	41,208	4,798	2,728	48,734	55.1
2009	51,548	582	419	779	42,395	4,527	2,846	49,768	57.5
2010	53,535	612	437	871	43,407	5,238	2,970	51,615	57.1
2011	54,881	642	455	871	44,563	5,363	2,987	52,913	57.4
2012	56,711	672	473	871	45,708	5,892	3,095	54,695	56.7
2013	58,109	702	491	871	46,884	6,032	3,129	56,045	56.9
2014	59,017	732	509	871	47,999	5,708	3,198	56,905	57.4
2015	60,321	760	525	871	49,113	5,795	3,258	58,166	57.5
2016	61,646	786	540	871	50,245	5,874	3,329	59,448	57.4
2017	63,075	812	556	871	51,469	5,953	3,414	60,836	57.8

* Column (OTH) includes Conservation Energy For Lighting and Public Authority Customers, Customer-Owned Self-service Cogeneration.

** Load Factors for historical years are calculated using the actual winter peak demand except the 1998, 2004 and 2007 historical load factors which are based on the actual summer peak demand.

Load Factors for future years are calculated using the net firm winter peak demand (Schedule 3.2.3)

PROGRESS ENERGY FLORIDA

SCHEDULE 3.3.2
HISTORY AND FORECAST OF ANNUAL NET ENERGY FOR LOAD (GWh)
HIGH LOAD FORECAST

(1)	(2)	(3)	(4)	(OTH)	(5)	(6)	(7)	(8)	(9)
YEAR	TOTAL	RESIDENTIAL CONSERVATION	COMM. / IND. CONSERVATION	OTHER ENERGY REDUCTIONS*	RETAIL	WHOLESALE	UTILITY USE & LOSSES	NET ENERGY FOR LOAD	LOAD FACTOR (%) **
1998	38,949	289	333	564	33,387	2,340	2,036	37,763	53.9
1999	40,375	312	339	564	33,441	3,267	2,452	39,160	50.0
2000	42,486	334	345	565	34,832	3,732	2,678	41,242	50.5
2001	42,200	354	349	564	35,263	3,839	1,831	40,933	47.5
2002	43,860	377	352	564	36,859	3,173	2,535	42,567	50.0
2003	45,233	402	357	564	37,957	3,359	2,595	43,911	47.7
2004	46,833	426	360	780	38,193	4,301	2,774	45,268	56.5
2005	48,474	455	363	779	39,177	5,195	2,506	46,878	52.3
2006	47,399	484	365	509	39,432	4,220	2,389	46,041	52.1
2007	49,306	511	383	779	39,282	5,598	2,753	47,633	52.3
2008	51,137	552	401	780	41,835	4,798	2,771	49,404	55.0
2009	52,320	582	419	779	43,116	4,527	2,897	50,540	57.4
2010	54,442	612	437	871	44,257	5,238	3,027	52,522	57.1
2011	55,882	642	455	871	45,498	5,363	3,053	53,914	57.4
2012	57,890	672	473	871	46,814	5,892	3,168	55,874	56.7
2013	59,392	702	491	871	48,085	6,032	3,211	57,328	56.9
2014	60,481	732	509	871	49,366	5,708	3,295	58,369	57.4
2015	62,052	760	525	871	50,735	5,795	3,367	59,897	57.5
2016	63,588	786	540	871	52,062	5,874	3,454	61,390	57.6
2017	65,292	812	556	871	53,541	5,953	3,559	63,053	57.8

* Column (OTH) includes Conservation Energy For Lighting and Public Authority Customers, Customer-Owned Self-service Cogeneration.

** Load Factors for historical years are calculated using the actual winter peak demand except the 1998, 2004 and 2007 historical load factors which are based on the actual summer peak demand.

Load Factors for future years are calculated using the net firm winter peak demand (Schedule 3.2.3)

PROGRESS ENERGY FLORIDA

SCHEDULE 3.3.3
HISTORY AND FORECAST OF ANNUAL NET ENERGY FOR LOAD (GWh)
LOW LOAD FORECAST

(1)	(2)	(3)	(4)	(OTH)	(5)	(6)	(7)	(8)	(9)
YEAR	TOTAL	RESIDENTIAL CONSERVATION	COMM. / IND. CONSERVATION	OTHER ENERGY REDUCTIONS*	RETAIL	WHOLESALE	UTILITY USE & LOSSES	NET ENERGY FOR LOAD	LOAD FACTOR (%) **
1998	38,949	289	333	564	33,387	2,340	2,036	37,763	53.9
1999	40,375	312	339	564	33,441	3,267	2,452	39,160	50.0
2000	42,486	334	345	565	34,832	3,732	2,678	41,242	50.5
2001	42,200	354	349	564	35,263	3,839	1,831	40,933	47.5
2002	43,860	377	352	564	36,859	3,173	2,535	42,567	50.0
2003	45,233	402	357	564	37,957	3,359	2,595	43,911	47.7
2004	46,833	426	360	780	38,193	4,301	2,774	45,268	56.5
2005	48,474	455	363	779	39,177	5,195	2,506	46,878	52.3
2006	47,399	484	365	509	39,432	4,220	2,389	46,041	52.1
2007	49,306	511	383	779	39,282	5,598	2,753	47,633	52.3
2008	49,791	552	401	780	40,574	4,798	2,686	48,058	55.1
2009	50,822	582	419	779	41,715	4,527	2,800	49,042	57.5
2010	52,722	612	437	871	42,648	5,238	2,916	50,802	57.2
2011	53,913	642	455	871	43,657	5,363	2,925	51,945	57.4
2012	55,590	672	473	871	44,660	5,892	3,022	53,574	56.8
2013	56,795	702	491	871	45,655	6,032	3,044	54,731	56.9
2014	57,509	732	509	871	46,588	5,708	3,101	55,397	57.4
2015	58,596	760	525	871	47,496	5,795	3,150	56,441	57.5
2016	59,719	786	540	871	48,444	5,874	3,203	57,521	57.6
2017	60,829	812	556	871	49,358	5,953	3,279	58,590	57.8

* Column (OTH) includes Conservation Energy For Lighting and Public Authority Customers, Customer-Owned Self-service Cogeneration.

** Load Factors for historical years are calculated using the actual winter peak demand except the 1998, 2004 and 2007 historical load factors which are based on the actual summer peak demand.

Load Factors for future years are calculated using the net firm winter peak demand (Schedule 3.2.3)

PROGRESS ENERGY FLORIDA

SCHEDULE 4

**PREVIOUS YEAR ACTUAL AND TWO-YEAR FORECAST OF PEAK DEMAND
AND NET ENERGY FOR LOAD BY MONTH**

(1) <u>MONTH</u>	(2) <u>ACTUAL</u>		(4) <u>FORECAST</u>		(6) <u>FORECAST</u>	
	(3) <u>2007</u>		(5) <u>2008</u>		(7) <u>2009</u>	
	<u>PEAK DEMAND</u>	<u>NEL</u>	<u>PEAK DEMAND</u>	<u>NEL</u>	<u>PEAK DEMAND</u>	<u>NEL</u>
	<u>MW</u>	<u>GWh</u>	<u>MW</u>	<u>GWh</u>	<u>MW</u>	<u>GWh</u>
JANUARY	8,803	3,387	10,075	3,896	9,881	3,946
FEBRUARY	9,097	3,309	8,236	3,363	7,968	3,402
MARCH	6,990	3,459	7,030	3,631	6,895	3,687
APRIL	7,474	3,491	7,603	3,521	7,688	3,636
MAY	8,123	4,035	8,722	4,241	8,680	4,358
JUNE	9,398	4,430	9,097	4,520	9,108	4,622
JULY	9,842	4,902	9,343	4,901	9,370	4,991
AUGUST	10,405	5,229	9,424	4,961	9,451	5,071
SEPTEMBER	9,443	4,448	8,626	4,474	8,712	4,577
OCTOBER	8,618	4,242	8,170	3,993	8,271	4,083
NOVEMBER	6,812	3,270	6,150	3,410	6,285	3,490
DECEMBER	7,212	3,431	7,585	3,823	7,641	3,905
TOTAL		47,633		48,734		49,768

NOTE: "Actual" = "Total" - "Interruptible" - "Res. LM" - "C/I LM" - "Voltage Reduction & Standby Generation"

FUEL REQUIREMENTS AND ENERGY SOURCES

PEF's two-year actual and ten-year projected nuclear, coal, oil, and gas requirements (by fuel unit) are shown in Schedule 5. PEF's two-year actual and ten-year projected energy sources by fuel type, are presented in Schedules 6.1 and 6.2, in GWh and percent respectively. PEF's fuel requirements and energy sources reflect a diverse fuel supply system that is not dependent on any one fuel source. Near term natural gas consumption is projected to increase as plants and purchases with tolling agreements are added to meet future load growth. However, a decrease in future fossil fuel consumption is projected with the addition of planned nuclear units in the years 2016 and 2017.

PROGRESS ENERGY FLORIDA

SCHEDULE 5
FUEL REQUIREMENTS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
				-ACTUAL-											
<u>FUEL REQUIREMENTS</u>			<u>UNITS</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
(1)	NUCLEAR		TRILLION BTU	66	63	69	53	68	60	79	75	80	75	131	211
(2)	COAL		1,000 TON	5,977	6,108	5,865	5,873	6,246	6,789	6,739	6,661	6,755	6,877	6,644	5,751
(3)	RESIDUAL	TOTAL	1,000 BBL	7,353	7,360	7,881	5,825	4,571	4,653	4,472	3,533	3,612	3,588	3,442	3,095
(4)		STEAM	1,000 BBL	7,353	7,360	7,881	5,825	4,571	4,653	4,472	3,533	3,612	3,588	3,442	3,095
(5)		CC	1,000 BBL	0	0	0	0	0	0	0	0	0	0	0	0
(6)		CT	1,000 BBL	0	0	0	0	0	0	0	0	0	0	0	0
(7)		DIESEL	1,000 BBL	0	0	0	0	0	0	0	0	0	0	0	0
(8)	DISTILLATE	TOTAL	1,000 BBL	713	692	745	876	853	1,064	1,105	918	905	1,254	937	1,182
(9)		STEAM	1,000 BBL	90	83	89	83	58	62	85	111	81	65	96	494
(10)		CC	1,000 BBL	2	22	0	0	0	0	0	0	0	0	0	0
(11)		CT	1,000 BBL	621	586	656	792	795	1,002	1,019	807	823	1,189	841	689
(12)		DIESEL	1,000 BBL	0	0	0	0	0	0	0	0	0	0	0	0
(13)	NATURAL GAS	TOTAL	1,000 MCF	76,448	83,300	100,915	134,052	142,985	150,270	147,262	170,238	178,709	186,796	169,647	144,342
(14)		STEAM	1,000 MCF	1,731	5,054	0	0	0	0	0	0	0	0	0	0
(15)		CC	1,000 MCF	61,487	65,369	85,345	119,019	128,560	134,492	131,329	156,017	164,464	170,344	155,575	131,834
(16)		CT	1,000 MCF	13,230	12,877	15,571	15,033	14,425	15,778	15,933	14,222	14,245	16,453	14,073	12,508
OTHER (SPECIFY)															
(17)	OTHER, DISTILLATE	ANNUAL	1,000 BBL	N/A		109	70	30	17	7	22	3	21	5	5
(18)	OTHER, NATURAL GAS	ANNUAL	1,000 MCF	N/A		0	0	0	0	0	0	0	0	0	0
(18.1)	OTHER, NATURAL GAS	ANNUAL	1,000 MCF	N/A		9,690	6,866	7,726	10,343	9,981	6,336	6,643	9,112	4,749	1,742

PROGRESS ENERGY FLORIDA

SCHEDULE 6.1

ENERGY SOURCES (GWh)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
-ACTUAL-															
ENERGY SOURCES			UNITS	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
(1)	ANNUAL FIRM INTERCHANGE 1/		GWh	2,091	2,956	1,347	1,028	1,098	1,063	981	627	638	909	454	43
(2)	NUCLEAR		GWh	6,382	6,124	6,751	5,156	6,954	6,107	7,974	7,533	8,042	7,490	13,268	21,505
(3)	COAL		GWh	14,968	15,293	14,457	14,506	14,906	16,034	15,894	15,724	15,956	16,247	15,630	13,511
(4)	RESIDUAL	TOTAL	GWh	4,656	4,575	4,766	3,508	2,749	2,799	2,682	2,128	2,195	2,186	2,084	1,853
(5)		STEAM	GWh	4,656	4,575	4,766	3,508	2,749	2,799	2,682	2,128	2,195	2,186	2,084	1,853
(6)		CC	GWh	0	0	0	0	0	0	0	0	0	0	0	0
(7)		CT	GWh	0	0	0	0	0	0	0	0	0	0	0	0
(8)		DIESEL	GWh	0	0	0	0	0	0	0	0	0	0	0	0
(9)	DISTILLATE	TOTAL	GWh	258	307	242	299	301	391	396	309	313	474	326	258
(10)		STEAM	GWh	0	50	0	0	0	0	0	0	0	0	0	0
(11)		CC	GWh	1	13	0	0	0	0	0	0	0	0	0	0
(12)		CT	GWh	257	244	242	299	301	391	396	309	313	474	326	258
(13)		DIESEL	GWh	0	0	0	0	0	0	0	0	0	0	0	0
(14)	NATURAL GAS	TOTAL	GWh	9,657	10,579	13,264	18,037	19,344	20,326	19,885	23,227	24,399	25,479	23,045	19,360
(15)		STEAM	GWh	161	475	0	0	0	0	0	0	0	0	0	0
(16)		CC	GWh	8,517	9,093	12,063	16,853	18,197	19,064	18,616	22,085	23,266	24,160	21,914	18,366
(17)		CT	GWh	979	1,011	1,201	1,184	1,147	1,262	1,269	1,142	1,133	1,319	1,131	994
(18)	OTHER 2/														
	QF PURCHASES		GWh	2,990	3,002	3,237	2,542	2,457	2,456	2,463	2,278	1,428	1,428	1,431	1,403
	RENEWABLES		GWh	1,404	1,210	1,220	1,216	1,221	1,849	2,613	2,580	2,255	2,217	2,214	2,108
	IMPORT FROM OUT OF STATE		GWh	3,683	3,658	3,450	3,476	2,585	1,888	1,807	1,639	1,679	1,736	996	795
	EXPORT TO OUT OF STATE		GWh	-48	-71	0	0	0	0	0	0	0	0	0	0
(19)	NET ENERGY FOR LOAD		GWh	46,041	47,633	48,734	49,768	51,615	52,913	54,695	56,045	56,905	58,166	59,448	60,836

1/ NET ENERGY PURCHASED (+) OR SOLD (-) WITHIN THE FRCC REGION.

2/ NET ENERGY PURCHASED (+) OR SOLD (-).

PROGRESS ENERGY FLORIDA

SCHEDULE 6.2
ENERGY SOURCES (PERCENT)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
-ACTUAL-															
			UNITS	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
(1)	ANNUAL FIRM INTERCHANGE 1/		%	4.5%	6.2%	2.8%	2.1%	2.1%	2.0%	1.8%	1.1%	1.1%	1.6%	0.8%	0.1%
(2)	NUCLEAR		%	13.9%	12.9%	13.9%	10.4%	13.5%	11.5%	14.6%	13.4%	14.1%	12.9%	22.3%	35.3%
(3)	COAL		%	32.5%	32.1%	29.7%	29.1%	28.9%	30.3%	29.1%	28.1%	28.0%	27.9%	26.3%	22.2%
(4)	RESIDUAL	TOTAL	%	10.1%	9.6%	9.8%	7.0%	5.3%	5.3%	4.9%	3.8%	3.9%	3.8%	3.5%	3.0%
(5)		STEAM	%	10.1%	9.6%	9.8%	7.0%	5.3%	5.3%	4.9%	3.8%	3.9%	3.8%	3.5%	3.0%
(6)		CC	%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(7)		CT	%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(8)		DIESEL	%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(9)	DISTILLATE	TOTAL	%	0.6%	0.6%	0.5%	0.6%	0.6%	0.7%	0.7%	0.6%	0.6%	0.8%	0.5%	0.4%
(10)		STEAM	%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(11)		CC	%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(12)		CT	%	0.6%	0.5%	0.5%	0.6%	0.6%	0.7%	0.7%	0.6%	0.6%	0.8%	0.5%	0.4%
(13)		DIESEL	%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(14)	NATURAL GAS	TOTAL	%	21.0%	22.2%	27.2%	36.2%	37.5%	38.4%	36.4%	41.4%	42.9%	43.8%	38.8%	31.8%
(15)		STEAM	%	0.3%	1.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(16)		CC	%	18.5%	19.1%	24.8%	33.9%	35.3%	36.0%	34.0%	39.4%	40.9%	41.5%	36.9%	30.2%
(17)		CT	%	2.1%	2.1%	2.5%	2.4%	2.2%	2.4%	2.3%	2.0%	2.0%	2.3%	1.9%	1.6%
(18)	OTHER 2/														
	QF PURCHASES		%	6.5%	6.3%	6.6%	5.1%	4.8%	4.6%	4.5%	4.1%	2.5%	2.5%	2.4%	2.3%
	RENEWABLES		%	3.0%	2.5%	2.5%	2.4%	2.4%	3.5%	4.8%	4.6%	4.0%	3.8%	3.7%	3.5%
	IMPORT FROM OUT OF STATE		%	8.0%	7.7%	7.1%	7.0%	5.0%	3.6%	3.3%	2.9%	3.0%	3.0%	1.7%	1.3%
	EXPORT TO OUT OF STATE		%	-0.1%	-0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
(19)	NET ENERGY FOR LOAD		%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

1/ NET ENERGY PURCHASED (+) OR SOLD (-) WITHIN THE FRCC REGION.

2/ NET ENERGY PURCHASED (+) OR SOLD (-).

FORECASTING METHODS AND PROCEDURES

INTRODUCTION

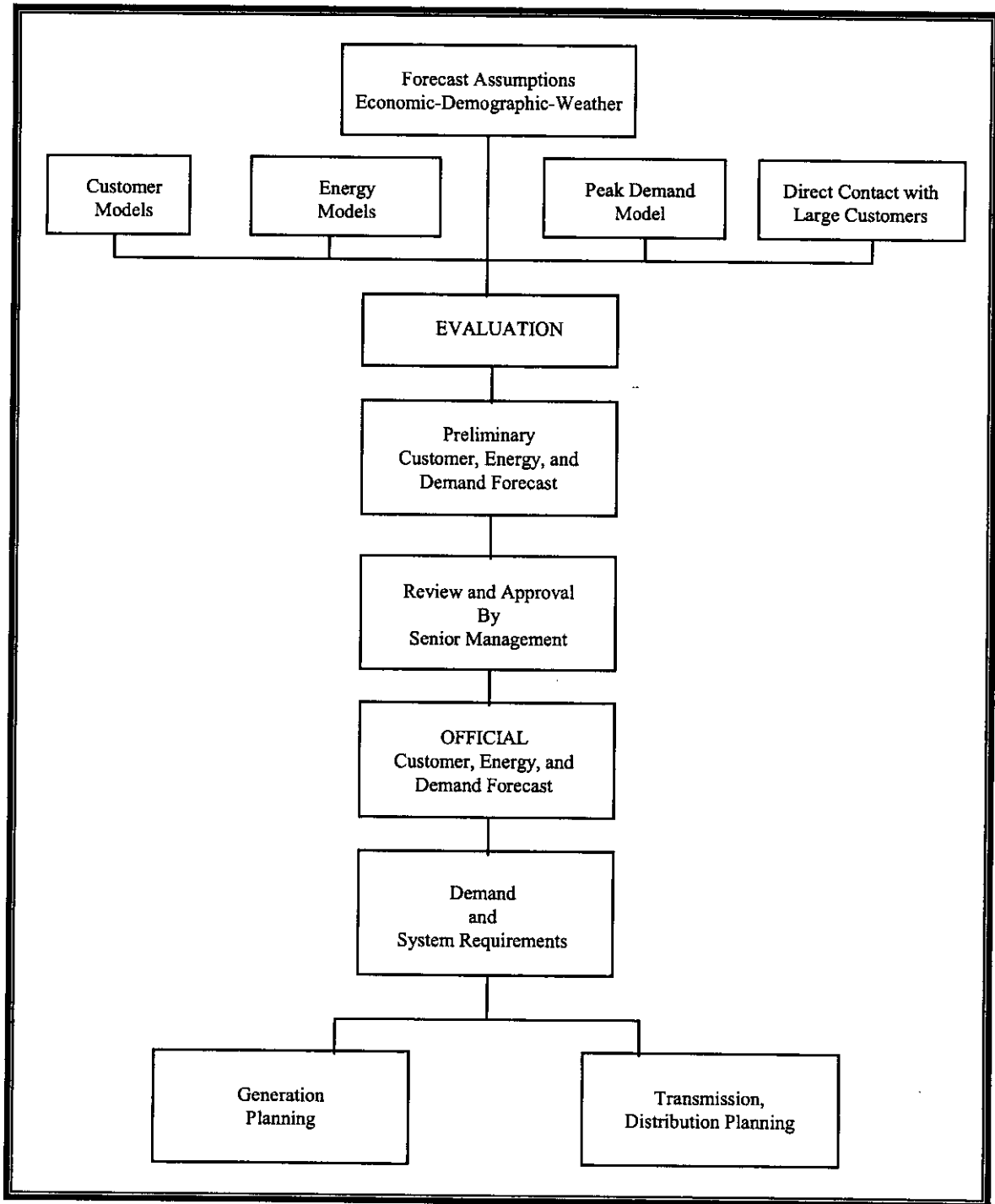
Accurate forecasts of long-range electric energy consumption, customer growth, and peak demand are essential elements in electric utility planning. Accurate projections of a utility's future load growth require a forecasting methodology with the ability to account for a variety of factors influencing electric energy usage over the planning horizon. PEF's forecasting framework utilizes a set of econometric models to achieve this end. This section will describe the underlying methodology of the customer, energy, and peak demand forecasts including the principal assumptions incorporated within each. Also included is a description of how Demand-Side Management (DSM) impacts the forecast, the development of high and low forecast scenarios and a review of DSM programs.

Figure 2.1, entitled "Customer, Energy and Demand Forecast", gives a general description of PEF's forecasting process. Highlighted in the diagram is a disaggregated modeling approach that blends the impacts of average class usage as well as customer growth based on a specific set of assumptions for each class. Also accounted for is some direct contact with large customers. These inputs provide the tools needed to frame the most likely scenario of the company's future demand.

FORECAST ASSUMPTIONS

The first step in any forecasting effort is the development of assumptions upon which the forecast is based. The Financial Services Department develops these assumptions based on discussions with a number of departments within PEF, as well as through the research efforts of a number of external sources. These assumptions specify major factors that influence the level of customers, energy sales, or peak demand over the forecast horizon. The following set of assumptions forms the basis for the forecast presented in this document.

