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Exhibit B

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FPSC-COMMISSION CLERK

“Delivery Excuse” means an event solely or substantially due to actions or omissions by Buyer and no more than nominally attributable to Seller and/or the EPC Contractor, which prevents or delays delivery of Energy hereunder.

“Delivery Start Date” means the Taking Over Date, as defined in the EPC Contract, provided that, in the event the Taking-Over Date is delayed as a result of a Delivery Excuse, the Delivery Start Date shall be the earliest date on which the Taking-Over Date would otherwise have occurred in the absence of a Delivery Excuse.

“Dispute” has the meaning assigned to it in Section 16.1.

“Disputing Party” has the meaning assigned to it in Section 13.7(a).

“Distribution System” means the distribution system consisting of electric lines, electric plant, transformers and switchgear is used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

“Dollars” means United States Dollars.

“Downgrade Event” has the meaning assigned to it in Section 6.9(f)

“Drop Dead Date” means the date which is [REDACTED] following the latest date by which any appeal could have been (but was not) taken in connection with the final approval of this Agreement by the FPSC.

“Due Date” means, with respect to any invoice delivered by Seller pursuant to Section 13.1, the 15th Day of the Month following the Month in which the invoice was sent, or if such 15th Day is not a Business Day, then the next succeeding Business Day.

“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.

“Effective Date” has the meaning assigned to it in Section 3.1(n).

“Electrical Interconnection and Operating Agreement” means the agreement between Seller and the Transmission Provider providing for the physical connection and operation of the Electrical Interconnection Facilities between the Facility and the Transmission System.

“Electrical Interconnection Facilities” means the interconnection facilities that physically connect the Facility with the Transmission System, as well as any required network upgrades thereto, as more fully described in the Electrical Interconnection and Operating Agreement.

“Electrical Interconnection Point” means the physical point at which the Facility is connected with the Transmission System or, if Seller interconnects with a Transmission System other than Buyer’s, Buyer’s interconnection with the Transmission Provider’s Transmission System, or such other physical point on which Seller and Buyer may agree.

which policy shall contain a broad form contractual endorsement specifically covering liabilities arising out of the interconnection with the Facility, or caused by the operation of the Facility or by Seller's failure to maintain the Facility in satisfactory and safe operating condition.

- (b) The insurance policy providing such coverage shall provide public liability insurance, including bodily injury and property damage, in an amount not less than [REDACTED] for each occurrence. The required insurance policy shall be endorsed with a provision requiring the insurance company to notify Buyer at least thirty (30) Days prior the effective date of any cancellation or material change in the policy.
- (c) Seller shall pay all premiums, deductibles and other charges due on said insurance policy and shall keep said policy in force during the Term of the Agreement.

5.2. Maintenance of "Occurrence" Form Policies

The coverage required by this Section 5 and any "umbrella" or excess coverage shall be "occurrence" form policies. In the event Seller should have "claims-made" form coverage the retroactive date shall be the Effective Date and coverage shall be extended for two years following termination of this Agreement. Prior written approval of all "claims-made" policies must be obtained from Buyer.

5.3. Policy Endorsements

Seller shall cause its insurers