FIGURE 2.1
Customer, Energy, and Demand Forecast



GENERAL ASSUMPTIONS

1. Normal weather conditions for energy sales are assumed over the forecast horizon using a sales-weighted thirty-year average of conditions at seven (7) weather stations across Florida (Saint Petersburg, Tampa, Orlando, Winter Haven, Gainesville, Daytona Beach, and Tallahassee). For kilowatt-hour sales projections, normal weather is based on a historical thirty-year average of the service area weighted billing month degree-days. Seasonal peak demand projections are based on a thirty-year historical average of system-weighted temperatures at time of seasonal peak at the Tampa, Orlando, and Tallahassee weather stations; the other weather stations are not used in developing the historic average because they lack the historic hourly data needed for peak-weather normalization.
2. The population projections produced by the Bureau of Economic and Business Research (BEBR) at the University of Florida as published in "Florida Population Studies Bulletin No. 147 (February 2007) provide the basis for development of the customer forecast. State and national economic assumptions produced by Economy.Com in their national and Florida forecasts (April 2007) are also incorporated.
3. Within the PEF service area, the phosphate mining industry is the dominant sector in the industrial sales class. Four (4) major customers accounted for 28 percent of the industrial class MWh sales in 2007. These energy intensive customers mine and process phosphate-based fertilizer products for the global marketplace. Both supply and demand for their products are dictated by global conditions that include, but are not limited to, foreign competition, national/international agricultural industry conditions, exchange-rate fluctuations, and international trade pacts. Load and energy consumption at the PEF-served mining or chemical processing sites depend heavily on plant operations, which are heavily influenced by these global as well as the local conditions. After years of excess mining capacity and weak product pricing power, the industry has consolidated down to just a few players in time to take advantage of better market conditions. In addition, a weaker U.S currency value on the foreign exchange is expected to help the industry in two (2) ways. First, American farm commodities will be more competitive overseas and lead to higher crop production at home. The demand for corn-based ethanol has also increased farm acreage. Therefore, both likely will result in greater

demand for fertilizer products. Second, a weak U.S. dollar results in U.S. fertilizer producers becoming more price competitive relative to foreign producers. Going forward, energy consumption is expected to increase in the near term, as a new mine operation is expected to open. A significant risk to this projection lies in the volatile price of energy (natural gas), which is a major cost of both mining and producing phosphoric fertilizers. The energy projection for this industry assumes no major reductions or shutdowns of operations in the service territory. This includes any change in output from self-owned generation facilities, which remove load from PEF generation facilities.

4. PEF supplies load and energy service to wholesale customers on a "full", "partial", and "supplemental" requirement basis. Full requirements (FR) customers' demand and energy is assumed to grow at a rate that approximates their historical trend. Contracts for this service include the cities of Bartow, Chattahoochee, Mt. Dora, Quincy, Williston, and Winter Park. Partial requirements (PR) customer load is assumed to reflect the current contractual obligations reflected by the nature of the stratified load they have contracted for, plus their ability to receive dispatched energy from power marketers any time it is more economical for them to do so. Contracts for PR service included in this forecast are with the Florida Municipal Power Agency (FMPA), Reedy Creek Utilities, TECO Energy, Seminole Electric Cooperative, Inc. (SECI) and the cities of New Smyrna Beach, Tallahassee, and Homestead. PEF's contractual arrangement with SECI includes a "supplemental" service contract (1983 contract) for service over and above stated levels they commit to supply themselves. This contract has been renegotiated and will become a seasonal purchase for "stratified peaking" capacity in 2014 when the term of this contract expires in December 2013. A firm contract with SECI for stratified intermediate service, which includes both 450 MW (October 1995 contract) and 150 MW in 2012, is contained in this projection. Two additional contracts, a 50 MW sale which began in December 2007 (Market Mitigation Sale) and a FR contract which will commence in 2010, and last through the forecast horizon, are also contained in this forecast. Finally, an agreement to provide interruptible service at a SECI metering site has also been included in this projection.
5. This forecast assumes that PEF will successfully renew all future franchise agreements.

6. This forecast incorporates demand and energy reductions from PEF's dispatchable and non-dispatchable DSM programs required to meet the approved goals set by the FPSC.
7. Expected energy and demand reductions from customer-owned self-service cogeneration facilities are also included in this forecast. PEF will supply the supplemental load of self-service cogeneration customers. While PEF offers "standby" service to all cogeneration customers, the forecast does not assume an unplanned need for power at time of peak.
8. This forecast assumes that the regulatory environment and the obligation to serve our retail customers will continue throughout the forecast horizon. Regarding wholesale customers, the company does not plan for generation resources unless a long-term contract is in place. Current FR customers are assumed to renew their contracts with PEF except those who have given notice to terminate. Current PR contracts are projected to terminate as terms reach their expiration date. Deviation from these assumptions can occur based on information provided by the Regulated Commercial Operations Department.

SHORT-TERM ECONOMIC ASSUMPTIONS

The economic outlook for this forecast was developed in 2007 as the homebuilding market continued its significant slowdown. The general consensus was that the U.S. economy in 2007 would log its most sluggish growth in five (5) years. Initial claims for unemployment insurance had begun to increase, gains in employment diminished and energy prices remained high. The Federal Reserve Board continued to warn of potential inflation risks, which meant that monetary policy easing was not expected in the near-term. In Florida, where the homebuilding and real estate sectors appeared worse than the national average, rising property tax and homeowner's insurance premiums were also considered to have a negative impact. Recent housing statistics showed large increases in unsold houses on the market. Significant home price declines have occurred; as a result, a more stable market is expected to return for homebuyers.

Compared with years past, the forecast for the U.S. economy lacks a strong engine for stimulus (e.g. limited tax cuts or incentives being proposed; limited ability to draw equity from homes to boost

consumption; a weakening job market.) The increase in energy prices, medical expenses and, adjustable rate mortgage payments are considered contributors to the forecast of a slower economy. In the PEF service area the average total cost per kWh to the residential customer increased by over 36 percent between 2003 and 2006, home prices have risen beyond the reach of some local residents, and school-aged population in some counties has begun to decline.

There are positive factors considered in this slow economic forecast. The significantly weaker U.S. currency is expected to boost American manufacturing and draw in more foreign tourists. As of mid-2007, U.S. exports had increased. This impact likely will become more apparent as China continues to strengthen its currency relative to the U.S. Dollar and slow China's fast-paced economy. In Florida, a large inventory of unsold homes has forced down housing prices to more affordable levels. Also with recent legislative efforts to decrease property taxes and homeowner's insurance premiums, a positive outlook is expected for future home sales.

LONG-TERM ECONOMIC ASSUMPTIONS

The long-term economic outlook assumes that changes in economic and demographic conditions, as well as technological change in the electric utility industry, will follow a trended behavior pattern. The main focus involves identifying these trends. No attempt is made to predict business cycle fluctuations or rapid penetration of a significant technological breakthrough impacting electric utility energy sales during this period.

Population Growth Trends

This forecast assumes Florida will experience slower in-migration and population growth over parts of the long term, as reflected in the BEBR projections. Florida's climate and low cost of living have historically attracted a major share of the retirement population from the eastern half of the United States. This will continue to occur primarily because the soon to be retiring baby-boom generation will increase the size of available retirees capable of moving to the South. Working against this significant trend will be several aesthetic and economic factors. First, the enormous growth in population and corresponding development of the 1980s, 1990s and early 2000s made portions of Florida less desirable and less affordable for retirement living. This perceived diminished quality of retiree life, along with increasing competition from neighboring

states, is expected to cause a slight decline in Florida's share of these prospective new residents over the long term. Second, and to a lesser extent, there is a lingering fear for safety and expense from hurricane damage.

Economic Growth Trends

Since the beginning of the Post-911 period, Florida experienced a 1980s-style population explosion and rapid service sector job creation. The State has benefited greatly from generational lows in interest rates, which, along with investors' unfriendly attitude toward the equity markets, set the stage for a tremendous surge in home construction. The national level of homebuilding in 2005-2006, set an all time record. This growth produced strong gains in both the construction industry and service-producing sectors of the Florida economy.

We now see that this pace of growth was not sustainable and that the economic environment that produced this construction boom has scaled back significantly. Interest rates tend to reflect more "long-term" norms. Investment in equities over housing has also returned. More importantly, affordability rates have dropped as housing prices in many parts of Florida have out-paced many areas of the country. While some of this affordability issue is diminishing, this could still have an impact on retiree decisions to move into the area. The availability and affordability of homeowners insurance also a concern of increasing importance since the 2004 and 2005 hurricane seasons.

Florida's rapid population growth of late has created a period of strong job creation, especially in the service sector industries. While the service-oriented economy expanded to support an increasing population level, there were also a number of corporations migrating to Florida capitalizing on the low cost, low tax, pro-business environment. This being the case, increased job opportunities in Florida created greater in-migration among the nation's working age population. Florida's ability to attract businesses from other states because of its "comparative advantage" is expected to continue throughout the forecast period but at a less significant level. Florida's successful effort to attract several biotech firms has the potential to draw a whole new growth industry to the State, the same way Disney and NASA once did.

The forecast assumes stable growth in real electricity price over the long term. That is, the change in the nominal price of electricity per kWh over time is expected to be close to the overall rate of inflation. This also implies that future fuel price escalation will track at or below the general rate of inflation throughout the forecast horizon.

Real personal incomes are assumed to increase throughout the forecast period thereby boosting the average customer's ability to purchase electricity. As incomes grow faster than the price of electricity, consumers, on average, will remain inclined to purchase additional electric appliances and increase their utilization of existing end-uses.

FORECAST METHODOLOGY

The PEF forecast of customers, energy sales, and peak demand is developed using customer class-specific econometric models. These models are expressly designed to capture class-specific variation over time. By modeling customer growth and average energy usage individually, subtle changes in existing customer usage are better captured as well as growth from new customers. Peak demand models are projected on a disaggregated basis as well. This allows for appropriate handling of individual assumptions in the areas of wholesale contracts, load management, and interruptible service.

ENERGY AND CUSTOMER FORECAST

In the retail jurisdiction, customer class models have been specified showing a historical relationship to weather and economic/demographic indicators using monthly data for sales models and annual data for customer models. Sales are regressed against "driver" variables that best explain monthly fluctuations over the historical sample period. Forecasts of these input variables are either derived internally or come from a review of the latest projections made by several independent forecasting concerns. The external sources of data include Moody's Economy.Com and the University of Florida's Bureau of Economic and Business Research. Internal company forecasts are used for projections of electricity price, weather conditions, and the length of the billing month. Normal weather, which is assumed throughout the forecast horizon, is based on the 30-year average of heating and cooling degree-days by month as measured at several weather stations throughout Florida for energy projections and temperatures around the hour of peak for the

firm retail demand forecast. Projections of PEF's demand-side management (conservation programs) are also incorporated as reductions to the forecast. Specific sectors are modeled as follows:

Residential Sector

Residential kWh usage per customer is modeled as a function of real Florida personal income, cooling degree-days, heating degree-days, the real price of electricity to the residential class and the average number of billing days in each sales month. This equation captures significant variation in residential usage caused by economic cycles, weather fluctuations, electric price movements, and sales month duration. Projections of kWh usage per customer combined with the customer forecast provide the forecast of total residential energy sales. The residential customer forecast is developed by correlating annual customer growth with PEF service area population growth and mortgage rates. County level population projections for the twenty-nine (29) counties, in which PEF serves residential customers, are provided by the BEBR.

Commercial Sector

Commercial MWh energy sales are forecast based on commercial sector (non-agricultural, non-manufacturing and non-governmental) employment, the real price of electricity to the commercial class, the average number of billing days in each sales month and heating and cooling degree-days. The measure of cooling degree-days utilized here differs slightly from that used in the residential sector reflecting different temperature base sensitivities, when heating and cooling load become observable. Commercial customers are projected as a function of the number of residential customers served.

Industrial Sector

Energy sales to this sector are separated into two sub-sectors. A significant portion of industrial energy use is consumed by the phosphate mining industry. Because this one (1) industry comprises a 28 percent share of the total industrial class, it is separated and modeled apart from the rest of the class. The term "non-phosphate industrial" is used to refer to those customers who comprise the remaining portion of total industrial class sales. Both groups are impacted significantly by changes in economic activity. However, adequately explaining sales levels requires separate explanatory

variables. Non-phosphate industrial energy sales are modeled using Florida manufacturing employment and a Florida industrial production index, the real price of electricity to the industrial class, and the average number of sales month billing days.

The industrial phosphate mining industry is modeled using customer-specific information with respect to expected market conditions. Since this sub-sector is comprised of only four (4) customers, the forecast is dependent upon information received from direct customer contact. PEF industrial customer representatives provide specific phosphate customer information regarding customer production schedules, inventory levels, area mine-out and start-up predictions, and changes in self-service generation or energy supply situations over the forecast horizon.

Street Lighting

Electricity sales to the street and highway lighting class are projected to increase due to growth in the service area population base. Because this class comprised less than 0.01 percent of PEF's 2007 electric sales and just 0.1 percent of total customers, a simple time trend was used to project energy consumption and customer growth in this class.

Public Authorities

Energy sales to public authorities (SPA), comprised mostly of government operated services, is also projected to grow with the size of the service area. The level of government services, and thus energy use per customer, can be tied to the population base, as well as to the state of the economy. Factors affecting population growth will affect the need for additional governmental services (i.e., public schools, city services, etc.) thereby increasing SPA energy usage per customer. Government employment has been determined to be the best indicator of the level of government services provided. This variable, along with heating and cooling degree-days (class specific), the real price of electricity and the average number of sales month billing days, results in a significant level of explained variation over the historical sample period. Intercept shift variables are also included in this model to account for the large change in school-related energy use in the billing months of January, July, and August. SPA customers are projected linearly as a function of a time-trend.

Sales for Resale Sector

The Sales for Resale sector encompasses all firm sales to other electric power entities. This includes sales to other utilities (municipal or investor-owned) as well as power agencies (rural electric authority or municipal).

Seminole Electric Cooperative, Inc. (SECI) is a wholesale, or sales for resale, customer of PEF on both a supplemental contract basis and contract demand basis. Under the supplemental contract, PEF provides service for those energy requirements above the level of generation capacity served by either SECI's own facilities or its firm purchase obligations. Monthly supplemental energy is developed using an average historical load shape of total SECI load in the PEF control area, subtracting out the level of SECI "committed" capacity from each hour. Beyond supplemental service, PEF has agreements with SECI to serve stratified base (50 MW) and intermediate (450-600 MW) energy. Both are assumed to remain a requirement on the PEF system throughout the forecast horizon. A "winter-only" seasonal peaking strata contract for 600 MW will replace the supplemental contract in 2014. An agreement to provide non-firm service is currently in effect between PEF and SECI amounting to an estimated 15 MW. Another contract, signed in 2004 to supply full requirements service for 150 MW, will begin in 2010.

The municipal sales for resale class includes a number of customers, divergent not only in scope of service, (i.e., full or partial requirement), but also in composition of ultimate consumers. Each customer is modeled separately in order to accurately reflect its individual profile. Several of the customers in this class are municipalities whose full energy requirements are met by PEF. The full requirement customers' energy projections grow at a rate that approximates their historical trend. Since the ultimate consumers of electricity in this sector are, to a large degree, residential and commercial customers, it is assumed that their use patterns will follow those of the PEF retail-based residential and commercial customer classes. PEF serves partial requirement service (PR) to municipalities such as New Smyrna Beach (NSB), Homestead, and Tallahassee, and other power providers like FMPA and Reedy Creek Utilities. In each case, these customers contract with PEF for a specific level and type of demand needed to provide their particular electrical system with an appropriate level of reliability. The terms of the FMPA contract is subject to change each year via a letter of "declared" MW nomination. More specifically, this means that the level and type of

demand and energy under contract can increase or decrease for each year a value is nominated. The energy forecast for each contract is derived using its historical load factors where enough history exists, or typical load factors for a given type of contracted stratified load. The energy projections for FMPA also include a "losses service contract" for energy PEF supplies to FMPA for transmission losses incurred when "wheeling" power to their ultimate customers in PEF's transmission area. This projection is based on the projected requirements of the aggregated needs of the cities of Ocala, Leesburg, Bushnell, Havana, and Newberry.

PEAK DEMAND FORECAST

The forecast of peak demand also employs a disaggregated econometric methodology. For seasonal (winter and summer) peak demands, as well as each month of the year, PEF's coincident system peak is separated into five (5) major components. These components consist of potential firm retail load, conservation and load management program capability, wholesale demand, company use demand and interruptible demand.

Potential firm retail load refers to projections of PEF retail hourly seasonal net peak demand (excluding the non-firm interruptible/curtailable/standby services) before the cumulative effects of any conservation activity or the activation of PEF's Load Management program. The historical values of this series are constructed to show the size of PEF's firm retail net peak demand assuming no utility-induced conservation or load control had taken place. The value of constructing such a "clean" series enables the forecaster to observe and correlate the underlying trend in retail peak demand to total system customer levels and coincident weather conditions at the time of the peak without the impacts of year-to-year variation in conservation activity or load control reductions. Seasonal peaks are projected using historical seasonal peak data regardless of which month the peak occurred. The projections become the potential retail demand projection for the month of January (winter) and August (summer) since this is typically when the seasonal peaks occur. The non-seasonal peak months are projected the same as the seasonal peaks, but the analysis is limited to the specific month being projected.

Energy conservation and direct load control estimates are consistent with PEF's DSM goals that have been approved by the FPSC. These estimates are incorporated into the MW forecast.

Projections of dispatchable and cumulative non-dispatchable DSM are subtracted from the projection of potential firm retail demand resulting in a projected series of retail monthly peak demand figures one would expect to occur.

Sales for Resale demand projections represent load supplied by PEF to other electric utilities such as SECI, FMPA, and other electric distribution companies. The SECI supplemental demand projection is based on a trend of their historical demand within the PEF control area. The level of MW to be served by PEF is dependent upon the amount of generation resources SECI supplies itself or contracts from others. An assumption has been made that beyond the last year of committed capacity declaration (five years out), SECI will shift their level of self-serve resources to meet their base and intermediate load needs. For FMPA demand projections, historical ratios of coincident-to-contract levels of demand are applied to future MW contract levels. Demand requirements continue at the MW level indicated by the final year in their respective contract declaration letter. The full requirements municipal demand forecast is estimated for individual cities using historically trended growth rates.

PEF "company use" at the time of system peak is estimated using load research metering studies and is assumed to remain stable over the forecast horizon. The interruptible and curtailable service (IS and CS) load component is developed from historic trends, as well as the incorporation of specific information obtained from PEF's large industrial accounts by field representatives.

Each of the peak demand components described above is a positive value except for the DSM program MW impacts and IS and CS load. These impacts represent a reduction in peak demand and are assigned a negative value. Total system firm peak demand is then calculated as the arithmetic sum of the five (5) components.

HIGH AND LOW FORECAST SCENARIOS

The high and low bandwidth scenarios around the base MWh energy sales forecast are developed using a Monte Carlo simulation applied to a multivariate regression model that closely replicates the base retail MWh energy forecast in aggregate. This model accounts for variation in Gross Domestic Product, retail customers and electricity price. The base forecasts for these variables were developed based on input from Economy.Com and internal company price projections. Variation around the base forecast predictor variables used in the Monte Carlo simulation was based on an 80 percent confidence interval calculated around variation in each variable's historic growth rate. While the total number of degree-days (weather) was also incorporated into the model specification, the high and low scenarios do not attempt to capture extreme weather conditions. Normal weather conditions were assumed in all three (3) scenarios.

The Monte Carlo simulation was produced through the estimation of 1,000 scenarios for each year of the forecast horizon. These simulations allowed for random normal variation in the growth trajectories of the economic input variables (while accounting for cross-correlation amongst these variables), as well as simultaneous variation in the equation (model error) and coefficient estimates. These scenarios were then sorted and rank ordered from one to a thousand, while the simulated scenario with no variation was adjusted to equal the base forecast.

The low retail scenario was chosen from among the ranked scenarios resulting in a bandwidth forecast reflecting an approximate probability of occurrence of 0.10. The high retail scenario similarly represents a bandwidth forecast with an approximate probability of occurrence also at 0.10. In both scenarios, the high and low peak demand bandwidth forecasts are projected from the energy forecasts using the load factor implicit in the base forecast scenario.

CONSERVATION

PEF's DSM performance is presented in the following tables, which compare the conservation savings actually achieved through PEF's DSM programs for the reporting years of 2005 through 2007 with the Commission-approved conservations goals.

On August 9, 2004, the FPSC issued a PAA Order approving new conservation goals for PEF that span the ten-year period from 2005 through 2014, as well as a new DSM Plan for PEF that was specifically designed to meet the new conservation goals (Docket 040031-EG, Order No. PSC-04-0769-PAA-EG). On January 5, 2007, the FPSC issued a PAA Order approving thirty-nine (39) additional DSM measures and two (2) residential programs, which will serve to increase the demand and energy savings available through PEF's DSM Plan (Docket 060647: Consummating Order PSC-07-0017-CO-EG making Order PSC-06-1018-TRF-EG effective and final).

Residential Conservation Savings Goals and Achievements

Year	Summer MW		Winter MW		Annual GWh Energy	
	Goal	Achieved	Goal	Achieved	Goal	Achieved
2005	13	18	43	48	21	29
2006	21	37	75	99	35	58
2007	30	58	108	153	50	85

Commercial Conservation Savings Goals and Achievements

Year	Summer MW		Winter MW		Annual GWh Energy	
	Goal	Achieved	Goal	Achieved	Goal	Achieved
2005	4	8	3	6	3	3
2006	7	16	7	12	6	9
2007	11	44	10	38	9	30

The forecasts contained in this Ten-Year Site Plan document are based on these 2007 program additions and modifications to PEF's DSM Plan and, therefore, appropriately reflect the most current projection of DSM savings over the next ten (10) years. PEF's DSM Plan consists of seven (7) residential programs, eight (8) commercial and industrial programs, and one (1) research and development program. The programs are subject to periodic monitoring and evaluation for the purpose of ensuring that all DSM resources are acquired in a cost-effective manner and that the program savings are durable. The following is a brief description of these programs.

RESIDENTIAL PROGRAMS

Home Energy Check Program

This energy audit program provides customers with an analysis of their current energy use and recommendations on how they can save on their electricity bills through low-cost or no-cost energy-saving practices and measures. The Home Energy Check program offers PEF customers the following types of audits: Type 1: Free Walk-Through Audit (Home Energy Check); Type 2: Customer-Completed Mail In Audit (Do It Yourself Home Energy Check); Type 3: Online Home Energy Check (Internet Option)-a customer-completed audit; Type 4: Phone Assisted Audit – a customer assisted survey of structure and appliance use; Type 5: Computer Assisted Audit; Type 6: Home Energy Rating Audit (Class I, II, III); Type7: Student Mail In Audit - a student-completed audit. The Home Energy Check Program serves as the foundation of the Home Energy Improvement Program in that the audit is a prerequisite for participation in the energy saving measures offered in the Home Energy Improvement Program.

Home Energy Improvement Program

This is the umbrella program to increase energy efficiency for existing residential homes. It combines efficiency improvements to the thermal envelope with upgraded electric appliances. The program provides incentives for attic insulation upgrades, duct testing and repair, and high efficiency electric heat pumps. The additional measures within this program include spray-in wall insulation, central AC 14 SEER non-electric heat, supply and return plenum duct seal, proper sizing of high efficiency HVAC, HVAC commissioning, reflective roof coating for

manufactured homes, reflective roof for single-family homes, window film or screen, and replacement windows.

Residential New Construction Program

This program promotes energy efficient new home construction in order to provide customers with more efficient dwellings combined with improved environmental comfort. The program provides education and information to the design and building community on energy efficient equipment and construction. It also facilitates the design and construction of energy efficient homes by working directly with the builders to comply with program requirements. The program provides incentives to the builder for high efficiency electric heat pumps and high performance windows. The highest level of the program incorporates the U.S. Environmental Protection Agency's Energy Star Homes Program and qualifies participants for cooperative advertising. New measures within the Residential New Construction Program include HVAC commissioning, window film or screen, reflective roof for single-family homes, attic spray-on foam insulation, conditioned space air handler, and energy recovery ventilation.

Low Income Weatherization Assistance Program

This umbrella program seeks to improve energy efficiency for low-income customers in existing residential dwellings. It combines efficiency improvements to the thermal envelope with upgraded electric appliances. The program provides incentives for attic insulation upgrades, duct testing and repair, reduced air infiltration, water heater wrap, HVAC maintenance, high efficiency heat pumps, heat recovery units, and dedicated heat pump water heaters.

Neighborhood Energy Saver Program

The newly approved Neighborhood Energy Saver (NES) Program consists of twelve (12) measures including compact fluorescent bulb replacement, water heater wrap and insulation for water pipes, water heater temperature check and adjustment, low-flow faucet aerator, low-flow showerhead, refrigerator coil brush, HVAC filters, and weatherization measures (weather stripping / door sweeps / etc.). In addition to the installation of new conservation measures, an important component of this program is educating families on energy efficiency techniques and the promotion of behavioral changes to help customers control their energy usage.

Residential Energy Management Program (EnergyWise)

This is a voluntary customer program that allows PEF to reduce peak demand and thus defer generation construction. Peak demand is reduced by interrupting service to selected electrical equipment with radio controlled switches installed on the customer's premises. These interruptions are at PEF's option, during specified time periods, and coincident with hours of peak demand. Participating customers receive a monthly credit on their electricity bills prorated above 600 kWh/month.

Renewable Energy Program

The Renewable Energy Program is designed to reduce system peak demand and increase renewable energy generation on the PEF grid. The program seeks to meet the following overall goals:

1. Obtain energy and demand reductions that are significant and measurable.
2. Enhance customers/contractors awareness of the capabilities of renewable energy technologies.
3. Educate customers/contractors about additional opportunities to generate and use renewable energy.
4. Develop and offer renewable energy measures to the marketplace.
5. Minimize "lost opportunities" in the renewable energy market.
6. Increase participation in the PEF Load Management program.

The Renewable Energy Program consists of two (2) measures:

- Solar Water Heater with EnergyWise – This measure encourages residential customers to install a solar thermal water heating system. The customer must have whole house electric cooling, electric water heating, and electric heating to be eligible for this program. Pool heaters and photovoltaic systems would not qualify. In order to qualify for this incentive, the heating, air conditioning, and water heating systems must be on the Energy Management Program (EnergyWise) and the solar thermal system must provide a minimum of 50 percent of the water-heating load.

- Solar Photovoltaics with Energy Wise (SolarWise for Schools) – This measure promotes environmental stewardship and renewable energy education through the installation of solar energy systems at schools within PEF’s service territory. Customers participating in the Winter-Only Energy Management or Year-Round Energy Management plan can elect to donate their monthly credit toward the SolarWise for Schools. The program will accumulate associated participant credits in a separate fund for a period of two (2) years, at which time the customer may elect to renew for an additional two (2) years. All proceeds collected from participating customers, and their associated monthly credits, will be used to promote photovoltaics and renewable energy education opportunities.

COMMERCIAL/INDUSTRIAL (C/I) PROGRAMS

Business Energy Check Program

This energy audit program provides commercial and industrial customers with an assessment of the current energy usage at their facilities, recommendations on how they can improve the environmental conditions of their facilities while saving on their electricity bills, and information on low-cost energy efficiency measures. The Business Energy Check consists of the following types of audits: a free walk-through audit, and a paid walk-through audit. Small business customers also have the option to complete a Business Energy Check online at Progress Energy’s website. In most cases, this program is a prerequisite for participation in the other C/I programs.

Better Business Program

This is the umbrella efficiency program for existing commercial and industrial customers. The program provides customers with information, education, and advice on energy-related issues and incentives on efficiency measures that are cost-effective to PEF and its customers. The Better Business Program promotes energy efficient heating, ventilation, air conditioning (HVAC), and some building retrofit measures (in particular, ceiling insulation upgrade, duct leakage test and repair, energy-recovery ventilation, and Energy Star cool roof coating products.) Newly approved measures within this program include demand-control ventilation, efficient compressed air systems, efficient motors, efficient indoor lighting, green roof, occupancy sensors, packaged AC steam cleaning, roof insulation, roof-top unit recommissioning, thermal energy storage and window film or screen.

Commercial/Industrial New Construction Program

The primary goal of this program is to foster the design and construction of energy efficient buildings. The new construction program: 1) provides education and information to the design community on all aspects of energy efficient building design; 2) requires that the building design, at a minimum, surpass the State of Florida energy code; 3) provides financial incentives for specific energy efficient equipment; and 4) provides energy design awards to building design teams. Incentives will be provided for high efficiency HVAC equipment, energy recovery ventilation and Energy Star cool roof coating products. Newly approved measures within this program include demand-control ventilation, efficient compressed air systems, efficient motors, efficient indoor lighting, green roof, occupancy sensors, roof insulation, thermal energy storage and window film or screen.

Innovation Incentive Program

This program promotes a reduction in demand and energy by subsidizing energy conservation projects for customers in PEF's service territory. The intent of the program is to encourage legitimate energy efficiency measures that reduce kW demand and/or kWh energy, but are not addressed by other programs. Energy efficiency opportunities are identified by PEF representatives during a Business Energy Check audit. If a candidate project meets program specifications, it will be eligible for an incentive payment, subject to PEF approval.

Commercial Energy Management Program (Rate Schedule GSLM-1)

This direct load control program reduces PEF's demand during peak or emergency conditions. As described in PEF's DSM Plan, this program is currently closed to new participants. It is applicable to existing program participants who have electric space cooling equipment suitable for interruptible operation and are eligible for service under the Rate Schedule GS-1, GST-1, GSD-1, or GSDT-1. The program is also applicable to existing participants who have any of the following electrical equipment installed on permanent residential structures and utilized for domestic (household) purposes: 1) water heater(s), 2) central electric heating systems(s), 3) central electric cooling system(s), and/or 4) swimming pool pump(s). Customers receive a

monthly credit on their bills depending on the type of equipment in the program and the interruption schedule.

Standby Generation Program

This demand control program reduces PEF's demand based upon the indirect control of customer generation equipment. This is a voluntary program available to all commercial, industrial, and agricultural customers who have on-site generation capability and are willing to reduce their PEF demand when PEF deems it necessary. The customers participating in the Standby Generation program receive a monthly credit on their electricity bills according to the demonstrated ability of the customer to reduce demand at PEF's request.

Interruptible Service Program

This direct load control program reduces PEF's demand at times of capacity shortage during peak or emergency conditions. The program is available to qualified non-residential customers with an average billing demand of 500 kW or more, who are willing to have their power interrupted. PEF will have remote control of the circuit breaker or disconnect switch supplying the customer's equipment. In return for this ability to interrupt load, customers participating in the Interruptible Service program receive a monthly interruptible demand credit applied to their electric bills.

Curtable Service

This direct load control program reduces PEF's demand at times of peak or emergency conditions. The program is available to qualified non-residential customers with an average billing demand of 500 kW or more, who are willing to curtail 25 percent of their average monthly billing demand. Customers participating in the Curtable Service program receive a monthly curtable demand credit applied to their electric bills.

RESEARCH AND DEVELOPMENT PROGRAMS

Technology Development Program

The primary purpose of this program is to establish a system to “Aggressively pursue research, development and demonstration projects jointly with others as well as individual projects” (Rule 25-17.001(5)(f), Florida Administration Code). PEF will undertake certain development, educational and demonstration projects that have promise to become cost-effective demand reduction and energy efficiency programs. This would include projects like Price Responsive Demand Reduction with a Home Area Network for load management capabilities, which the Company is currently evaluating and testing. The objective of this project is to develop the next generation of load management with goals of increasing customer awareness to use energy more efficiently, while advancing demand response capabilities. Additional projects include the evaluation of off-peak generation with energy storage for on-peak demand consumption, and Plug-In Hybrid Electric Vehicles with vehicle-to-grid discharge. In most cases, each demand reduction and energy efficiency project that is proposed and investigated under this program requires field-testing with customers.

CHAPTER 3
**FORECAST OF
FACILITIES REQUIREMENTS**



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CHAPTER 3
FORECAST OF FACILITIES REQUIREMENTS

RESOURCE PLANNING FORECAST

OVERVIEW OF CURRENT FORECAST

Supply-Side Resources

PEF has a summer total capacity resource of 11,215 MW (see Table 3.1). This capacity resource includes nuclear (769 MW), fossil steam (3,889 MW), combined cycle plants (2,134 MW), combustion turbine (2,501 MW; 143 MW of which is owned by Georgia Power for the months June through September), utility purchased power (484 MW), independent power purchases (636 MW), and non-utility purchased power (802 MW). Table 3.2 presents PEF's firm capacity contracts with Qualifying Facilities (QF's).

Demand-Side Programs

Total DSM resources are presented in Schedules 3.1.1 and 3.2.1 of Chapter 2. These programs include Non-Dispatchable DSM, Interruptible Load, and Dispatchable Load Control resources. PEF's 2008 Ten-Year Site Plan Demand-Side Management projections are consistent with the DSM Goals established by the Commission in Docket No. 040031-EG.

Capacity and Demand Forecast

PEF's forecasts of capacity and demand for the projected summer and winter peaks can be found in Schedules 7.1 and 7.2, respectively. PEF's forecasts of capacity and demand are based on serving expected growth in retail requirements in its regulated service area and meeting commitments to wholesale power customers who have entered into supply contracts with PEF. In its planning process, PEF balances its supply plan for the needs of retail and wholesale customers and endeavors to ensure that cost-effective resources are available to meet the needs across the customer base. Over the years, as wholesale markets have grown more competitive, PEF has remained active in the competitive solicitations while planning in a manner that maintains an appropriate balance of commitments and resources within the overall regulated supply framework.

Base Expansion Plan

PEF's planned supply resource additions and changes are shown in Schedule 8 and are referred to as PEF's Base Expansion Plan. This Plan includes a net gain in summer capacity of 3,903 MWs through the summer of 2017. As identified in Schedule 8, PEF's next planned unit is the Bartow Repowering Project with an expected completion date of June 2009. This project is followed by the planned installation of natural gas fired combined cycle technology in 2013 at the Suwannee River Plant and new nuclear generation at the Company's Levy County site in 2016 and 2017.

PEF's Base Expansion Plan projects the need for additional units with proposed in-service dates during the ten-year period from 2008 through 2017. These units, together with purchases from Qualifying Facilities (QF), Investor Owned Utilities, and Independent Power Producers including but not limited to Reliant/Osceola (January 2007 - March 2009), Mirant Shady Hills (April 2007 - April 2024), and Southern Company (June 2010 - December 2015), help the PEF system meet the growing energy requirements of its customer base. The capacity needs identified in this plan may be impacted by PEF's ability to extend or replace existing purchase power cogenerator and QF contracts and to secure the new renewable purchased power resources in their respective projected timeframes. Status reports and specifications for the planned new generation facilities are included in Schedule 9. The new transmission lines associated with the Bartow Repowering Project as well as the planned Suwannee River Plant combined cycle project and the Levy County nuclear units are shown in Schedule 10.

TABLE 3.1
PROGRESS ENERGY FLORIDA
TOTAL CAPACITY RESOURCES OF
POWER PLANTS AND PURCHASED POWER CONTRACTS
AS OF DECEMBER 31, 2007

PLANTS	NUMBER OF UNITS	SUMMER NET DEPENDABLE CAPABILITY (MW)
Nuclear Steam		
Crystal River	<u>1</u>	<u>769</u> (1)
Total Nuclear Steam	1	769
Fossil Steam		
Crystal River	4	2,310
Anclote	2	1,006
Bartow	3	444
Suwannee River	<u>3</u>	<u>129</u>
Total Fossil Steam	12	3,889
Combined Cycle		
Hines Energy Complex	4	1,930
Tiger Bay	<u>1</u>	<u>204</u>
Total Combined cycle	5	2,134
Combustion Turbine		
DeBary	10	642
Intercession City	14	984 (2)
Bayboro	4	178
Bartow	4	176
Suwannee	3	153
Turner	4	148
Higgins	4	113
Avon Park	2	49
University of Florida	1	46
Rio Pinar	<u>1</u>	<u>12</u>
Total Combustion Turbine	47	2,501
Total Units	65	
Total Net Generating Capability		9,293
<i>(1) Adjusted for sale of approximately 8.2% of total capacity</i>		
<i>(2) Includes 143 MW owned by Georgia Power Company (Jun-Sep)</i>		
Purchased Power		
Qualifying Facility Contracts	16	802
Investor Owned Utilities	2	484
Independent Power Producers	2	636
TOTAL CAPACITY RESOURCES		11,215

TABLE 3.2
PROGRESS ENERGY FLORIDA
QUALIFYING FACILITY GENERATION CONTRACTS
AS OF DECEMBER 31, 2007

Facility Name	Firm Capacity (MW)
Cargill	15.0
Dade County Resource Recovery	43.0
El Dorado	114.2
Lake Cogen	110.0
Lake County Resource Recovery	12.8
LFC Jefferson	8.5
LFC Madison	8.5
Mulberry	79.2
Orange Cogen (CFR-Biogen)	74.0
Orlando Cogen	79.2
Pasco Cogen	109.0
Pasco County Resource Recovery	23.0
Pinellas County Resource Recovery 1	40.0
Pinellas County Resource Recovery 2	14.8
Ridge Generating Station	39.6
Royster	30.8
TOTAL	801.6

PROGRESS ENERGY FLORIDA

SCHEDULE 7.1

FORECAST OF CAPACITY, DEMAND AND SCHEDULED MAINTENANCE

AT TIME OF SUMMER PEAK

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	TOTAL ^a	FIRM ^b	FIRM		TOTAL	SYSTEM FIRM					
	INSTALLED	CAPACITY	CAPACITY		CAPACITY	SUMMER PEAK	RESERVE MARGIN		SCHEDULED	RESERVE MARGIN	
	CAPACITY	IMPORT	EXPORT	QF	AVAILABLE	DEMAND	BEFORE MAINTENANCE	% OF PEAK	MAINTENANCE	AFTER MAINTENANCE	% OF PEAK
YEAR ^c	MW	MW	MW	MW	MW	MW	MW		MW	MW	
2008	9,160	2,087	0	173	11,420	9,424	1,996	21%	0	1,996	21%
2009	9,859	1,467	0	173	11,499	9,451	2,048	22%	0	2,048	22%
2010	9,890	1,592	0	173	11,655	9,689	1,966	20%	0	1,966	20%
2011	9,900	1,680	0	323	11,903	9,873	2,030	21%	0	2,030	21%
2012	10,035	1,989	0	439	12,463	10,195	2,268	22%	0	2,268	22%
2013	11,065	1,879	0	439	13,383	10,393	2,990	29%	0	2,990	29%
2014	11,065	1,748	0	439	13,252	10,568	2,684	25%	0	2,684	25%
2015	11,065	1,748	0	439	13,252	10,776	2,476	23%	0	2,476	23%
2016	11,961	1,336	0	439	13,736	10,961	2,775	25%	0	2,775	25%
2017	13,053	1,336	0	439	14,828	11,150	3,678	33%	0	3,678	33%

Notes:

a. Total Installed Capacity does not include the 143 MW to Southern Company from Intercession City, P11.

b. FIRM Capacity Import includes Cogeneration, Utility and Independent Power Producers, and Short Term Purchase Contracts.

c. Progress Energy is pursuing summer seasonal purchases of approximately 250 MW in 2008. The deals are not yet consummated as of the time of the Ten-Year Site Plan filing. Since the purchase is expected to be from peaking capacity, no energy impact has been included in the plan at this time.

PROGRESS ENERGY FLORIDA

SCHEDULE 7.2

FORECAST OF CAPACITY, DEMAND AND SCHEDULED MAINTENANCE
AT TIME OF WINTER PEAK

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	TOTAL ^a	FIRM ^b	FIRM		TOTAL	SYSTEM FIRM					
	INSTALLED	CAPACITY	CAPACITY	QF	CAPACITY	WINTER PEAK	RESERVE MARGIN		SCHEDULED	RESERVE MARGIN	
	CAPACITY	IMPORT	EXPORT		AVAILABLE	DEMAND	BEFORE MAINTENANCE	% OF PEAK	MAINTENANCE	AFTER MAINTENANCE	% OF PEAK
YEAR	MW	MW	MW	MW	MW	MW	MW		MW	MW	% OF PEAK
2007/08	10,285	1,934	0	173	12,392	10,075	2,317	23%	0	2,317	23%
2008/09	10,295	1,667	0	173	12,135	9,881	2,254	23%	0	2,254	23%
2009/10	11,131	1,478	0	173	12,782	10,311	2,471	24%	0	2,471	24%
2010/11	11,125	1,636	0	173	12,934	10,524	2,410	23%	0	2,410	23%
2011/12	11,263	1,725	0	439	13,427	10,974	2,453	22%	0	2,453	22%
2012/13	11,270	2,077	0	439	13,786	11,250	2,536	23%	0	2,536	23%
2013/14	12,403	1,836	0	439	14,678	11,318	3,360	30%	0	3,360	30%
2014/15	12,403	1,836	0	439	14,678	11,549	3,129	27%	0	3,129	27%
2015/16	12,403	1,424	0	439	14,266	11,786	2,480	21%	0	2,480	21%
2016/17	13,272	1,424	0	439	15,135	12,011	3,124	26%	0	3,124	26%
2017/18	14,392	1,424	0	439	16,255	12,242	4,013	33%	0	4,013	33%

Notes:

a. Total Installed Capacity does not include the 143 MW to Southern Company from Intercession City, P11.

b. FIRM Capacity Import includes Cogeneration, Utility and Independent Power Producers, and Short Term Purchase Contracts.

PROGRESS ENERGY FLORIDA

SCHEDULE 8
 PLANNED AND PROSPECTIVE GENERATING FACILITY ADDITIONS AND CHANGES

AS OF JANUARY 1, 2008 THROUGH DECEMBER 31, 2017

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
PLANT NAME	UNIT NO.	LOCATION (COUNTY)	UNIT TYPE	FUEL PRI.	FUEL ALT.	FUEL TRANSPORT PRI.	FUEL TRANSPORT ALT.	START MO./YR	SERVICE MO./YR	RETIREMENT MO./YR	NAMEPLATE KW	SUMMER MW	WINTER MW	STATUS	NOTES ^c
TIGER BAY	1	POLK	CC						5/2008			10	10	A	(5)
CRYSTAL RIVER	5	CITRUS	ST						5/2009			(30)	(30)	D	(2)
CRYSTAL RIVER	5	CITRUS	ST						5/2009			14	14	A	(6)
BARTOW	1-3	PINELLAS	ST							6/2009		(444)	(464)	RP	(4)
BARTOW	4	PINELLAS	CC	NG	DFO	PL	WA	01/2007	6/2009			1159	1279	RP	(4)
CRYSTAL RIVER	3	CITRUS	NP						12/2009			37	37	A	(3)
CRYSTAL RIVER	4	CITRUS	ST						4/2010			(30)	(30)	D	(2)
ANCLOTE	2	PASCO	ST						5/2010			10	10	P	(6)
CRYSTAL RIVER	4	CITRUS	ST						5/2010			14	14	A	(6)
ANCLOTE	1	PASCO	ST						5/2011			10	10	P	(6)
CRYSTAL RIVER	3	CITRUS	NP						12/2011			129	129	A	(3)
CRYSTAL RIVER	1	CITRUS	ST						3/2012			7	7	A	(6)
SUWANNEE RIVER	1-3	SUWANNEE	ST							d.		(129)	(146)		(1)
SUWANNEE RIVER	4	SUWANNEE	CC	NG	DFO	PL	TK	12/2010	6/2013			1159	1279	P	(1)
RIO PINAR	P1	ORGANGE	CT							d.		(12)	(16)		(1)
TURNER	P1-P2	VOLUSIA	CT							d.		(22)	(32)		(1)
AVON PARK	P1-P2	HIGHLANDS	CT							d.		(49)	(70)		(1)
HIGGINS	P1-P4	PINELLAS	CT							d.		(113)	(133)		(1)
LEVY	1	LEVY	NP	NUC		RR		01/2010	6/2016			1092	1120	P	(1)
LEVY	2	LEVY	NP	NUC		RR		01/2011	6/2017			1092	1120	P	(1)

a. Net capability of Crystal River 3 represents approximately 91.8% PEF Ownership.

b. See page v. for Code Legend of Future Generating Unit Status.

c. NOTES

- (1) Planned, Prospective, or Committed project.
- (2) Planned derations due to FGD scrubber installations.
- (3) Planned uprates.
- (4) Repowering.
- (5) Scheduled major inspection and rotor exchange.
- (6) Turbine Project.

d. Suwannee 1-3 expect to be shut down with the start-up of Suwannee 4-on-1 CC unit by 6/2013. Peakers at Avon Park, Higgins, Rio Pinar, Turner estimated to be in cold stand-by or retired by 6/2016.

PROGRESS ENERGY FLORIDA

**SCHEDULE 9
STATUS REPORT AND SPECIFICATIONS OF PROPOSED GENERATING FACILITIES
AS OF JANUARY 1, 2008**

(1)	Plant Name and Unit Number:	Bartow Repowering - Unit No. 4
(2)	Capacity	
	a. Summer:	1,159
	b. Winter:	1,279
(3)	Technology Type:	COMBINED CYCLE
(4)	Anticipated Construction Timing	
	a. Field construction start date:	01/2007
	b. Commercial in-service date:	06/2009 (EXPECTED)
(5)	Fuel	
	a. Primary fuel:	NATURAL GAS
	b. Alternate fuel:	DISTILLATE FUEL OIL
(6)	Air Pollution Control Strategy:	DRY LOW NO _x COMBUSTION with SELECTIVE CATALYTIC REDUCTION
(7)	Cooling Method:	COOLING WATER
(8)	Total Site Area:	1,348 ACRES
(9)	Construction Status:	UNDER CONSTRUCTION
(10)	Certification Status:	N/A
(11)	Status with Federal Agencies:	IN PROCESS
(12)	Projected Unit Performance Data	
	a. Planned Outage Factor (POF):	6.9 %
	b. Forced Outage Factor (FOF):	4.6 %
	c. Equivalent Availability Factor (EAF):	88.8 %
	d. Resulting Capacity Factor (%):	65.3 %
	e. Average Net Operating Heat Rate (ANOHR):	7,236 BTU/kWh
(13)	Projected Unit Financial Data	
	a. Book Life (Years):	25
	b. Total Installed Cost (In-service year \$/kW):	512.72 (INCREMENTAL COST)
	c. Direct Construction Cost (\$/kW):	445.45
	d. AFUDC Amount (\$/kW):	67.27
	e. Escalation (\$/kW):	0.00
	f. Fixed O&M (\$/kW-yr):	3.84
	g. Variable O&M (\$/MWh):	2.75
	h. K Factor:	NO CALCULATION

PROGRESS ENERGY FLORIDA

SCHEDULE 9
STATUS REPORT AND SPECIFICATIONS OF PROPOSED GENERATING FACILITIES
AS OF JANUARY 1, 2008

(1)	Plant Name and Unit Number:	Suwannee River Plant - Unit No. 4 (4-on-1 CC)
(2)	Capacity	
	a. Summer:	1,159
	b. Winter:	1,279
(3)	Technology Type:	COMBINED CYCLE
(4)	Anticipated Construction Timing	
	a. Field construction start date:	12/2010
	b. Commercial in-service date:	6/2013 (EXPECTED)
(5)	Fuel	
	a. Primary fuel:	NATURAL GAS
	b. Alternate fuel:	DISTILLATE FUEL OIL
(6)	Air Pollution Control Strategy:	DRY LOW NO _x COMBUSTION with SELECTIVE CATALYTIC REDUCTION
(7)	Cooling Method:	UNKNOWN
(8)	Total Site Area:	596 ACRES
(9)	Construction Status:	PLANNED
(10)	Certification Status:	PLANNED
(11)	Status with Federal Agencies:	PLANNED
(12)	Projected Unit Performance Data	
	a. Planned Outage Factor (POF):	6.9 %
	b. Forced Outage Factor (FOF):	4.6 %
	c. Equivalent Availability Factor (EAF):	88.8 %
	d. Resulting Capacity Factor (%):	65.3 %
	e. Average Net Operating Heat Rate (ANOHR):	7,236 BTU/kWh
(13)	Projected Unit Financial Data	
	a. Book Life (Years):	25
	b. Total Installed Cost (In-service year \$/kW):	799.89
	c. Direct Construction Cost (\$/kW):	615.99
	d. AFUDC Amount (\$/kW):	102.88
	e. Escalation (\$/kW):	81.03
	f. Fixed O&M (\$/kW-yr):	3.84
	g. Variable O&M (\$/MWh):	2.75
	h. K Factor:	NO CALCULATION

PROGRESS ENERGY FLORIDA

**SCHEDULE 9
STATUS REPORT AND SPECIFICATIONS OF PROPOSED GENERATING FACILITIES
AS OF JANUARY 1, 2008**

(1)	Plant Name and Unit Number:	Levy County Unit No. 1
(2)	Capacity	
	a. Summer:	1,092
	b. Winter:	1,120
(3)	Technology Type:	ADVANCED LIGHT WATER NUCLEAR
(4)	Anticipated Construction Timing	
	a. Field construction start date:	1/2010
	b. Commercial in-service date:	6/2016 (EXPECTED)
(5)	Fuel	
	a. Primary fuel:	URANIUM
	b. Alternate fuel:	-
(6)	Air Pollution Control Strategy:	N/A
(7)	Cooling Method:	COOLING TOWER
(8)	Total Site Area:	3,100 ACRES
(9)	Construction Status:	PLANNED
(10)	Certification Status:	PLANNED
(11)	Status with Federal Agencies:	PLANNED
(12)	Projected Unit Performance Data	
	a. Planned Outage Factor (POF):	5.1 %
	b. Forced Outage Factor (FOF):	3.0 %
	c. Equivalent Availability Factor (EAF):	92.0 %
	d. Resulting Capacity Factor (%):	90 %
	e. Average Net Operating Heat Rate (ANOHR):	9,715 BTU/kWh
(13)	Projected Unit Financial Data	
	a. Book Life (Years):	40
	b. Total Installed Cost (In-service year \$/kW):	.7425.01
	c. Direct Construction Cost (\$/kW):	5165.91
	d. AFUDC Amount (\$/kW):	1620.30
	e. Escalation (\$/kW):	638.80
	f. Fixed O&M (\$/kW-yr):	52.96
	g. Variable O&M (\$/MWh):	2.86 in current year 2008\$
	h. K Factor:	NO CALCULATION

PROGRESS ENERGY FLORIDA

SCHEDULE 9
STATUS REPORT AND SPECIFICATIONS OF PROPOSED GENERATING FACILITIES
AS OF JANUARY 1, 2008

(1)	Plant Name and Unit Number:	Levy County Unit No. 2
(2)	Capacity	
	a. Summer:	1,092
	b. Winter:	1,120
(3)	Technology Type:	ADVANCED LIGHT WATER NUCLEAR
(4)	Anticipated Construction Timing	
	a. Field construction start date:	1/2011
	b. Commercial in-service date:	6/2017 (EXPECTED)
(5)	Fuel	
	a. Primary fuel:	URANIUM
	b. Alternate fuel:	-
(6)	Air Pollution Control Strategy:	N/A
(7)	Cooling Method:	COOLING TOWER
(8)	Total Site Area:	3,100 ACRES
(9)	Construction Status:	PLANNED
(10)	Certification Status:	PLANNED
(11)	Status with Federal Agencies:	PLANNED
(12)	Projected Unit Performance Data	
	a. Planned Outage Factor (POF):	5.1 %
	b. Forced Outage Factor (FOF):	3.0 %
	c. Equivalent Availability Factor (EAF):	92.0 %
	d. Resulting Capacity Factor (%):	90 %
	e. Average Net Operating Heat Rate (ANOHR):	9,715 BTU/kWh
(13)	Projected Unit Financial Data	
	a. Book Life (Years):	40
	b. Total Installed Cost (In-service year \$/kW):	5155.09
	c. Direct Construction Cost (\$/kW):	3390.06
	d. AFUDC Amount (\$/kW):	1278.60
	e. Escalation (\$/kW):	486.43
	f. Fixed O&M (\$/kW-yr):	37.07
	g. Variable O&M (\$/MWh):	2.86 in current year 2008\$
	h. K Factor:	NO CALCULATION

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

BARTOW REPOWERING

- (1) POINT OF ORIGIN AND TERMINATION: Bartow Plant - Northeast Substation
- (2) NUMBER OF LINES: 3
- (3) RIGHT-OF-WAY: Existing transmission line right-of-way
- (4) LINE LENGTH: 4 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2009
- (7) ANTICIPATED CAPITAL INVESTMENT: \$72,408,125 *
- (8) SUBSTATIONS: N/A
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* The projected capital estimate may vary during construction of the Bartow Repowering Project

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

BARTOW REPOWERING

- (1) POINT OF ORIGIN AND TERMINATION: Northeast Substation - Thirty-Second Street Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: New and existing transmission line right-of-ways
- (4) LINE LENGTH: 2.4 miles
- (5) VOLTAGE: 115 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 09/2008
- (7) ANTICIPATED CAPITAL INVESTMENT: \$4,000,000 *
- (8) SUBSTATIONS: Thirty-Second Street Substation - Addition
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* The projected capital estimate may vary during construction of the Bartow Repowering Project

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

BARTOW REPOWERING

- (1) POINT OF ORIGIN AND TERMINATION: Northeast Substation - Fortieth Street Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: New and existing transmission line right-of-ways
- (4) LINE LENGTH: 8.3 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 09/2008
- (7) ANTICIPATED CAPITAL INVESTMENT: \$11,000,000 *
- (8) SUBSTATIONS: N/A
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* The projected capital estimate may vary during construction of the Bartow Repowering Project

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

BARTOW REPOWERING

- (1) POINT OF ORIGIN AND TERMINATION: Pasadena Substation - Fifty-First Street Substation
- (2) NUMBER OF LINES: 2
- (3) RIGHT-OF-WAY: Existing transmission line right-of-way
- (4) LINE LENGTH: 0.4 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 09/2008
- (7) ANTICIPATED CAPITAL INVESTMENT: \$12,000,000 *
- (8) SUBSTATIONS: Fifty-First Street Substation - Addition
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* The projected capital estimate may vary during construction of the Bartow Repowering Project

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

SUWANNEE RIVER PLANT - Unit No. 4

- (1) POINT OF ORIGIN AND TERMINATION: Ft. White - Suwannee Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 40 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2013
- (7) ANTICIPATED CAPITAL INVESTMENT: \$80,000,000 *
- (8) SUBSTATIONS: N/A
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* The projected capital estimate may vary during construction of the combined cycle project.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Levy - Central Florida South Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 50 miles
- (5) VOLTAGE: 500 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$150,000,000 *
- (8) SUBSTATIONS: Levy, Central Florida South
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Levy - Crystal River Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: New transmission line right-of-way
- (4) LINE LENGTH: 10 miles
- (5) VOLTAGE: 500 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$30,000,000 *
- (8) SUBSTATIONS: Levy
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Levy - Citrus Substation
- (2) NUMBER OF LINES: 2
- (3) RIGHT-OF-WAY: New transmission line right-of-way
- (4) LINE LENGTH: 10 miles
- (5) VOLTAGE: 500 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$50,000,000 *
- (8) SUBSTATIONS: Levy
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options * under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Crystal River - Brookridge Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 35 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$70,000,000 *
- (8) SUBSTATIONS: N/A
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Brookridge - Brooksville West Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 4 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$8,000,000 *
- (8) SUBSTATIONS: N/A
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Kathleen - Lake Tarpon Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 45 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$100,000,000 *
- (8) SUBSTATIONS: N/A
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Citrus - Crystal River East Substation
- (2) NUMBER OF LINES: 2
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 6 miles
- (5) VOLTAGE: 230 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$12,000,000 *
- (8) SUBSTATIONS: Citrus
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Citrus - Brookridge Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 35 miles
- (5) VOLTAGE: 500 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$105,000,000 *
- (8) SUBSTATIONS: Citrus
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

* Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

PROGRESS ENERGY FLORIDA

SCHEDULE 10

STATUS REPORT AND SPECIFICATIONS OF PROPOSED DIRECTLY ASSOCIATED TRANSMISSION LINES

LEVY UNITS 1 & 2

- (1) POINT OF ORIGIN AND TERMINATION: Brookridge - Lake Tarpon Substation
- (2) NUMBER OF LINES: 1
- (3) RIGHT-OF-WAY: Existing and new transmission line rights-of-way
- (4) LINE LENGTH: 40 miles
- (5) VOLTAGE: 500 kV
- (6) ANTICIPATED CONSTRUCTION TIMING: 06/2016
- (7) ANTICIPATED CAPITAL INVESTMENT: \$120,000,000 *
- (8) SUBSTATIONS: Citrus
- (9) PARTICIPATION WITH OTHER UTILITIES: N/A

Each of these projects is part of one or more transmission options for the Levy Nuclear project. Out of several options * under consideration, the final option is yet to be chosen, and thus this list of projects is subject to change. In addition, the projected capital estimate for this project may vary during construction of the Levy Units.

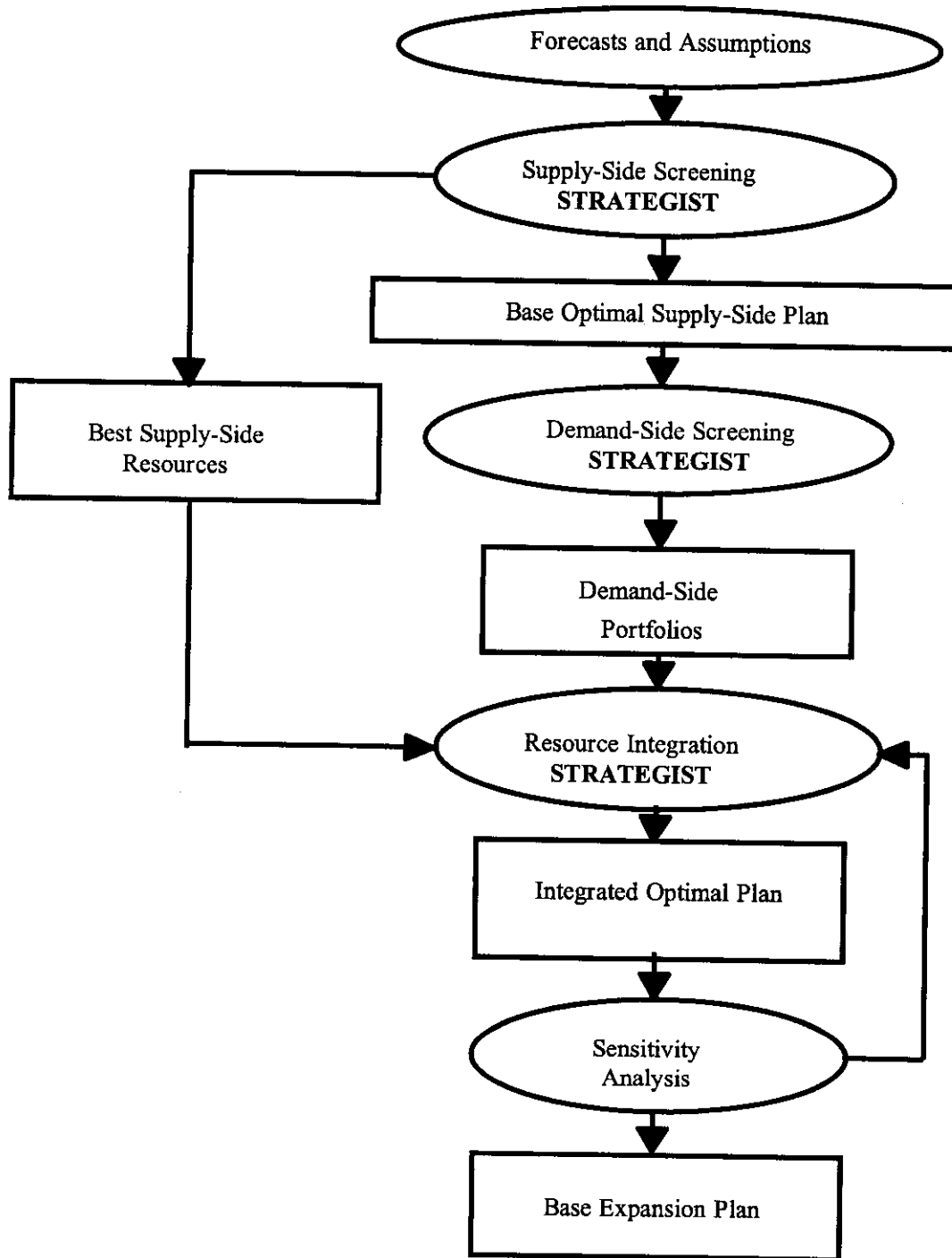
INTEGRATED RESOURCE PLANNING OVERVIEW

PEF employs an Integrated Resource Planning (IRP) process to determine the most cost-effective mix of supply- and demand-side alternatives that will reliably satisfy our customers' future demand and energy needs. PEF's IRP process incorporates state-of-the-art computer models used to evaluate a wide range of future generation alternatives and cost-effective conservation and dispatchable demand-side management programs on a consistent and integrated basis.

An overview of PEF's IRP Process is shown in Figure 3.1. The process begins with the development of various forecasts, including demand and energy, fuel prices, and economic assumptions. Future supply- and demand-side resource alternatives are identified and extensive cost and operating data are collected to enable these to be modeled in detail. These alternatives are optimized together to determine the most cost-effective plan for PEF to pursue over the next ten (10) years to meet the company's reliability criteria. The resulting ten-year plan, the Integrated Optimal Plan, is then tested under different relevant sensitivity scenarios to identify variances, if any, which would warrant reconsideration of any of the base plan assumptions. If the plan is judged robust under sensitivity analysis and works within the corporate framework, it evolves as the Base Expansion Plan. This process is discussed in more detail in the following section titled "The Integrated Resource Planning (IRP) Process".

The Integrated Resource Plan provides PEF with substantial guidance in assessing and optimizing the Company's overall resource mix on both the supply side and the demand side. When a decision supporting a significant resource commitment is being developed (e.g. plant construction, power purchase, DSM program implementation), the Company will move forward with directional guidance from the IRP and delve much further into the specific levels of examination required. This more detailed assessment will typically address very specific technical requirements and cost estimates, detailed corporate financial considerations, and the most current dynamics of the business and regulatory environments.

FIGURE 3.1
Integrated Resource Planning (IRP) Process Overview



THE INTEGRATED RESOURCE PLANNING (IRP) PROCESS

Forecasts and Assumptions

The evaluation of possible supply- and demand-side alternatives, and development of the optimal plan, is an integral part of the IRP process. These steps together comprise the integration process that begins with the development of forecasts and collection of input data. Base forecasts that reflect PEF's view of the most likely future scenarios are developed, along with high and low forecasts that reflect alternative future scenarios. Computer models used in the process are brought up-to-date to reflect this data, along with the latest operating parameters and maintenance schedules for PEF's existing generating units. This establishes a consistent starting point for all further analysis.

Reliability Criteria

Utilities require a margin of generating capacity above the firm demands of their customers in order to provide reliable service. Periodic scheduled outages are required to perform maintenance and inspections of generating plant equipment and to refuel nuclear plants. At any given time during the year, some capacity may be out of service due to unanticipated equipment failures resulting in forced outages of generation units. Adequate reserve capacity must be available to accommodate these outages and to compensate for higher than projected peak demand due to forecast uncertainty and abnormal weather. In addition, some capacity must be available for operating reserves to maintain the balance between supply and demand on a moment-to-moment basis.

PEF plans its resources in a manner consistent with utility industry planning practices, and employs both deterministic and probabilistic reliability criteria in the resource planning process. A Reserve Margin criterion is used as a deterministic measure of PEF's ability to meet its forecasted seasonal peak load with firm capacity. PEF plans its resources to satisfy a twenty (20) percent Reserve Margin criterion.

Loss of Load Probability (LOLP) is a probabilistic criterion that measures the probability that a company will be unable to meet its load throughout the year. While Reserve Margin considers the peak load and amount of installed resources, LOLP takes into account generating unit sizes, capacity mix, maintenance scheduling, unit availabilities, and capacity assistance available from

other utilities. A standard probabilistic reliability threshold commonly used in the electric utility industry, and the criterion employed by PEF, is a maximum of one (1) day in ten (10) years loss of load probability.

PEF has based its resource planning on the use of dual reliability criteria since the early 1990s, a practice that has been accepted by the FPSC. PEF's resource portfolio is designed to satisfy the twenty (20) percent Reserve Margin requirement and probabilistic analyses are periodically conducted to ensure that the one (1) day in ten (10) years LOLP criterion is also satisfied. By using both the Reserve Margin and LOLP planning criteria, PEF's resource portfolio is designed to have sufficient capacity available to meet customer peak demand, and to provide reliable generation service under expected load conditions. PEF has found that resource additions are typically triggered to meet the twenty (20) percent Reserve Margin thresholds before LOLP becomes a factor.

Supply-Side Screening

Potential supply-side resources are screened to determine those that are the most cost-effective. Data used for the screening analysis is compiled from various industry sources and PEF's experiences. The wide range of resource options is pre-screened to set aside those that do not warrant a detailed cost-effectiveness analysis. Typical screening criteria are costs, fuel source, technology maturity, environmental parameters, and overall resource feasibility.

Economic evaluation of generation alternatives is performed using the STRATEGIST optimization program. This optimization tool evaluates revenue requirements for specific resource plans generated from multiple combinations of future resource additions that meet system reliability criteria and other system constraints. All resource plans are then ranked by system revenue requirements.

Demand-Side Screening

Like supply-side resources, data for large numbers of potential demand-side resources are also collected. These resources are pre-screened to eliminate those alternatives that are still in research and development, addressed by other regulations (e.g. building code), or not applicable to PEF's

customers. STRATEGIST is updated with cost data and load impact parameters for each potential DSM measure to be evaluated.

The Base Optimal Supply-Side Plan is used to establish avoidable units for screening future demand-side resources. Each future demand-side alternative is individually tested in this plan over the ten-year planning horizon to determine the benefit or detriment that the addition of this demand-side resource provides to the overall system. STRATEGIST calculates the benefits and costs for each demand-side measure evaluated and reports the appropriate ratios for the Rate Impact Measure (RIM), the Total Resource Cost Test (TRC), and the Participant Test. Demand-side programs that pass the RIM test are then bundled together to create demand-side portfolios. These portfolios contain the appropriate DSM options and make the optimization solvable with the STRATEGIST model.

Resource Integration and the Integrated Optimal Plan

The cost-effective generation alternatives and the demand-side portfolios developed in the screening process can then be optimized together to formulate integrated optimal plans. The optimization program considers all possible future combinations of supply- and demand-side alternatives that meet the company's reliability criteria in each year of the ten-year study period and reports those that provide both flexibility and low revenue requirements (rates) for PEF's ratepayers.

Developing the Base Expansion Plan

The integrated optimized plans that provide the lowest revenue requirements are then further tested using sensitivity analysis. The economics of the plan may be evaluated under high and low forecast scenarios for fuel, load and financial assumptions, or any other sensitivities which the planner deems relevant. From the sensitivity assessment, the ten-year plan that is identified as achieving the best balance of flexibility and cost is then reviewed within the corporate framework to determine how the plan potentially impacts or is impacted by many other factors. If the plan is judged robust under this review, it evolves as the Base Expansion Plan.

KEY CORPORATE FORECASTS

Load Forecast

The assumptions and methodology used to develop the base case load and energy forecast is described in Chapter 2 of this TYSP.

Fuel Forecast

Base Fuel Case: The base case fuel price forecast was developed using short-term and long-term spot market price projections from industry-recognized sources. Coal prices are expected to be relatively stable month to month; however, oil and natural gas prices are expected to be more volatile on a day-to-day and month-to-month basis.

In the short term, the base cost for coal is based on the existing contracts and spot market coal prices and transportation arrangements between PEF and its various suppliers. For the longer term, the prices are based on spot market forecasts reflective of expected market conditions. Oil and natural gas prices are estimated based on current and expected contracts and spot purchase arrangements as well as near-term and long-term market forecasts. Oil and natural gas commodity prices are driven primarily by open market forces of supply and demand. Natural gas firm transportation cost is determined primarily by pipeline tariff rates and tends to change less frequently than commodity prices.

Financial Forecast

The key financial assumptions used in PEF's most recent planning studies were 45 percent debt and 55 percent equity capital structure, projected debt cost of 5.9 percent, and an equity return of 11.75 percent. These assumptions resulted in a weighted average cost of capital of 9.1 percent and an after-tax discount rate of 8.1 percent.

TEN-YEAR SITE PLAN (TYSP) RESOURCE ADDITIONS

In this TYSP, PEF's supply-side resources include the repowering of the P.L. Bartow Plant with F-Class combined cycle technology with an expected in-service date of June 2009. The planned units in this TYSP include the installation of combined cycle technology at the Suwannee River Plant as well as two (2) nuclear units on a greenfield site in Levy County.

The Company recently submitted a petition for a Determination of Need for the nuclear units at Levy County, proposing to proceed with development of two 1,100 MW units. The Company selected Levy Units 1 and 2 for projected commercial service in 2016 and 2017, respectively, to meet its generation capacity needs in the period 2016 to 2019 and beyond after carefully evaluating planning options through the Company's on-going Integrated Resource Planning ("IRP") process outlined herein. The nuclear units were identified as the most cost-effective option to meet the need, taking into account the need to improve fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce current and potential future air emission compliance costs, and contribute to the long-term stability of the electric grid. Since nuclear units involve very long licensing and construction lead times, PEF plans to continue with the design and development of the infrastructure and transmission requirements, negotiations for procurement and construction contracts and permitting and licensing to support the current planned in-service dates.

Through its ongoing planning process, PEF will continue to evaluate the timetables for all projected resource additions and assess alternatives for the future considering, among other things, projected load growth, fuel prices, current lead times in the construction marketplace, project development timelines for new fuels, and technologies, and environmental compliance considerations. The Company will continue to examine the merits of new generation alternatives and adjust its resource plans accordingly to ensure optimal selection of resource additions based on the best information available.

RENEWABLE ENERGY

PEF continues to make purchases from the following facilities listed by fuel type:

Municipal Solid Waste Facilities:

- Lake County Resource Recovery (12.8 MW)
- Metro-Dade County Resource Recovery (43 MW)
- Pasco County Resource Recovery (23 MW)
- Pinellas County Resource Recovery (54.8 MW)

Waste Heat from Exothermic Processes:

- PCS Phosphate (As Available)

Waste Wood, Tires, and Landfill Gas:

- Ridge Generating Station (39.6 MW)
- SI Group Energy (5 MW) (As-Available)

Photovoltaics

- Various customer and PEF owned installations (524 kW connected to PEF)

In addition, PEF has entered into contracts with Biomass Energy Group (116 MW) and BG&E (150 MW). The Biomass Energy Group facility will utilize an energy crop, while the BG&E units will fire gas from wood products.

PEF continues to seek out renewable suppliers that can provide reliable capacity and energy at economic rates. In July 2007, PEF issued a Request for Renewables (RFR) soliciting proposals for renewable energy projects. Over 55 responses were received, and discussions with potential suppliers are ongoing. PEF will submit renewable standard offer contracts in compliance with FPSC rules.

PLAN SENSITIVITIES

Load Forecast

In general, higher-than-projected load growth would shift the need for new capacity to an earlier year and lower-than-projected load growth would delay the need for new resources. PEF's TYSP includes in the short-term the Bartow Repowering Project currently under construction

and additions of combined cycle and nuclear units in the long-term. The Company's resource plan provides the flexibility to shift certain resources to earlier or later in-service dates should a significant change in projected customer demand begin to materialize.

Fuel Forecast

PEF's current TYSP includes new natural gas fueled resources in 2009 and 2013. The plan also includes uprates to the Crystal River nuclear unit No. 3 in 2009 and 2011, and new nuclear units in 2016 and 2017. PEF focused its fuel forecast sensitivity on price projections for natural gas. Higher gas prices would improve the economics for non gas-fueled resources and lower gas prices would benefit gas-fueled resources. Uncertainty over future environmental regulation, particularly as it relates carbon, as well as fuel security and reliability considerations, favors pursuit of the nuclear option.

Fuel price forecasts can have a significant impact on the economics of generation alternatives. Consideration of fuel forecast sensitivity for this TYSP did not suggest reconsideration of the base plan. PEF will continue to monitor fuel price relationships to identify long-term structural changes and assess the potential impacts on the economics of resource selection.

Financial Forecast

PEF's current TYSP includes a combined cycle addition in 2013 with nuclear unit additions in 2016 and 2017. Lower cost of capital and escalation rates would favor options with longer construction lead times and higher capital costs such as the nuclear addition. However, PEF does not expect these assumptions to go much lower than the current base case forecast and nuclear generation is not projected to be feasible before 2016. PEF will continue to assess the economics of future generation alternatives including consideration of the uncertainties in planning assumptions.

TRANSMISSION PLANNING

PEF's transmission planning assessment practices are developed to test the ability of the planned system to meet the reliability criteria as outlined in the FERC Form 715 filing, and to assure the system meets PEF, Florida Reliability Coordinating Council, Inc. (FRCC) and NERC criteria. This involves the use of load flow and transient stability programs to model various contingency situations that may occur, and determining if the system response meets the reliability criteria. In general, this involves running simulations for the loss of any single line, generator, or transformer. PEF normally runs this analysis for system peak and off-peak load levels for possible contingencies, and for both summer and winter. Additional studies are performed to determine the system response to credible, but less probable criteria. These studies include the loss of multiple generators or lines, combinations of each, and some load loss is permissible under these more severe disturbances. These credible, but less probable scenarios are also evaluated at various load levels, since some of the more severe situations occur at average or minimum load conditions. In particular, critical fault clearing times are typically the shortest (most severe) at minimum load conditions, with just a few large base load units supplying the system needs.

As noted in the PEF reliability criteria, some remedial actions are allowed to reduce system loadings, in particular, sectionalizing is allowed to reduce loading on lower voltage lines for bulk system contingencies, but the risk to load on the sectionalized system must be reasonable (it would not be considered prudent to operate for long periods with a sectionalized system). In addition, the number of remedial action steps and the overall complexity of the scheme are evaluated to determine overall acceptability.

Presently, PEF uses the following reference documents to calculate Available Transfer Capability (ATC) for required transmission path postings on the Florida Open Access Same-Time Information System (OASIS):

- FRCC: FRCC ATC Calculation and Coordination Procedures, April 4, 2006, which can be found on the FRCC's website:
<https://www.frcc.com/ATCWG/Shared%20Documents/FRCC%20ATC%20Coordination%20Procedures.pdf>
- NERC: Transmission Transfer Capability, May 1, 1995,
- NERC: Available Transfer Capability – Definitions and Determination, July 30, 1996.

PEF uses the FRCC Capacity Benefit Margin (CBM) methodology to assess its CBM needs. This methodology is summarized as follows:

“FRCC Transmission Providers make an assessment of the CBM needed on their respective systems by using either deterministic or probabilistic generation reliability analysis. The appropriate amount of transmission interface capability is then reserved for CBM on a per interface basis, taking into account the amount of generation available on other interconnected systems, the respective load peaking diversities of those systems, and Transmission Reliability Margin (TRM). Operating reserves may be included if appropriate in TRM and subsequently subtracted from the CBM if needed.”

PEF currently has zero CBM reserved on each of its interfaces (posted paths). PEF's CBM on each path is currently established through the transmission provider functions within PEF using deterministic and probabilistic generation reliability analysis.

Currently, PEF proposes several bulk transmission additions that must be certified under either the Florida Transmission Line Siting Act (TLSA) or the Power Plant Siting Act (PPSA). PEF proposed bulk transmission line additions are summarized in the following Table 3.3. PEF has listed only the larger transmission projects. These projects may change depending upon the outcome of PEF's final corridor and specific route selection process.

TABLE 3.3
PROGRESS ENERGY FLORIDA
LIST OF PROPOSED BULK TRANSMISSION LINE ADDITIONS
2008 – 2017

MVA RATING WINTER	LINE OWNERSHIP	TERMINALS		LINE LENGTH (CKT.-MILES)	COMMERCIAL IN-SERVICE DATE (MO./YEAR)	NOMINAL VOLTAGE (kV)
1141	PEF	LAKE BRYAN	WINDERMERE #1	10 *	5 / 2008	230
1141	PEF	LAKE BRYAN	WINDERMERE #2	10	5 / 2008	230
1141	PEF	AVALON	GIFFORD	7	5 / 2009	230
612	PEF	BARTOW	NORTHEAST - Circuit 1	4	6/2009	230
612	PEF	BARTOW	NORTHEAST - Circuit 2	4	6/2009	230
612	PEF	BARTOW	NORTHEAST - Circuit 3	4	6/2009	230
525	PEF	NORTHEAST	32 ND STREET	2.4	9/2008	115
810	PEF	NORTHEAST	40 TH STREET	8.3*	9/2008	230
810	PEF	PASADENA	51 ST STREET	0.4	9/2008	230
810	PEF	51 ST STREET	40 TH STREET	0.2	9/2008	230
837	PEF	AVON PARK	FORT MEADE	26†	6/2009	230
1141	PEF	HINES ENERGY COMPLEX	WEST LAKE WALES #2	21	5 / 2010	230
1141	PEF	INTERCESSION CITY	WEST LAKE WALES #2	30	6 / 2010	230
1141	PEF/TECO	LAKE AGNES (TECO)	GIFFORD	32	6/2011	230
1141	PEF	INTERCESSION CITY	WEST LAKE WALES #1	30 *	6/2011	230
1141	PEF	BITHLO	STANTON (OUC)	6**	5/2010	230
1141	PEF	FT. WHITE	SUWANNEE	40	6/2013	230
2870	PEF	LEVY	CENTRAL FLA SOUTH	50***	6/2016	500
2870	PEF	LEVY	CRYSTAL RIVER	10***	6/2016	500
2870	PEF	LEVY	CITRUS #1	10***	6/2016	500
2870	PEF	LEVY	CITRUS #2	10***	6/2016	500
2870	PEF	CITRUS	BROOKRIDGE	35***	6/2016	500
2870	PEF	BROOKRIDGE	LAKE TARPON	40***	6/2016	500
1141	PEF	CRYSTAL RIVER	BROOKRIDGE	35***	6/2016	230
1141	PEF	BROOKRIDGE	BROOKSVILLE WEST	4***	6/2016	230
1141	PEF	CITRUS	CRYSTAL RIVER EAST #1	6***	6/2016	230
1141	PEF	CITRUS	CRYSTAL RIVER EAST #2	6***	6/2016	230
1141	PEF	KATHLEEN	LAKE TARPON	45***	6/2016	230

* Rebuild existing circuit

** 6 miles is the present estimated distance for PEF's portion of this 12-mile PEF-OUC tie line

***Each of these projects is part of one or more transmission options for the Levy County Nuclear Power Plant project. Out of several options under consideration, the final option has yet to be chosen, and thus the above list of projects is subject to change.

† Convert existing 115 kV line to 230 kV

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CHAPTER 4

**ENVIRONMENTAL AND
LAND USE INFORMATION**



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CHAPTER 4
ENVIRONMENTAL AND LAND USE INFORMATION

PREFERRED SITES

PEF's base expansion plan includes the repowering of the existing P.L. Bartow Plant in Pinellas County with combined cycle technology, the potential installation of combined cycle technology at the Suwannee River Plant, and the installation of two (2) nuclear power units at the Levy County greenfield site. While these sites are suitable for new generation, PEF continues to evaluate other available options for future supply alternatives.

PEF is currently undergoing construction of the P.L. Bartow Plant repowering project , which is scheduled to begin commercial operation in June 2009. The planned combined cycle technology installation at the Suwannee River Plant with a possible operation date of summer 2013 as well as installation of the Levy County nuclear power units with operation planned to begin in 2016 and 2017 are being evaluated. Appropriate permitting requirements for PEF's preferred sites are discussed in the following site descriptions.

P.L. BARTOW PLANT – PINELLAS COUNTY

As mentioned above, PEF is in the process of repowering the existing P.L. Bartow Plant with natural gas-fired 4-on-1 combined cycle technology, which is scheduled to begin commercial operation in June 2009.

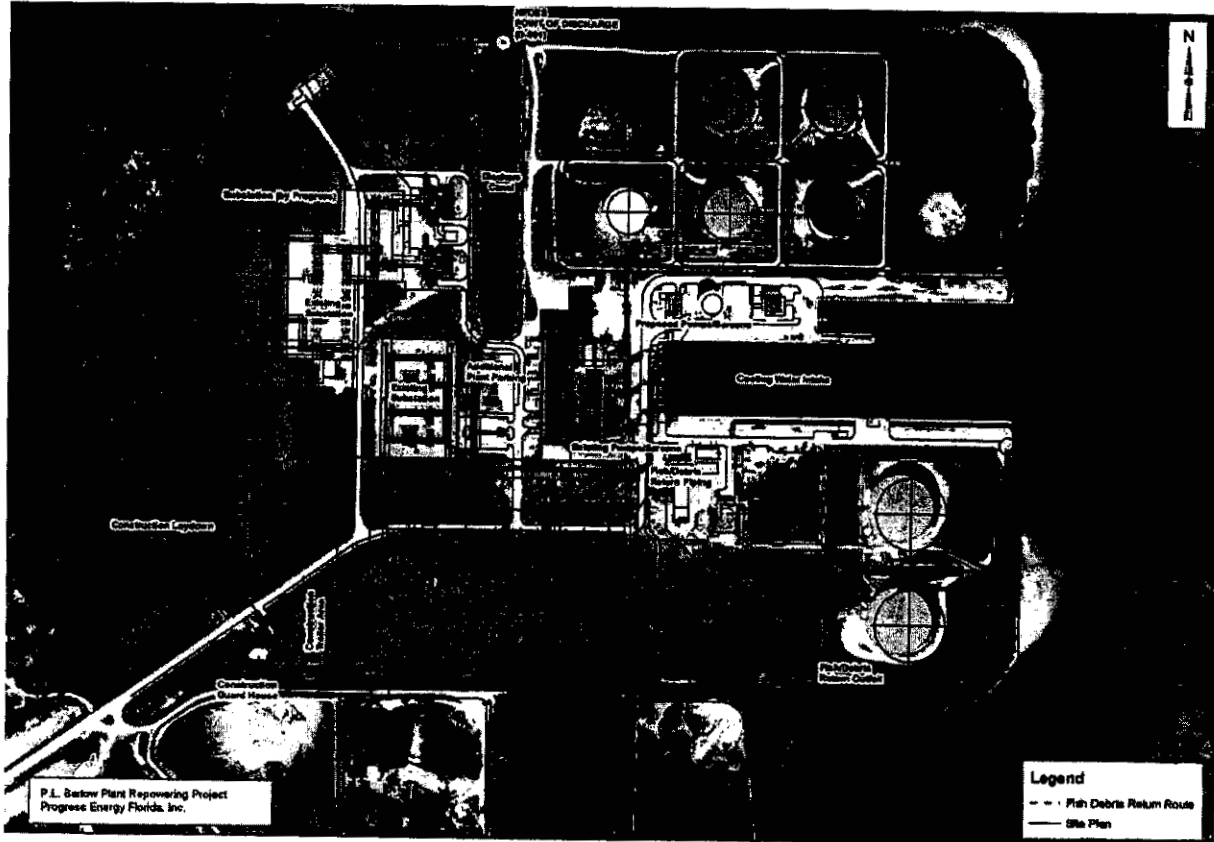
The P.L. Bartow Plant site (see Figure 4.1) consists of 1,348 acres in Pinellas County, on the west shore of Tampa Bay. The site is located on Weedon Island, just north of downtown Saint Petersburg. An adjacent barge fuel oil off-loading facility, a natural gas supply from the Florida Gas Transmission (FGT) pipeline, and a proposed Gulfstream natural gas pipeline provide the necessary fuel. The existing site consists of three (3) boilers, and four (4) combustion turbine peaking units. The repowered site will consist of a 4-on-1 combined cycle unit and the four (4) combustion turbine peaking units.

FIGURE 4.1.a

P.L. Bartow Plant (Pinellas County)



FIGURE 4.1.b
P.L. Bartow Plant (Pinellas County) – Plant Layout



In addition to this repowered unit combusting clean fuels, controls will also be utilized to minimize air emissions. These controls include dry low NO_x (DLN) burners, water injection, and selective catalytic reduction (SCR) systems. This project will have a positive impact on the surrounding air quality.

The repowered site will utilize existing water intake and discharge facilities. It will also use the existing water supply and ground water discharge treatment system. This repowered site has been designed and will operate such that no net new impact on water quality and water use will result.

Transmission modifications will be required to accommodate the repowering of these steam units (see Chapter 3).

SUWANNEE RIVER PLANT – SUWANNEE COUNTY

PEF is considering the installation of combined cycle technology at the Suwannee River Plant in place of existing fuel oil generation. The base expansion plan predicts a commercial operation start-up of June 2013 to meet the forecasted load.

The Suwannee River Plant site (see Figure 4.2) consists of 596 acres in unincorporated northwest Suwannee County, on the Suwannee River and approximately eleven (11) miles northwest of Live Oak, FL.

Three (3) fuel oil boilers as well as three (3) combustion turbine peaking units make up the current generation at this site. Fuel oil is transported in by rail car and truck, while pipeline natural gas is supplied by Southern Natural Gas. If this project is completed, the site will no longer utilize the fuel oil boilers and it will then consist of a combined cycle unit and the three (3) combustion turbines peaking units.

The installation of natural gas-fired combined cycle technology, combustion of clean fuels, as well as use of current combustion and control technology will have a positive effect on the surrounding air quality.

FIGURE 4.2.a.
Suwannee River Plant (Suwannee County)

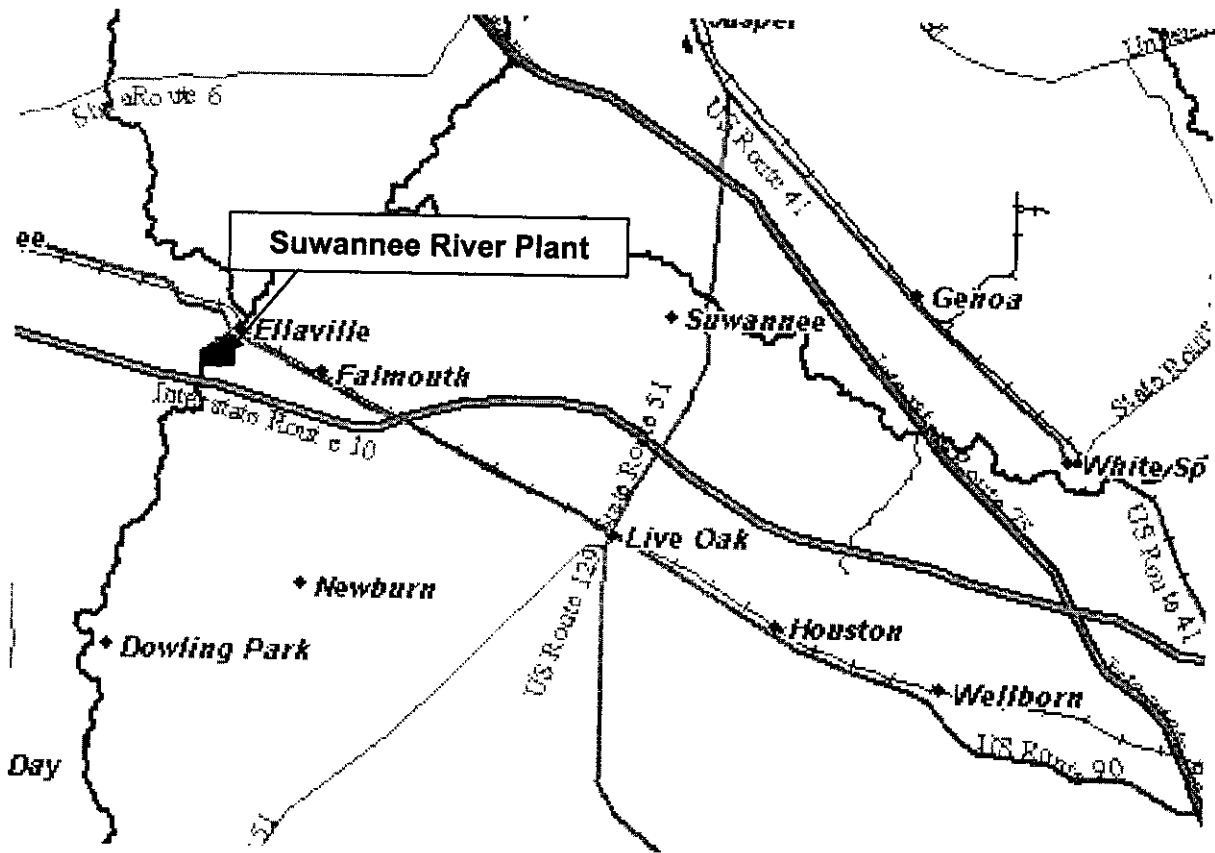
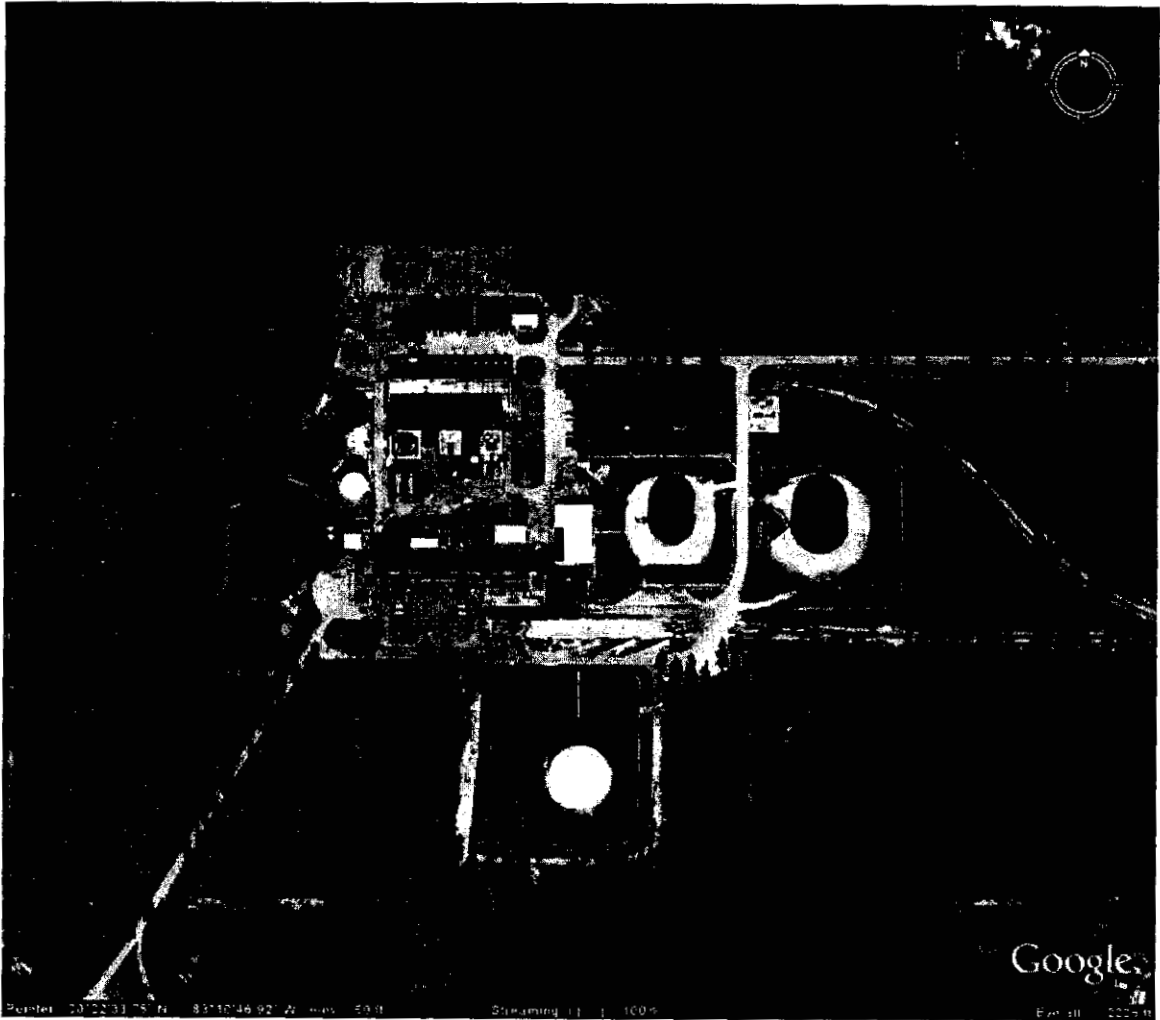


FIGURE 4.2.b.
Suwannee River Plant (Suwannee County) –Plant Layout



If the combined cycle technology project uses a closed cycle or off stream once through cooling, potentially the river water usage may change from the existing configuration. Additionally if closed cycle cooling is utilized, cooling tower blowdown treatment may possibly be required prior to discharge to the river. Applicable requirements related to water quality and water usage as a result of this project will be evaluated in more detail as this project moves forward.

With the potential project site located on or near the existing Suwannee River Plant, local land use and zoning requirements will be evaluated. In addition, noise, natural resources, and wetland impacts will be evaluated and mitigated for, as part of the site design and permitting process.

Transmission modifications are expected in support of this Suwannee River Plant project (see Chapter 3).

LEVY COUNTY NUCLEAR POWER PLANT – LEVY COUNTY

PEF recently named a site in southern Levy County as the preferred location for construction of new generation. The Company is planning the construction of two (2) new nuclear units at this plant site with planned operation to begin in 2016 and 2017.

The Levy County site (see Figure 4.3) is approximately 3,100 acres and located eight (8) miles inland from the Gulf of Mexico and roughly ten (10) miles north of the existing PEF Crystal River Energy Complex.

The site is about 2.5 miles from the Cross Florida Barge Canal, from which the Levy units may draw their makeup water to supply the on-site cooling water system. The Levy County Plant Units 1 and 2, together with the necessary associated site facilities, will occupy approximately ten (10) percent of the 3,100 acre site and the remaining acreage will be preserved as an exclusionary boundary around the developed plant site and a buffer preserve. PEF purchased an additional 2,100 acre tract contiguous with the southern boundary of the Levy site that secures access to a water supply for the site from the Cross Florida Barge Canal as well as transmission corridors from the plant site. The property for many years had been used for silviculture and was

designated as Forestry/Rural Residential. The surrounding area land use is predominantly vacant, commercial forestry lands.

This site was chosen based on several considerations including availability of land and water resources, access to the electric transmission system, and environmental considerations. First, the Levy County site had access to an adequate water supply. Second, the site is at a relatively high elevation, which provides additional protection from wind damage and flooding. Third, unlike a number of other sites considered, the Levy site has more favorable geotechnical qualities, which are critical to siting a nuclear power plant. Fourth, the Levy site provides geographical separation from other electrical generating facilities. Even though the Crystal River Energy Complex site has many favorable qualities, adding new nuclear generating capacity to the Crystal River Energy Complex at this time would result in a significant concentration of PEF's generating assets in one geographical location. This increases the likelihood of a significant generation loss from a single event and a potential large scale impact on the PEF system. The Levy County location also would assist in avoiding a potential loss from a single significant transmission system event that might result in a large-scale impact on the PEF system.

PEF's assessment of the Levy County site addressed whether any threatened and endangered species or archeological and cultural resources would be adversely impacted by the development of the site for nuclear generation units and related facilities. No significant issues were identified in PEF's evaluations of the property.

The proximity of the Levy County site to the PEF's existing Crystal River Unit 3 nuclear plant provides opportunities for efficiencies in shared support functions. The two (2) Levy units will be located on a greenfield site where site and transmission infrastructure must be constructed along with the buildings necessary for the power units. The site will include cooling towers, intake and discharge structures, containment buildings, auxiliary buildings, turbine buildings, diesel generators, warehouses, related site work and infrastructure, including roads, transmission lines, and a transmission substation. The Company will submit a Site Certification Application ("SCA") to the Florida Department of Environmental Protection ("DEP") for the entire site, including plants and associated facilities for the units.

Nuclear power is a clean source of electric power generation. Electric power generation from nuclear fuel produces no sulfur dioxide (SO₂), nitrogen oxide (NO_x), green house gases (GHG), or other emissions. Therefore, it will have a positive effect on the surrounding air quality.

Water discharged from nuclear plants must meet federal Clean Water Act requirements and state water-quality standards. Before operating, a nuclear plant's licensing process requires an environmental impact statement that carefully examines and resolves all potential impacts to water quality from the operation of the plant. These issues include concerns about the discharge of heated water and the impacts on aquatic life in cooling water used by the plant.

Transmission modifications will be required to accommodate the Levy County Nuclear Power Plant.

FIGURE 4.3.a.

Levy County Nuclear Power Plant (Levy County)

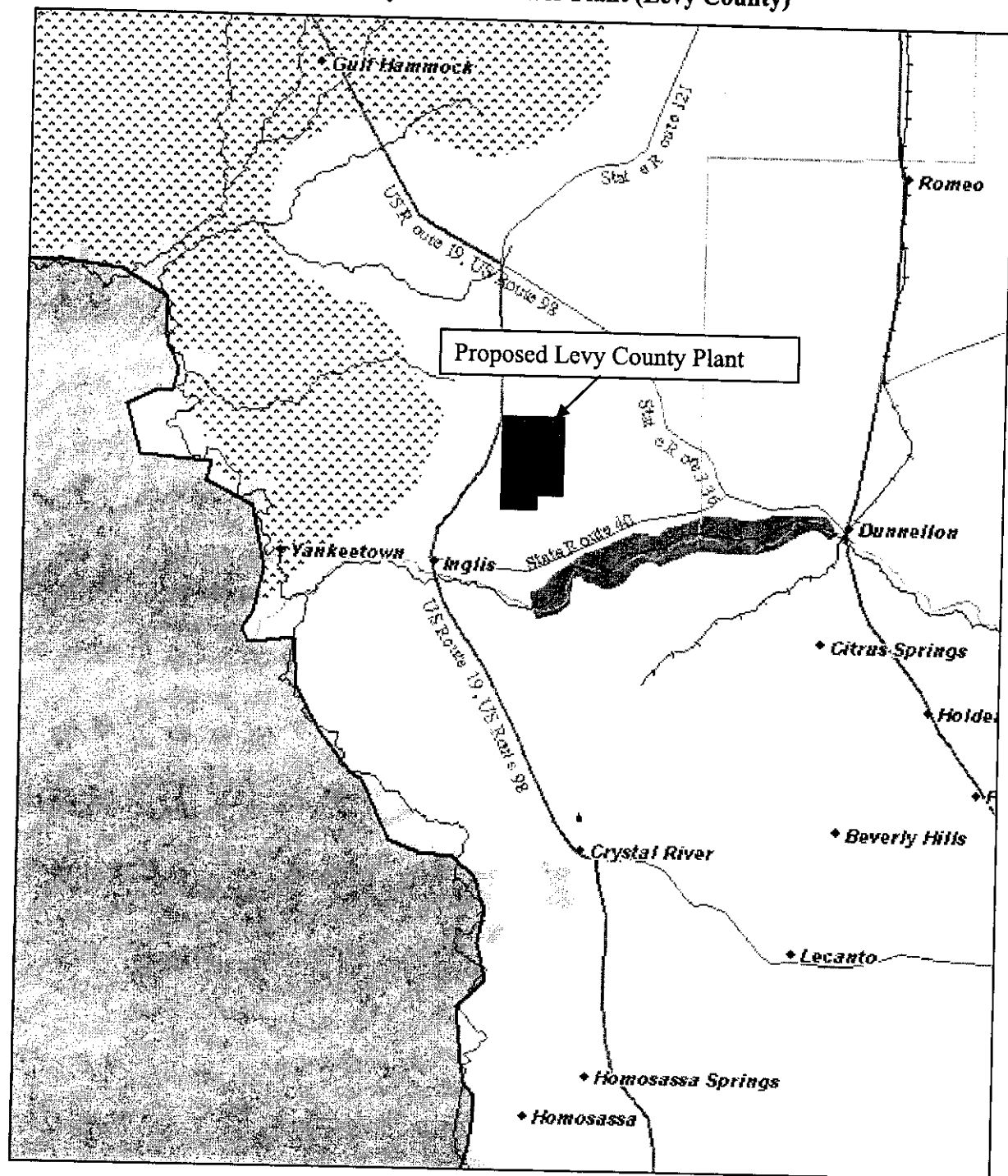
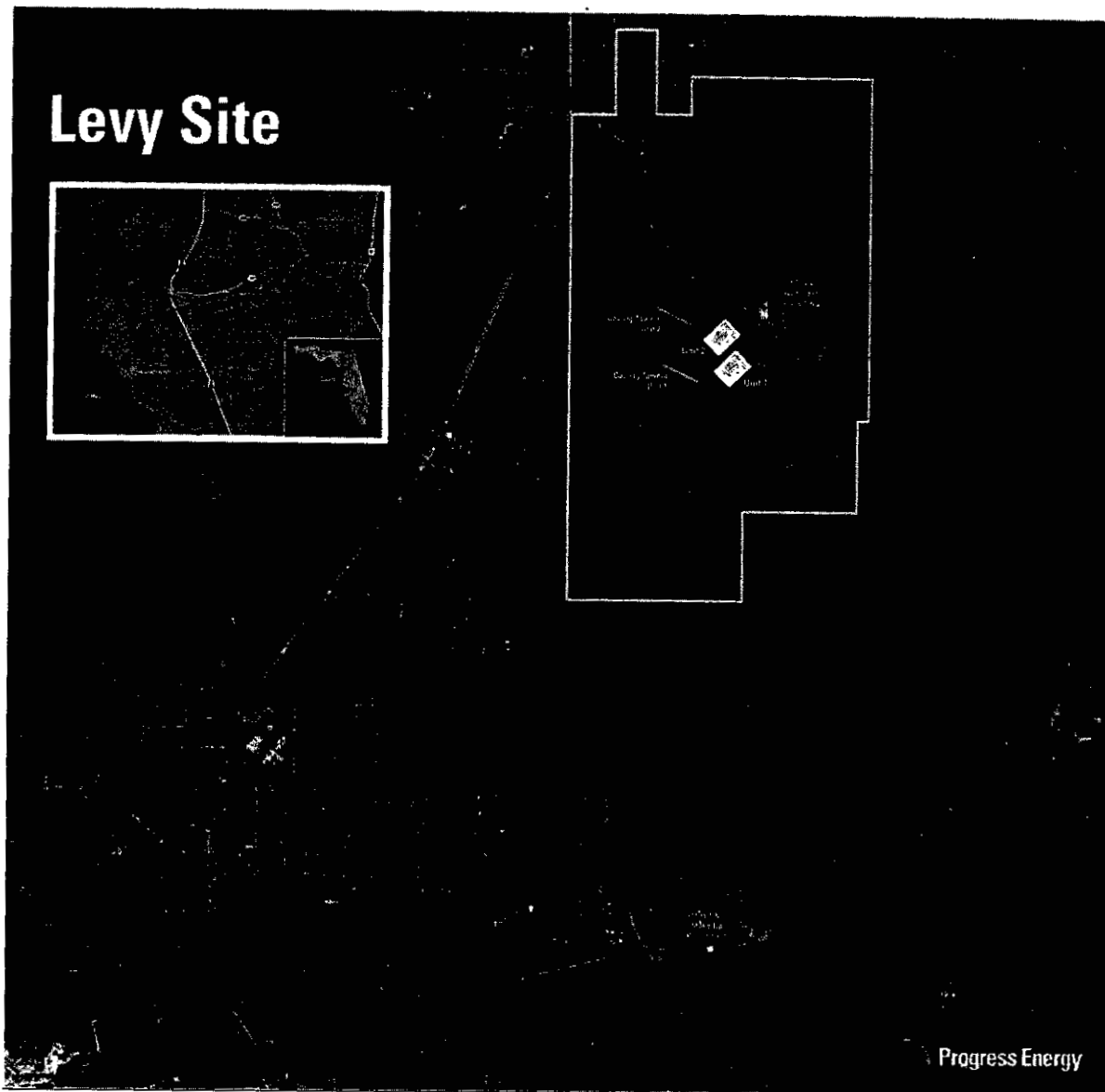


FIGURE 4.3.b.

Levy County Nuclear Power Plant (Levy County) – Aerial View



ATTACHMENT C
Response Package (Instructions)

PEF2013RFP
6/12/08



Attachment C - Response Package

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RESPONSE PACKAGE SCHEDULES

NOTICE OF INTENT TO BID

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SCHEDULE 3 – PROJECT CAPACITY RATING AND HEAT RATE SCHEDULE

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SCHEDULE 5 – ENVIRONMENTAL AND REGULATORY PERMIT STATUS SCHEDULE

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SCHEDULE 7 – TRANSMISSION INFORMATION SCHEDULE

SCHEDULE 8 – PROJECT PRO FORMAS SCHEDULE

SCHEDULE 9 – PROJECT MILESTONE SCHEDULE

I. General Instructions

This Response Package contains the information required of Bidders and reviews the required organizational structure and contents of the proposals submitted in response to PEF's RFP for Power Supply Resources. Prior to developing their proposals, Bidders are requested to carefully read Progress Energy Florida's RFP and the instructions in this Response Package.

Proposals in response to this RFP must consist of three bound copies and an electronic version (on diskette or CD-ROM) with all text portions of the responses in Microsoft Word or Adobe Acrobat and schedules in Microsoft Excel. Each copy of the proposal is to be bound separately. Bidders must submit two (2) extra unbound copies of any document that is larger than 8 ½" x 11". Bidders must ensure that the proposals are delivered on time. Preprinted materials such as maps, annual reports, etc. do not have to be submitted in electronic format.

Bidders are required to use the schedules provided. The schedules (as well as the format of the entire Response Package) have been designed to facilitate the evaluation of the proposals in an expedient manner. Failure to use the schedules will be grounds for disqualification.

II. Organization and Contents of Bidders' Proposals

A. Overview

Bidders' proposals **must** be organized according to the structure specified below. If a particular chapter or section is not relevant to a Bidder's proposal, then the Bidder should include the chapter or section and indicate why it is not relevant. Where PEF has included a schedule that is to be completed by the Bidder, the schedules must be completed or the Bidder must indicate why the schedule is not relevant. This requirement is in place to assist the Bidder and PEF in assuring that no question has been overlooked and to provide all relevant information needed to evaluate the proposals.

B. Proposal Outline

The outline that Bidders **must** use to organize their proposals is presented below. Also specified in each section of this Response Package are the chapter number and section number that should be used for all proposals. The specific information that is to be included in each chapter is described below. However, because the information requested may not be relevant to all types of proposals, PEF has indicated in bold the type of proposal to which each question applies. **Where no specific type of proposal is indicated, the Bidder should assume that the information is required for all types of proposals.**

- ◆ Proposal Executive Summary
- ◆ Chapter 1: Project Summary
- ◆ Chapter 2: Proposal Pricing
- ◆ Chapter 3: Operating Performance
- ◆ Chapter 4: Permitting Plans
- ◆ Chapter 5: Engineering and Design Plans
- ◆ Chapter 6: Site Control

- ◆ Chapter 7: Transmission Plan
- ◆ Chapter 8: Fuel Supply and Transportation Plan
- ◆ Chapter 9: Project Financing Plan
- ◆ Chapter 10: Commercial Operation Date Certainty
- ◆ Chapter 11: Bidder Experience
- ◆ Chapter 12: Acceptance of Pro-Forma Agreements

This Response Package is organized around a series of schedules. The matrix presented below indicates which schedules apply to different types of proposals. These schedules are provided in an Excel workbook included as part of this Response Package. If a schedule applies to the type of proposal that the Bidder is submitting, the Bidder is **required** to provide both hard and electronic copies of the schedule. **Inconsistencies between the electronic and hard copies will be grounds for disqualification.**

Schedules To Be Completed By Bidder

Schedule No. and Name	New Unit	Existing Unit	System Power
Schedule A: Project Summary	X	X	X
Schedule 1: Pricing Schedule for New and Existing Unit Proposals	X	X	
Schedule 2: Pricing Schedule for System Power Proposals			X
Schedule 3: Capacity States and Heat Rates for New and Existing Unit Proposals	X	X	
Schedule 4: Operating Performance Schedule	X	X	X
Schedule 5: Environmental and Regulatory Permit Status Schedule	X		
Schedule 6: Air Emissions Schedule	X	X	
Schedule 7: Transmission Information Schedule	X	X	X
Schedule 8: Project Pro Forma Schedule	X		
Schedule 9: Project Milestone Schedule	X		

C. Proposal Executive Summary

The Bidder is required to provide a brief summary of its proposal (no more than two pages). The summary should include at a minimum a brief overview of the technology and equipment proposed, amount of capacity offered, project location and point of delivery, proposed project pricing, power delivery period, proposed fuel supply arrangements, experience with key project elements, financing plan/arrangements, permitting schedule, and conformance with the Pro-Forma Agreements provisions (reference Attachment A to the RFP).

D. Chapter 1: Project Summary

Chapter 1 of the Bidder's proposal must consist of a completed Project Summary (Schedule A). Bidders should complete Schedule A after they have completed all other schedules; data must be consistent with the detailed schedules. In addition to submitting the Excel spreadsheet version of this schedule, the Bidder must include a hard copy of this schedule in Chapter 1 of its proposal. The information in this form will be treated as non-confidential and non-proprietary and may be released to the public.

E. Chapter 2: Proposal Pricing

Introduction

Bidders are required to complete all the applicable pricing schedules referenced in this chapter of the Response Package and to provide a complete description of the components of the charges. Progress Energy Florida has included price schedules for New and Existing Unit Proposals (Schedule 1) and System Power Proposals (Schedule 2) in the Response Package forms as part of this package. Bidders should only complete those schedules that are pertinent to the type of bid submitted (reference "Schedules to be Completed by Bidder" table on Page C2). Bidders should note that contract year one is a partial year. Therefore, a "10-year" contract will cover one partial year and nine full years, for example, June 1, 2013 through December 31, 2022.

Price Schedule for New and Existing Unit Proposals

Bidders offering New or Existing Unit Proposals must complete all relevant sections of Schedule 1 as described in this section of the Response Package. Bidders should ensure that the pricing components of their proposals conform to the requirements described in Figure III-3 (New and Existing Unit Proposal Pricing Parameters) of the PEF 2013 RFP Document. **All costs to be paid by PEF must be reflected in the proposed pricing. PEF will not accept any charges other than those identified in Schedule 1.** Bidders must specify the pricing for their proposals in terms of the following components and units, to the degree that each component is relevant to the particular bid:

Fixed Payment

- Generation Capital Charge (\$/kW-Yr)
- Fixed Operation and Maintenance (O&M) Charge (\$/kW-Yr)
- Transmission Charge (\$/kW-Yr)
- Pipeline Reservation Charge (\$/mmBtu-day)

Variable Payment

- Fuel Commodity (\$/mmBtu)
- Variable Transportation (\$/mmBtu)
- Variable O&M Price (\$/MWh, \$/hour, or both)

Start Payment

- Start Price Per Facility (\$/start/facility).

In addition to completing the schedule, Bidders should include back-up sheets that clearly describe their pricing proposals in terms of the pricing components, any indices proposed to adjust the prices, and the frequency of change in the indices for payment purposes.

The first entries in Schedule 1 are the Contract Start Month, the Contract Start Year, and the Contract End Year, which represent the term for which capacity and energy will be provided to PEF by the Bidder. Bidders must then specify the proposed Contract Capacity for both the Winter and Summer Seasons for each year of the proposed term.

CAPACITY SPECIFICATION CRITERIA

- Summer: 90°F, 60% R.H.
- Winter: 45°F, 60% R.H.

SEASONAL DEFINITIONS

Summer	Winter
May through October	November through April

Bidders then enter the annual fixed payment items in Schedule 1 for every year of the term of the proposal. The annual fixed payments must be based on the Seasonal Contract Capacities. Therefore, Bidders must take into account the difference in Summer and Winter Contract Capacities and enter **annualized** \$/kW values for every year, including the start year when the proposal does not include all 12 months of the calendar year. Since the Summer and Winter Periods each contain six (6) months, this can easily be achieved by using the average Summer and Winter Contract Capacities when developing \$/kW values. Bidders will be paid monthly based on the product of the Bidder-specified seasonal capacity and one-twelfth (1/12) of the Bidder-specified annual charges, and will be subject to adjustments based on actual operating performance (the adjustments for operating performance are described in the Pro-Forma Agreements included as Attachment A to the PEF 2013 RFP Document).

Generation capital charges are to be consistent with the generation equipment costs specified in Section 9.0 of the Bidder's proposal. Fixed O&M charges should reflect the fixed costs associated with operating and maintaining the project.

A transmission charge must be specified by the Bidder in Schedule 1 for each year of the proposal. These charges should represent the Bidder's Interconnection Facilities and wheeling (if applicable) costs to PEF's Delivery Point and must be based on the Seasonal Contract Capacities. The transmission charges specified are to be consistent with the transmission equipment costs specified in Section 9.0 of the Bidder's proposal. If the proposed project is not located in the PEF control area, any costs related to an upgrade of other transmission systems required for delivery of Firm Power from the Facility to the delivery point in the PEF control area must be included in the price proposal by the Bidder. Costs for any necessary upgrades to integrate the project into the PEF transmission system will be estimated by PEF during the Initial and Detailed Evaluations of proposals and the costs for the upgrades on the PEF system and other affected utility systems will be included in the evaluation of the proposal.

Bidders must specify a fixed pipeline demand/reservation charge (if appropriate to the technology being proposed). Bidders must specify a charge for each year of the proposal in \$/mmBtu-day and must specify the amount of transportation proposed to be reserved (in Chapter 8 of the proposal). Bidders may specify a fixed pipeline demand/reservation tariff as the price. Progress Energy Florida reserves the right to negotiate fuel transportation provisions with the Bidder if benefits can be derived for PEF and its customers.

Bidders must provide fuel price proposals for the primary and secondary fuels. The primary fuel is the fuel that the Bidder expects to use for the majority of the generation in the year, and the secondary fuel is the fuel that the Bidder expects to use for the remaining generation. If desired, the Bidder may propose to use only one fuel throughout the year and not specify a secondary fuel (the primary and secondary fuels are specified on Schedule A). Bidders have three options for proposing fuel prices:

1. the Bidder may specify a series of firm prices or a price that escalates at a Bidder-specified rate. These prices will be used for evaluation and payment purposes. The escalation rate used must be outlined in the Bidder's proposal.

2. the Bidder may propose to use a price index or combination of indices or propose a formula based on an index or combination of indices. Reference price forecasts are provided in Schedule 1 for the Bidder to use as an index to formulate prices. The Bidder should enter the formula in the appropriate cells (in Rows 29-30 and 32-33 of Schedule 1) and also describe the formula in Chapter 2 of its proposal. The Bidder shall enter the name of the proposed index (e.g., "Gas Daily Henry Hub", "Gas Daily Florida Citygate", etc.) in the space provided on Rows 48 and 49 of Schedule 1.
3. the Bidder may propose to use a fuel tolling arrangement whereby PEF will supply fuel tolling services to the project. If the Bidder selects this option, PEF will determine the appropriate price to use for the evaluation.

If the Bidder selects option 2 above, the PEF fuel price forecast will be used as an index to evaluate proposals; however, the Bidder will be paid based on the actual values of the index(es) at the time of payment. The PEF fuel price forecast assumptions are based on recent forecasts for the fuels; however, PEF reserves the right to update these forecasts during the evaluation period if they no longer reflect PEF's current expectations.

The index selected for each pricing component should be consistent with market-based indices that are appropriate for that component. For example, if a Bidder proposes to use natural gas as its primary fuel, a gas commodity index is appropriate to choose. If a Bidder proposes to use a secondary fuel, the Bidder should select an appropriate index for that fuel. The Bidder must identify the pricing point for the index selected, if appropriate.

Bidders must enter annual prices for variable O&M. Although Bidders may specify two fuels (Primary and Secondary) to be used during a year, Bidders should enter only one annual price for each of the O&M components. These prices should reflect the weighted average annual O&M, based on the proposed fuels. Bidders may propose variable O&M prices in terms of \$/MWh or \$/hour of operation, or both.

Bidders are also required to enter annual start prices. The start price component is designed to compensate the Bidder for the cost of starting the Facility. Payment will only be made for starts required and initiated by PEF. PEF will not reimburse the Bidder for test starts or starts arising from a forced outage or from an unplanned maintenance outage. PEF will estimate the number of starts for evaluation purposes but pay the Bidder based on the actual number of successful starts.

Schedule 1 provides an area for other costs to be specified by the Bidder. Any other costs the Bidder expects PEF to pay must be identified in this area. **PEF will not accept any charges other than those identified in Schedule 1.**

Bidders should include back-up sheets which clearly describe their pricing proposals in terms of the pricing components and the index(es) proposed to adjust the prices.

Price Schedule For System Power Proposals

Bidders who are proposing System Power Proposals are required to complete Schedule 2. **All costs to be paid by PEF must be reflected in the proposed pricing. PEF will not accept any charges other than those identified in Schedule 2.**

The first entries in Schedule 2 are the Contract Start Month, the Contract Start Year, and the Contract End Year, which represent the term for which capacity and energy will be provided to PEF by the Bidder. Bidders must then specify the proposed Contract Capacity for both the winter and Summer Seasons for each year of the proposed term.

Bidders next enter capacity and transmission charges, fuel and non-fuel energy prices, and start prices in Schedule 2 for every year of the term of the proposal. The capacity charge should represent fixed costs associated with the generation system from which power is being provided. For the transmission charge, the Bidder should enter the total price of transmission, including wheeling and system upgrade costs as appropriate, to deliver the system power to the delivery point at the PEF control area. Costs for any necessary upgrades to integrate the proposed power flow into the PEF transmission system will be estimated by PEF during the Initial and Detailed Evaluations of proposals, and the costs for the upgrades on the PEF system and other affected utility systems will be included in the evaluation of the proposal.

The capacity and transmission charges must be based on the Seasonal Contract Capacities and must be entered as **annualized** values for every year, including the start year when the proposal does not include all twelve months of the calendar year. Bidders will be paid monthly based on the product of the Seasonal Contract Capacity and one-twelfth (1/12) of the Bidder-specified annual capacity and transmission charges, and will be subject to adjustments based on the actual availability of capacity under the contract.

Bidders of System Power Proposals must guarantee 100% availability for the capacity and energy offered to PEF. In the event that PEF signs a power purchase agreement (PPA) with a Bidder to supply System Power, and that a supplier of such power fails to deliver the capacity and energy committed to in the PPA, then PEF will only pay for the capacity and energy actually received and will also charge the supplier for PEF's cost of replacement capacity and energy. PEF prefers proposals that, when curtailments are necessary, the Bidder curtail delivery only on a pro-rata basis simultaneously and proportionately along with the Bidder's other firm sales, including primary public service obligations.

The system fuel energy price should reflect the fuel costs associated with providing energy from the Bidder's generation system. Bidders have three options for proposing fuel-related system energy prices:

1. the Bidder may specify a series of firm prices or a price that escalates at a Bidder-specified rate. These prices will be used for evaluation and payment purposes. The escalation rate used by the Bidder must be outlined in the Bidder's proposal.
2. the Bidder may propose to use a price index or combination of indices or propose a formula based on an index or combination of indices. Reference price forecasts are provided in Schedule 2 for the Bidder to use as an index to formulate prices. The Bidder should enter the formula in the appropriate cells (in Row 27 of Schedule 2) and also describe the formula in Chapter 2 of its proposal. The Bidder shall enter the proposed index(es) (e.g., "Gas Daily Henry Hub", "Gas Daily Florida Citygate", etc.) in the space provided on Row 40 of Schedule 2.
3. the Bidder may propose a "true-up" arrangement whereby the fuel price will be trued-up to the Bidder's regulatory jurisdiction's system average fuel price. If the Bidder selects this option,

the bidder must provide a series of prices to be used for evaluation purposes, as well as evidence that the series of prices are reasonable.

If the Bidder selects option 2 above, the PEF fuel price forecast will be used as an index to evaluate the proposal; however, the Bidder will be paid based on the actual values of the index(es) at the time of payment. The PEF fuel price forecast assumptions are based on recent forecasts for the fuels; however, PEF reserves the right to update these forecasts during the evaluation period if they no longer reflect PEF's current expectations.

The index selected for each pricing component should be consistent with market-based indices that are appropriate for that component. For example, if a Bidder proposes to use natural gas as its primary fuel, a gas commodity index is appropriate to choose. If a Bidder proposes to use a secondary fuel, the Bidder should select an appropriate index for that fuel. The Bidder must identify the pricing point for the index selected, if appropriate.

The non-fuel energy costs should represent the non-fuel variable costs associated with providing energy from the Bidder's system. The non-fuel energy costs can be represented in terms of \$/MWh or \$/hour scheduled, or both.

The Bidder may also provide annual start prices. The start price component is designed to compensate the Bidder for the cost of starting various facilities when PEF schedules power for delivery. PEF will estimate the number of starts for evaluation purposes but pay the Bidder based on the actual number of times PEF schedules power for delivery.

Schedule 2 provides an area for other costs to be specified by the Bidder. Any other costs the Bidder expects PEF to pay must be identified in this area. **PEF will not accept any charges other than those identified in Schedule 2.**

Bidders should include back-up sheets which clearly describe their pricing proposals in terms of the pricing components and the index(es) proposed to adjust the prices.

Contract Flexibility Provisions

Also pursuant to Section II.E of the PEF 2013 RFP Document, PEF is encouraging Bidders to offer contract flexibility provisions. For example, Bidders may propose an initial contract term and provide PEF options to extend the term at predefined prices. If Bidders would like to provide such options, the pricing schedules should be used to convey the prices. The initial term should be entered as the Contract Term, and the extension provisions should be explained by the Bidder. Other flexibility provisions could be also be proposed. Bidders should clearly and completely explain their proposals, including appropriate pricing information.

F. Chapter 3: Operating Performance

In this chapter of its proposal, each Bidder must demonstrate how its proposal complies with all of the operating performance requirements specified in Section III of the PEF 2013 RFP Document and the degree to which it is consistent with PEF's preferences for the operational Technical Criteria outlined in Section III.B.3.b.ii of the RFP. In Attachment A of the PEF 2013 RFP Document, PEF has provided Pro-Forma Agreements that reviews several of these operating performance requirements which will be used to ensure that the Bidder's generating resource provides PEF with its required level of

operating performance. Bidders are required to answer the questions presented in Schedules 3 and 4 and to provide all necessary data to support the assertions made.

Bidders must specify in Schedule 3 the proposed project's heat rate information for the proposed primary fuel and secondary fuel. The heat rate data must be provided by specifying seasonal capacity states and heat rates for each fuel based on the Capacity Specification Criteria and Seasonal Definitions given in Attachment A (Pro-Forma Agreements). Capacity states must be specified at net generation levels at the delivery point of the PEF control area. In addition, the Bidder should specify the elevation at which the unit is (would be) be sited. The heat rate data provided will be used for both evaluation and contract purposes.

Heat rates must be expressed in terms of the higher heating value of the fuel and must be the average (not incremental) heat rate for the capacity state. Heat rates must incorporate any margin for degradation during the term of the contract. Degradation may be incorporated over the term or annually. Bidders are required to provide heat rate data for the minimum load and full load operating points (the full load capacity values must be equal to the Seasonal Contract Capacity values and are carried over from Schedule 1). Bidders may provide heat rates for up to three additional capacity states to better represent the operational characteristics of the proposed project.

In Schedule 4, the Bidder must provide responses to all items that apply to the type of proposal being offered. Answer yes or no for each Operating Performance threshold by entering an "X" in the appropriate box for each item in the first part of Schedule 4. In the second part of Schedule 4, Bidders must provide operating performance evaluation criteria responses and outage information.

G. Chapter 4: Permitting Plans

In this chapter of its proposal, each Bidder should demonstrate how its proposal complies with all of the permitting requirements specified in Section III of the PEF 2013 RFP Document, and the degree to which it is consistent with PEF's preferences for a high level of certainty that the proposed project will receive its required permits within the time indicated on the project's critical path schedule. Each Bidder is required to answer the questions presented below and provide all necessary data to support these assertions. For sections that require responses to several bullet items, the Bidder must always precede its response with the bullet item, verbatim, as shown below.

Section

4.0 In Schedule 5, the Environmental and Regulatory Permit Status Schedule, identify which items would be required for the project to be constructed and operated by placing an "X" in the "Not Required" or "Required" column by each item. If a permit has been applied for, indicate the date that the permit was applied for in the column marked "Applied For" and the date that the permit is likely to be issued in the column labeled "Expected Receipt." Some of the required items are pre-printed in Schedule 5. However, if additional permits would be required, add them to the schedule in the blank cells provided.

The Bidder should indicate why the project is likely to receive each required permit, license, or approval. **[New Unit Proposals]**

4.1 Provide specific information for the project site as identified below. **[New Unit Proposals]**

- List any new rights-of-way required for the project for fuel pipelines, water pipelines, rail spurs, roadways, or electric transmission lines.
 - Identify the total acreage of wetlands on the proposed site or rights-of-way before and after construction and the acreage disturbed, lost, or converted during construction.
 - Provide a copy of a map showing any portions of the proposed site or rights-of-way that are in a local or state designated Coastal Zone Management Area (CZMA).
 - Provide evidence that the existing zoning for the site is compatible with the proposed use and, if not, provide a plan for changing the zoning.
 - Provide evidence that a Phase I Environmental Assessment has been completed and that the proposed site or rights-of-way are not contaminated. If the proposed site or rights-of-way are contaminated, indicate the clean-up measures planned, their estimated costs, schedules for completion, and status of reviews by appropriate federal or state agencies.
 - Identify any environmentally sensitive areas (*i.e.*, wetlands, water use caution areas, state lands (including submerged), CZMA, wildlife refuge, public parks, critical habitats for endangered species) within a one-mile radius of the proposed plant location and any mitigation measures for these areas.
 - Identify any sites of historical or archaeological significance within a one-mile radius of the proposed plant location and any mitigation measures for these areas.
- 4.2 Describe the current and recent past land use and development of the site and adjacent lands, discussing the compatibility of the project with adjacent and nearby land uses. **[New Unit Proposals]**
- 4.3 Provide a waste disposal plan for the proposed project which identifies the solid or hazardous wastes that would be generated by the project and identifies how they would be disposed. **[New Unit Proposals]**
- 4.4 Indicate the quantity and source of cooling, injection, steam make-up, and general use water that would be needed for the project. This information should include the characteristics of the water to be used, necessary treatment processes, and a discussion of competing uses for the water. Provide a water supply plan for securing water supply and delivery to the project. Include the source of the water, a description of the water delivery system, the terms and conditions of any existing water supply transportation arrangements, and the status of such arrangement. **[New Unit Proposals, Existing Unit Proposals]**
- 4.5 Provide the following information concerning the wastewater generated by the project **[New Unit Proposals]**:
- The sources, composition, and expected quantity of wastewater to be generated by the project, the disposal method to be employed, including any waste treatment methods, and the water composition after treatment.

- The classification of any surface waters or groundwaters to which wastewater effluent is discharged and the name of the surface water.
- 4.6 Describe any hydrologic alterations, (*e.g.*, dredging, filling, diking, outfall structure, or impoundment) of any surface waters that would be required by the project, identifying the affected resource, the significance of the alteration, and the mitigation measures proposed. **[New Unit Proposals]**
- 4.7 Provide the following information regarding the impact of the project on the air quality of the surrounding area **[New Unit Proposals, Existing Unit Proposals]**:
- Identify the air quality management area where the project is (would be) located and indicate the attainment status of this area for each of the criteria pollutants.
 - Identify whether there are any Class 1 areas within 100 kilometers of the proposed project site. If so, indicate whether any visibility modeling has been performed and the visibility impacts on the Class 1 areas projected by the model.
 - Indicate the removal efficiency of any pollution control equipment that is (would be) employed for NO_x, SO₂, PM, CO, Hg, or hazardous air pollutants (HAPs).
 - Complete Schedule 6, the Air Emissions Schedule, for both the primary and secondary fuel.
 - If BACT or LAER would apply to the project, indicate how the Bidder proposes to comply with these requirements.
 - Describe plans for obtaining any required offsets and allowances for the project, including SO₂ and NO_x allowances.
 - Address levels of NH₃ (ammonia) emissions and requirements for handling/storage, if used.
 - Describe the strategy for compliance with the Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR), and the Clean Air Visibility Rule (CAVR).
- 4.8 Indicate the expected incremental ambient noise level during the daytime and nighttime hours that would result from the operation of the project at the nearest property boundary and any planned mitigation measures. Also, indicate the distance of the nearest residence from the project and define the expected daytime and nighttime ambient noise levels at the nearest residence. **[New Unit Proposals]**

H. Chapter 5: Engineering and Design Plans

In this chapter of the proposal, the Bidder should demonstrate how its proposal complies with all of the engineering and design requirements specified in Section III of the PEF 2013 RFP Document. The Bidder is required to provide the information requested below and all data necessary to support the assertions made. **[New Unit Proposals, Existing Unit Proposals]**

Section

5.0 This section is used to describe, at the highest level, the project's facilities. The discussion should clearly describe the assumptions as to what degree, if any, the new facilities will interface and rely on or enhance existing facilities.

- **Layout and Location**—Describe the location of the new facilities on site using a conceptual layout drawing. If existing facilities are present, show them in relation to the new units. The drawing(s) should show the location and size of the units and auxiliaries, stacks, fuel and water delivery systems, fuel and water storage tanks, waste water handling and disposal systems, water treatment systems, sanitary waste treatment systems, site storm water management systems, effluent storage system and tanks, etc. The site layout shall also identify wetland boundaries, buffers, etc. The drawing(s) should show the plant access for operations and construction, construction lay down and parking as well as security and buffer arrangements. The drawing(s) shall also show, in phantom, the location for future build-out reserve areas.
- **Offices, Control Room, Shops and Warehousing**—Describe what facilities are going to be built or added, either to existing or as stand alone facilities. With regard to office and shop space, describe the number of individuals to be housed in offices, and the assumption on the level of maintenance work to be done in the shop.
- **Transmission and Substation**—Describe in general terms how the unit(s) are, or are proposed to be, interconnected to the Progress Energy Florida transmission system. Describe conceptually the substation arrangement (e.g. breaker and a half scheme) and at what voltage level the units are to be tied in to the substation. Describe the step up transformer including the MVA rating. Supply a single line diagram.
- **15 kV and Higher Equipment up to the Step up Transformer**—Describe the 15kV equipment from the generator leads to the step up transformer. This description shall include the iso-phase bus work, generator breaker and connected auxiliary transformers and equipment. This equipment should be described on a single line diagram.
- **Less than 15kV Electrical System**—Describe the lesser voltage electrical systems to be installed. Indicate any interface or tie in to existing systems. Redundant systems should be defined. The uninterruptible power source for the plant shall also be described. Include appropriate single line diagrams.
- **Plant Control Room Philosophy**—Describe in general terms the overall control room philosophy as to the balance of plant DCS and the interface with the unit specific control system. Describe any tie-ins or interface with existing plant systems. Describe the interface of the DCS unit controls to the RTU connection to the PEF Energy Control Center.
- **Raw, Service and Potable Water Facilities**—Describe any new and/or existing facilities and any interconnection between the facilities, if applicable. The description shall include the capability of the systems and the storage requirements.

- Demineralized Water Facilities—Describe demineralized water facilities. Include the throughput and the amount of waste water to be rejected. Describe the storage facilities and the amount of capacity available in hours of operation. Describe the nature of the demineralizer arrangement as to whether it is leased and if it includes pre-filtration and reverse osmosis. If buildings are required describe them as well.

5.1 Provide an operations and maintenance plan (O&M Plan) which demonstrates that the project will be operated and maintained in a manner to allow the project to satisfy its contractual commitments. This O&M Plan should indicate proposed project staffing levels, the schedule for major maintenance activities, plans for inspecting and testing of major equipment, entities responsible for operating and maintaining the project, and status and schedule for securing a maintenance agreement.

5.2 Provide an engineering design plan that identifies the following:

- generation technology, including the make/model/supplier's name
- emission control equipment, including the make/model/supplier's name
- major equipment to be employed, including the make/model/supplier's name
- major equipment vendors
- whether new or refurbished equipment will be used
- commercial in-service date **[Existing Unit Proposals only]**

5.3 Provide historic operating performance data (heat rate, EFOR, summer and winter MDC, number of starts) for the projects that demonstrate the proposed project will be able to achieve the operating targets specified. **[Existing Unit Proposals only]**

Provide historic operating performance data (heat rate, EFOR, summer and winter MDC, number of starts) for projects of similar technology that demonstrate that the proposed technology will be able to achieve the operating targets specified. **[New Unit Proposal only]**

5.4 Provide a heat and material balance diagram.

5.5 Specify any limitations the proposed project will have regarding the start-up fuel system. If the project has or will have a secondary fuel, please specify whether the project will be able to start on either fuel independent of other fuel systems being completely out of service. Please specify whether the project will be able to switch fuel sources "on the fly."

5.6 Provide the following projected unit performance information:

- Equivalent Forced Outage Rate (EFOR)

$$EFOR = \frac{FOH + EFDH}{FOH + SH}$$

Where:

FOH = Forced Outage Hours: The sum of all hours experienced during forced outages.

- EFDH = Equivalent Forced Derated Hours: The summation of the products of the Forced Derated Hours (FDH) and size (MW) of reduction for each event, divided by the Seasonal Contract Capacity (SCC).
- FDH = Forced Derated Hours: The number of hours experienced during a forced derated event.
- SH = Service Hours: The total number of hours a unit was electrically connected to the transmission system.

- Equivalent Availability Factor (EAF)

$$EAF = [(AH - (EUDH + EPDH)) / PH]$$

Where:

- AH = Available Hours: Period Hours (PH) less Planned Outage Hours (POH), Forced Outage Hours (FOH) and Maintenance Outage Hours (MOH).
- PH = Period Hours: Number of hours in the period (month).
- POH = Planned Outage Hours: The sum of all hours experienced during planned outages and planned outage extensions.
- FOH = Forced Outage Hours: The sum of all hours experienced during forced outages.
- MOH = Maintenance Outage Hours: The sum of all hours experienced during maintenance outages and maintenance outage extensions.
- EUDH = Equivalent Unplanned Derated Hours: The summation of the products of Unplanned Derated Hours (UDH) and size (MW) of reduction for each event, divided by Seasonal Contract Capacity (SCC).
- UDH = Unplanned Derated Hours: The number of hours experienced during a forced derated event, a maintenance derated event, or scheduled derated extension of a maintenance derated event.
- EPDH = Equivalent Planned Derated Hours: The summation of the products of the Planned Derated Hours (PDH) and size (MW) of reduction for each event, divided by the Seasonal Contract Capacity (SCC).
- PDH = Planned Derated Hours: The number of hours experienced during planned derated event or scheduled derated extension of a planned derated event.

I. Chapter 6: Site Control

In this chapter of the proposal, the Bidder should demonstrate how its proposal complies with all of the site control requirements specified in Section III of the PEF 2013 RFP Document. Bidders are required to provide the information requested below and all necessary data to support the assertions made. **[New Unit Proposals, Existing Unit Proposals]**

Section

- 6.0** Provide a USGS map (7.5 minute scale) that indicates the project site location and the surrounding area of at least two (2) miles from the site center, identifies all generation, substation, and other equipment, and all new rights-of-way that would be required for the project, including critical dimensions. Show proximity to and identify the nearest PEF

substation and/or transmission line. Provide a recent aerial photograph showing the site location and surrounding area for at least one (1) mile from each site boundary.

- 6.1 Demonstrate site control either in the form of an agreement demonstrating ownership of the site, lease of the site for the term of the proposal, or at a minimum, an executed letter of intent to negotiate a lease for the site for the full contract term or term necessary for financing (whichever is greater) or to purchase the site. Provide a copy of a letter of intent or contract that demonstrates that the Bidder's proposal satisfies PEF's site control threshold. If the property is fee owned, a copy of the Title and Legal Description of the property is required.
- 6.2 If off-site rights-of-way are required for gas, electrical, water, or rail service, demonstrate site control either in the form of an executed letter of intent to negotiate a lease for the rights-of-way for the full contract term or term necessary for financing (whichever is greater) or to purchase the rights-of-way.

J. Chapter 7: Transmission Plan

In this chapter of the proposal, the Bidder should demonstrate how its proposal complies with all of the transmission requirements specified in Section III of PEF 2013 RFP Document. Bidders are required to provide the information requested below and all necessary data to support the assertions made.

Section

7.0 Bidders are required to provide a completed Transmission Information Schedule (Schedule 7).
[All Proposals]

7.1 If the proposed project or power source is located outside of PEF's control area, provide a transmission plan that identifies the project's proposed transmission path, including delivery point. Also provide evidence that the host control area utility and all wheeling utilities are willing to grant PEF the right to dispatch the output of New and Existing Unit Proposals or the right to schedule the power from System Power Proposals. Identify the PEF interface utility that would be used to deliver the power to PEF. **[Existing Unit Proposals, New Unit Proposals]**

For New Unit Proposals located outside of the PEF control area, bidders are required to provide one of the following from the host control area utility:

- A completed transmission interconnection feasibility study report.
- A transmission service agreement feasibility study report from the host control area utility.

In addition, for New Unit Proposals located outside of the PEF control area, bidders are required to provide the following:

- Host/Source Control Area.

- PEF Point-of-Receipt Interface Control Area.
- Submit all information requested in the Interconnection Request for a Large Generating Facility as submitted to the Host Control Area (see Appendix 1 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatioasis.com (see Schedule 7 instructions).
- Short Listed bidders with proposed projects outside of PEF's control area will be required to provide a completed transmission system impact study report (or equivalent, as agreed to by PEF) from the host control area utility within seven (7) calendar days after the announcement of the Short List.
- Final listed bidders with proposed projects outside of PEF's control area will be required to provide a completed transmission facility study report (or equivalent, as agreed to by PEF) from the host control area utility within seven (7) calendar days after the announcement of the Short List.
- Bidders are required to provide the contact information of a transmission planner from the host control area utility.

For Existing Unit Proposals located outside the PEF control area, bidders are required to provide the following:

- Host/Source Control Area.
- PEF Point-of-Receipt Interface Control Area.
- Submit a completed transmission service agreement study report from the host control area utility, in order for PEF to perform a Transmission Service Impact Study.

7.2 For projects located inside of the PEF control area, bidders are required to provide the following:

- Interconnection Request Queue Position and Date.
- Submit all information requested in the Interconnection Request for a Large Generating Facility (see Appendix 1 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatioasis.com (see Schedule 7 instructions). **[Existing Unit Proposals, New Unit Proposals]**,
- A completed Interconnection Feasibility Study Agreement (see Appendix 2 of Attachment P (LGIP) in PEF's OATT), **[Existing Unit Proposals, New Unit Proposals]**
- Seven days after announcement of Short List, submit a completed Interconnection System Impact Study Agreement (see Appendix 3 of Attachment P (LGIP) in PEF's OATT), **[Existing Unit Proposals, New Unit Proposals]** or

- An equivalent, as agreed to by PEF (bidders must seek approval prior to submitting a proposal in response to this RFP) [**System Power Proposals**].

Final listed bidders with proposed projects inside of PEF's control will be required, if needed, to provide a completed transmission system facility study agreement report (or equivalent, as agreed to by PEF) within seven (7) calendar days after the announcement of the Final List.

K. Chapter 8: Fuel Supply and Transportation Plan

In this chapter of the proposal, the Bidder should demonstrate how its proposal complies with all of the fuel supply and transportation plan requirements specified in Section III of the PEF 2013 RFP Document and the degree to which it is consistent with PEF's requirements for a reliable fuel supply for the proposed project. Bidders are required to provide a preliminary fuel supply plan and all necessary data to support the assertions made regarding this plan. [**New Unit Proposals, Existing Unit Proposals**] Bidders interested in having PEF provide fuel tolling services should complete Section 8.1 rather than Section 8.0.

Section

8.0 The preliminary fuel supply plan for both primary and secondary fuels must specify or provide the information listed below.

- Provide a map of the fuel supply and transportation infrastructure for the proposed project and a description of supply and transportation alternatives available to the project. If natural gas is proposed as a fuel (primary or secondary), identify the proposed main pipeline source, the length of any lateral from the main pipeline to the site, and the size and pressure of the lateral. If oil is proposed as a fuel (primary or secondary), provide the fuel quality requirements, proposed on-site storage capacity (total usable volume and number of tanks), the proposed transport means to the site, and the distance from the expected supply source.
- Provide copies of all fuel supply and transportation agreements in place for the proposed project. If fuel supply and transportation contracts are not in place, provide a description of the types and quality of service for fuel supply and transportation sought, the pricing and operational requirements, the contract terms and conditions required, and the status of such arrangements including the date that such arrangements will be in place. If the Bidder has received proposals from fuel and transportation providers, the Bidder should include the preferred proposal as well as a description of the experience of the Bidder in developing similar supply arrangements.
- Specify the criteria that would be used to select the ultimate fuel supplier and transportation service providers.
- If a secondary fuel is to be used, provide supporting information for the periods over which the primary and secondary fuel supply are expected to be used. The Bidder must specify

any months in which the usage of the primary fuel is expected to be curtailed and the conditions under which the primary fuel is expected to be curtailed.

- Indicate whether transportation would be provided from existing capacity or whether new construction would be required. If new construction is required, provide an assessment of the availability of rights-of-way.
- If natural gas is being proposed, indicate the required gas pressure for the proposed project and confirm the capability of the pipeline to deliver natural gas to the project at or above that pressure.
- If natural gas is being proposed, indicate the amount of fixed pipeline demand/reservation (in mmBtu per day) on which the pricing is based.
- Describe the liquid fuel unloading facilities. This should include the number of truck or rail unloading stations and the unloading rate for the unloading facility. Describe the amount of existing storage and any new oil storage required. Describe if the storage is single or double walled and the amount of fuel oil storage dedicated to any new units. Describe whether a storage tank fire protection system is, or will be installed.

8.1 PEF is willing to consider tolling proposals. If the Bidder is interested in PEF providing fuel tolling services, the following information must be included in its proposal:

- Provide a map of the fuel supply and transportation infrastructure for the proposed project and a description of supply and transportation alternatives available to the project. If natural gas is proposed as a fuel (primary or secondary), identify the proposed main pipeline source, the length of any lateral from the main pipeline to the site, and the size and pressure of the lateral. If oil is proposed as a fuel (primary or secondary), provide the fuel quality requirements, proposed on-site storage capacity (total usable volume and number of tanks), the proposed transport means to the site, and the distance from the expected supply source.
- If a secondary fuel can be used, provide information for the periods over which the primary and secondary fuel supply is expected to be used.

[Existing Unit Proposals]

- The name of gas pipeline(s) with which the project is interconnected
- Location of the interconnection/meter
- Flow capability of each meter at the plant and the pressure requirement
- The name of the Operator Account
- Specify whether there are other units at the site that serve other customers such that a balancing agreement would need to be developed with a third party.

[New Unit Proposals]

- The name of gas pipeline(s) with which the project will be interconnected
- Location of the proposed interconnection/meter
- Specify whether the facility will serve only PEF such that the meter could be added to PEF's Operator Account.

L. Chapter 9: Project Financing Plan

The Bidder is required to provide evidence that the project is financially viable and that the project will likely be able to attract funds from investors and lenders. In this section of the proposal, the Bidder should demonstrate how its proposal complies with all of the project financial viability requirements specified in Section III of the PEF 2013 RFP Document and the degree to which it is consistent with PEF's preferences for proposals for which the Bidder is able to demonstrate that there is a high likelihood of the project securing funding. Bidders are required to provide the information requested below and all necessary data to support the assertions made.

Section

9.0 The financing plan must specify or provide the following: **[New Unit Proposals]**

- The projected cost of the project, broken down into the following major cost elements:

- Equipment

- Generation facilities

- Transmission Interconnection facilities

- Fuel facilities (e.g. pipeline interconnection, oil storage tanks, rail spurs)

- EPC Contractor

- Contingency

- Licensing, permits and site certificates

- Interest During Construction

- Other Costs.

- How the proposed project would be financed, including likely lenders and investors, the terms under which funds would be provided, and the respective percentage of funding represented by debt and equity.
- The timing for securing financing.
- A description of the project from a legal and financial standpoint indicating the actual ownership structure, the entities that will have ownership interests and their percentage interests in the project, their responsibilities for the development of the project, and their responsibilities for funding of project development expenses.
- Provide documentation demonstrating the relevant experience of the Bidder (or partner responsible for securing financing) in obtaining financing for other power generation projects.

9.1 The Bidder is required to provide sufficient financial information to enable PEF to assess the financial strength and credit of the entity that would execute a contract with PEF. Subsidiaries or affiliates of companies that desire the project's viability be judged based on a parent company or affiliated company must indicate the extent to which the parent or affiliate will provide financial guarantees for the proposed project and under what circumstances it would do

so. To enable PEF to make such an assessment, Bidders are required to provide the following information: **[All Proposals]**

- For publicly traded companies, provide copies of annual reports and Form 10-Ks for the two most recent years. For privately held companies, provide copies of audited financial statements, including, at a minimum, income statements, balance sheets, cash flow statements, and notes to financials for the two most recent years.
- Dunn and Bradstreet identification number credit rating of the Bidder's senior unsecured debt securities.

9.2 The Bidder is required to include a discussion of the potential for increases or decreases in PEF's cost of capital and any competitive advantage the Bidder's financing arrangements may give the Bidder. **[All Proposals]**

9.3 For proposals that will be seeking to obtain project financing, Bidders are required to provide full project financial Pro Formas that supply, at a minimum, the information outlined in Schedule 8, Project Pro Formas Schedule, for the proposed financing term. For purposes of completing this pro forma, Bidders should assume an appropriate project capacity factor for the technology being proposed (10% for peaking duty, 50% for intermediate duty, and 80% for baseload duty). Actual project capacity factors will vary. The assumed capacity factor is used only to review the project's financial viability as indicated by the Bidder's project pro forma. PEF reserves the right to request project pro formas from all short-listed proposals. **[New Unit Proposals]**

M. Chapter 10: Commercial Operation Date Certainty

The Bidder is required to demonstrate that its New Unit Project will be able to achieve the June 1, 2013 commercial operation date requirement. As part of this demonstration, the Bidder is required to provide a critical path diagram and schedule for the project that conforms to the requirements specified below. PEF will evaluate the reasonableness of the following aspects of the Bidder's proposed schedule: permitting, securing the project site, fuel supply and transportation arrangements, engineering design, equipment procurement, project financing, project construction, and start-up and testing. PEF's evaluation will consider the evidence presented by the Bidder that the proposed schedule for each of these project elements is reasonable. For the purposes of developing this schedule only, the Bidder should assume that negotiations are finalized by December 12, 2008. However, specifying this date should not be construed as a commitment by PEF to finalize negotiations by this date.

Section

10.0 Provide a critical path diagram and schedule for the project that specifies the critical path for each of the elements of the project development cycle including but not limited to, the following: permitting, securing the project site, fuel supply and transportation arrangements, engineering design, equipment procurement, construction and permanent financing, project construction, and start-up and testing. **[New Unit Proposals]**

- 10.1 Complete Schedule 9, the Project Milestone Schedule, which will be included as part of an executed contract. **[New Unit Proposals]**
- 10.2 The Bidder should provide a summary of its current and planned electric power resources including such information as the source of supply, contract terms, and accessibility to the PEF system. For proposals that require new resources be built to maintain a reliable supply on the host system, Bidders are required to state the type of capacity to be built and provide evidence that the required construction can be completed in time to maintain a reliable supply. **[System Power Proposals]**
- 10.3 If the proposed project will be providing steam or electricity to a host customer, indicate the name of the entity to whom this service will be provided, the type and amount of energy to be provided, and the status of negotiations regarding the terms and conditions under which such service will be provided, including appropriate documentation of such contracts. **[New Unit Proposal, Existing Unit Proposal]**

N. Chapter 11: Bidder Experience

The Bidder is required to provide evidence regarding its relevant experience in developing projects that are of an equivalent size and technology. PEF will evaluate each Bidder's relevant experience in six areas: permitting, engineering, financing, fuel procurement, project construction, and operations and maintenance, including environmental compliance. For proposals that rely on a project team composed of more than one firm to develop the project, the Bidder should indicate its relevant experience in working with other team members to develop projects.

Section

- 11.0 Provide for at least five comparable projects a project reference not affiliated with the Bidder. For each reference, specify a contact name, title, company, address, and phone number.

For each project, indicate the utility or company served and provide a description of the project, including project location, the size and type of project, the scheduled and actual in-service date, and the availability factor achieved. **[New Unit Proposals, Existing Unit Proposals]**
- 11.1 For each of the project participants, provide an experience statement which lists the relevant experience of the firm, including other projects of a similar type, size, and technology. Describe the experience in the following six areas: permitting, engineering, financing, fuel procurement, project construction, and operations and maintenance, including environmental compliance. **[New Unit Proposals, Existing Unit Proposals]**
- 11.2 Provide documentation regarding the contractual relationship between the Bidder and all additional project participants and vendors. If this contractual relationship has not been finalized, specify the schedule for doing so. **[New Unit Proposals]**
- 11.3 Indicate if the Bidder has failed to perform under any contracts or agreements for power supplies. If so, please explain. **[All Proposals]**

- 11.4 Provide a summary of current litigation activity, with supporting explanatory information as necessary, related to (1) provision of energy products and services (fuel, power, ancillary services, engineering, on-site services); (2) lease option arrangements for assets; (3) purchases of energy products and services (as above); or (4) industrial construction projects (power plants, industrial plants, cogeneration facilities, etc.). **[All Proposals]**

O. Chapter 12: Acceptance of the Pro-Forma Agreements

[All Proposals]

Attachment A to the PEF 2013 RFP Document represents pro-Forma Tolling and Non-Tolling Agreements that PEF will be utilized during contract negotiations. The Pro-Forma Agreements were developed assuming the resources are in the PEF Control Area. For System Power Proposals, or to the extent the resources are off-system, some definitions, terms, and conditions may not apply or may need to be revised to reflect the location of the resource.

Bidders willing to accept PEF's Pro-Forma Agreements (Attachment A to PEF 2013 RFP Document) without exceptions should indicate this in their proposals. Bidders with exceptions to the Tolling and Non-Tolling Pro-Forma Agreements should indicate all exceptions in red-lined form. Each exception should be clearly described, the requested change clearly identified, and the associated paragraph and page number from the Pro-Forma Agreements indicated. Bidders may provide the red-lined form using the Word version that was included in the RFP Package. Red-lined versions of the Pro-forma Agreements should be accompanied by a textual discussion which reviews the reason for the exception.

Progress Energy Florida RFP for Power Supply Resources

Notice of Intent to Bid - Non Binding

Name of Bidder
Bidder Contact

Bidder Name _____
Contact Name _____
Address _____
Telephone _____
Fax _____
E-mail address _____

Bidder Representatives
Attending Bidders
Conference

Names: _____

Bidders Conference will be held on June 19, 2008 at the Tampa Westshore Marriott at 1:00 PM

All potential Bidders are requested to submit a Notice of Intent to Bid to Progress Energy Florida's Official Contact by June 19, 2008.

Respond by fax, mail, or
e-mail to:

David Dawson
PEF Resource Planning
6565 38th Ave North
St. Petersburg, FL 33710

Telephone number: (727) 344-4165
Fax number: (727) 344-4184
E-mail address: PEF2013RFP@pgnmail.com

Web Site: www.progress-energy.com/PEF2013RFP

Schedule A

Project Summary

Name of Bidder								
Bidder Contact	Name	_____						
	Address	_____						

	Telephone	_____						
	Fax	_____						
	e-mail address	_____						
Project Name		_____						
Project Location	County	_____						
	State	_____						
Contract Start Month/Year		_____						
Term of Proposal	Years	_____						
Seasonal Contract Capacity (MW)	Summer	_____						
	Winter	_____						
Proposal Type	Check One	<table style="margin-left: 20px;"> <tr> <td style="padding: 2px;">New Unit</td> <td style="width: 20px; text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Existing Unit</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">System Power</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	New Unit	<input type="checkbox"/>	Existing Unit	<input type="checkbox"/>	System Power	<input type="checkbox"/>
New Unit	<input type="checkbox"/>							
Existing Unit	<input type="checkbox"/>							
System Power	<input type="checkbox"/>							
Generation Technology	Technology	_____						
Fuel Type	Primary	_____						
	Secondary	_____						
Heat Rate @ Max Load	Summer	_____ HHV						
	Winter	_____ HHV						

**Schedule 2'
Pricing Schedule for System Proposals**

Contract Start Month:
 Contract Start Year:
 Contract End Year:

Number	Contract Year											
	1	2	3	4	5	6	7	8	9	10	11	12
Beginning	08/01/13	08/01/14	08/01/15	08/01/16	08/01/17	08/01/18	08/01/19	08/01/20	08/01/21	08/01/22	08/01/23	08/01/24
Ending	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22	12/31/23	12/31/24
Proposed Contract Capacity (MW)												
Asset Class												
Asset Type												
Capacity Charge (\$/MW-year)												
Transmission Charge (\$/MW-year)												
Total Plant Charges (\$/MW-year)												
Variable Payment												
System Fuel Energy Price (\$/MWh)												
Non-Fuel Energy Price												
Other												
Plant Payment												
Plant Price (\$/MWh)												
Contract Capacity (MW)												
Contract Capacity (MW)												
Contract Capacity (MW)												

Reference Price Forecasts (MWh/MWh)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Natural Gas, Henry Hub	8.51	8.02	8.26	8.42	8.75	9.07	9.38	9.70	9.75	9.89	10.27	10.51	10.80	10.86	11.07
Mid. S. Gas, 11.9¢ Btu, 3000Btu/MWh, delivered to Florida Gulf Coast	8.93	18.48	18.87	18.98	11.23	11.90	11.77	12.08	12.17	12.32	12.48	12.61	12.75	12.84	12.96
No. 2 Oil, 95¢ Bbl, delivered to Florida Gulf Coast	13.87	14.42	14.70	14.98	15.41	15.77	16.12	16.48	16.86	16.90	17.13	17.36	17.58	17.68	17.81

Notes:
 1. For instructions on completing this schedule, refer to Response Package, Section 8 E.
 2. Even though first year will be a partial year, use the ANNUALIZED contract term.
 3. Reference Price Forecasts are for reference purposes only and may be used to represent an index; they are not firm prices. Forecasts are subject to change.

**Schedule 3
Capacity States and Heat Rates for New and Existing Unit Proposals'**

Specify Capacity States (MW) and Net Heat Rates (Btu/kWh) for each Season.
Winter is defined as January, February, March, April, November, and December.
Summer is defined as May, June, July, August, September, and October.

Plant operation _____ Unit

Number	Contract Year												Contract Year												
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Beginning	06/01/13	01/01/14	01/01/15	01/01/16	01/01/17	01/01/18	01/01/19	01/01/20	01/01/21	01/01/22	01/01/23	01/01/24	01/01/25	01/01/26	01/01/27	01/01/28	01/01/29	01/01/30	01/01/31	01/01/32	01/01/33	01/01/34	01/01/35	01/01/36	01/01/37
Ending	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22	12/31/23	12/31/24	12/31/25	12/31/26	12/31/27	12/31/28	12/31/29	12/31/30	12/31/31	12/31/32	12/31/33	12/31/34	12/31/35	12/31/36	12/31/37
Equipment	Winter Fuel Load Capacity (MW)																								
	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
	Summer Full Load Capacity (MW)																								
Options	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
	Winter Minimum Load (MW)																								
	Net Heat Rate-Primary Fuel																								
Options	Net Heat Rate-Secondary Fuel																								
	Summer Minimum Load (MW)																								
	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
Options	Winter-Capacity State 2 (MW)																								
	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
	Summer-Capacity State 2 (MW)																								
Options	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
	Winter-Capacity State 3 (MW)																								
	Net Heat Rate-Primary Fuel																								
Options	Net Heat Rate-Secondary Fuel																								
	Summer-Capacity State 3 (MW)																								
	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
Options	Winter-Capacity State 4 (MW)																								
	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								
	Summer-Capacity State 4 (MW)																								
Options	Net Heat Rate-Primary Fuel																								
	Net Heat Rate-Secondary Fuel																								

Notes:
 1. For instructions on completing this schedule, refer to Response Package, Section A.F.
 2. Capacity must be specified at net generation level at the Delivery Point.
 3. All heat rates must be expressed in Btu/kWh, higher heating value (HHV). Heat rates for capacity states must be average, not incremental, heat rates. Heat rates must incorporate any margin for degradation during the term of the contract. Degradation may be incorporated as an average over the term or annually.
 4. The Minimum Load point is considered Capacity State 1.

**Schedule 4
Operating Performance Schedule¹**

3in 3in

Contract and Unit Proprietor will have a direct communication link with Program Energy Planner's Control Center that enables Program Energy Plante to monitor the operation of the unit under automatic generation control (AGC) or PEP's control mode or a combination of automatic scheduling (AGC) or PEP's control mode.
(Show Unit Proposal, Existing Unit Proposal)

Program Energy Plante will be able to operate the unit to provide voltage support for the PEP system.
(Show Unit Proposal, Existing Unit Proposal) to PEP's control mode

Program Energy Plante will be able to operate the unit to provide frequency support for the PEP system.
(Show Unit Proposal, Existing Unit Proposal) to PEP's control mode

The proposed unit will be fully dispatchable by Program Energy Plante.
(Show Unit Proposal, Existing Unit Proposal)

The proposed unit will be fully dispatchable by Program Energy Plante.
(Show Unit Proposal, Existing Unit Proposal)

The Meter agent to coordinate maintenance schedule with Program Energy Plante.
(Show Unit Proposal, Existing Unit Proposal)

The level of on-site fuel storage (equivalent hours of operation at full load without refilling).
(Show Unit Proposal, Existing Unit Proposal)

**Schedule 4
Operating Performance Schedule¹
(continued)**

Alternative Performance Evaluation Criteria (Show Unit Proposal, Existing Unit Proposal)

The maximum capacity level at which each unit may be operated within an AGC MW

The minimum capacity level (MW) at which each unit may be operated MW

The maximum capacity level (MW) within an AGC MW

The guaranteed start time required to bring each unit from a cold start to minimum load level (hr) minutes

The guaranteed ramp rate for each unit from the minimum loading level MW/min (MW/hr)

The ramp rate for each unit from the minimum loading level within an AGC MW/min (MW/hr)

The maximum number of starts per unit that PEP would be allowed per year. (This table will include other limited settings or operational performance will not be included when determining the number of starts requested by PEP.) starts/year (MW)

The maximum number of hours each unit has been taken off-line per year hours

The maximum number of hours each unit has been taken off-line per year hours

The maximum number of hours during a year that PEP would be allowed to operate the facility (or power plant) hours (MW)

Additional Information (Show Unit Proposal, Existing Unit Proposal)

The Equivalent Forced Outage Rate (FER) is

Specify the average number of days per year of scheduled maintenance for each unit, consistent with Schedule 3

Unit	Maintenance Days/Year

¹ For instructions on completing this schedule, refer to Response Package, Section 3.7.

**Schedule 6
Air Emissions Schedule**

Primary Fuel						
Fuel Type:	0		Maximum Hours of Operation:			
Pollutant	Facility at Maximum Load Conditions				Facility Total (Including all sources at ISO conditions)	
	ppm	lbs/MMBtu	lbs/hr	Tons/yr	lbs/hr	Tons/yr
NOx						
VOCs						
SO2						
CO						
PM						
Sulfuric Acid Mist						
Hazardous Air						

Secondary Fuel						
Fuel Type:	0		Maximum Hours of Operation:			
Pollutant	Facility at Maximum Load Conditions				Facility Total (Including all sources at ISO conditions)	
	ppm	lbs/MMBtu	lbs/hr	Tons/yr	lbs/hr	Tons/yr
NOx						
VOCs						
SO2						
CO						
PM						
Sulfuric Acid Mist						
Hazardous Air						

Maximum Hours of Operation: hours
(sum of all fuels; consistent with Schedule 4, page 2)

**Schedule 7
Transmission Information Schedule**

Check the appropriate box and provide the requested information:

New Unit Proposal (Unit Inside PEF)

- Interconnection Request Queue Position and Date _____
- Submit all information requested in the Interconnection Request for a Large Generating Facility (see Appendix 1 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Submit a completed Interconnection Feasibility Study Agreement (see Appendix 2 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Seven Days after announcement of Short List, submit a completed Interconnection System Impact Study Agreement (see Appendix 3 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Seven Days after announcement of Final List, if needed, submit a completed Interconnection System Facility Study Agreement (see Appendix 4 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.

New Unit Proposal (Unit Outside PEF)

- Host/Source Control Area _____
- PEF Point-of-Receipt Interface Control Area _____
- Submit a completed transmission interconnection feasibility study report or a transmission service agreement study report from the host control area utility.
- Submit all information requested in the Interconnection Request for a Large Generating Facility as submitted to the Host Control Area (see Appendix 1 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Seven Days after announcement of Short List, submit a completed Interconnection System Impact Study report or transmission service agreement impact study report from the host control area utility, in order for PEF to perform a Transmission Service Impact Study.
- Seven Days after announcement of Final List, if needed, submit a completed Interconnection System Facility Study report.

Existing Unit Proposals (Unit Inside PEF)

- Submit all information requested in the Interconnection Request for a Large Generating Facility (see Appendix 1 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Submit a completed Interconnection Feasibility Study Agreement (see Appendix 2 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Seven Days after announcement of Short List, submit a completed Interconnection System Impact Study Agreement (see Appendix 3 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.
- Seven Days after announcement of Final List, if needed, submit a completed Interconnection System Facility Study Agreement (see Appendix 4 of Attachment P (LGIP) in PEF's OATT), which can be found at www.oatloasis.com.

Existing Unit Proposals (Unit Outside PEF)

- Host/Source Control Area _____
- PEF Point-of-Receipt Interface Control Area _____
- Submit a completed transmission service agreement study report from the host control area utility, in order for PEF to perform a Transmission Service Impact Study.

System Power Proposal

Host/Source Control Area _____

PEF Point-of-Receipt Interface Control Area _____

Study Deposit Requirements are \$10,000 for Feasibility Studies, \$50,000 for Impact Studies, and \$100,000 for Facility Study.

Contact information for transmission planner from the host control area utility:

[New and Existing Unit Proposals Outside PEF, System Power Proposals]

Company: _____

Name: _____

Street Address: _____

P. O. Box: _____

City, State, Zip Code: _____

Phone Number: _____

Fax: _____

Email: _____

Line No.	Schedule B Project Pro Forma Schedule ¹ (\$ 000's)											Schedule B Project Pro Forma Schedule ¹ (\$ 000's)																
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
PROJECT ASSUMPTIONS																												
Total Project Capital Cost (F 000's)	[]																											
Debt Ratio (%)	[]																											
Debt Cost (%)	[]																											
Debt Term (yrs)	[]																											
OPERATING REVENUES																												
1 Capacity Payments	[]																											
2 Fixed O&M Payments	[]																											
3 Energy Payments	[]																											
4 Other Revenues (optional)	[]																											
5 Total Revenues (1+2+3+4)	[]																											
OPERATING EXPENSES																												
6 Fuel - Commodity Costs	[]																											
7 Fuel - Transportation Costs	[]																											
8 Variable Operation & Maintenance Costs	[]																											
9 Fixed Operation & Maintenance Costs	[]																											
10 Wheeling Charges	[]																											
11 Insurance	[]																											
12 Property Taxes	[]																											
13 Administration	[]																											
14 Other Expenses (optional)	[]																											
15 Total Operating Expenses (6+7+8+9+10+11+12+13+14)	[]																											
16 Net Operating Income - Before Tax (5-15)	[]																											
TAXES																												
17 Tax Depreciation and Amortization	[]																											
18 Interest Expense	[]																											
19 Other Income / (Deductions) - Net	[]																											
20 Taxable Income (16-17-18+19)	[]																											
21 State Income Taxes Payable	[]																											
22 Federal Income Taxes Payable	[]																											
23 Income Taxes Payable (21+22)	[]																											
AFTER-TAX CASH FLOW																												
24 Principal Payments	[]																											
25 Revenue Receipts / (Withdrawals) - Net	[]																											
26 Net After Tax Cash Flow (16-18-23-24-25)	[]																											
27 Debt Service Coverage Ratio (16/23-24)	N/A																											

Notes:
¹ Bidders should enter data by each line item marked with an asterisk. Shaded cells will be automatically calculated by the system. Bidders should enter data by each line item marked with an asterisk. Shaded cells will be automatically calculated by the spreadsheet.

**Schedule 9
Project Milestone Schedule**

For all items other than Commercial Operation Date, specify the number of months prior to Scheduled Commercial Operation Date

Site Acquisition:	<input type="text"/>
Fuel Supply Contract:	<input type="text"/>
Facility Contracts:	<input type="text"/>
Public Service Commission Approval:	<input type="text"/>
Air Permit:	<input type="text"/>
Commencement of Construction:	<input type="text"/>
Delivery of Turbine-Generator Equipment:	<input type="text"/>
Wheeling Agreements:	<input type="text"/>
Financial Closing:	<input type="text"/>
Commercial Operation Date:	<input type="text"/>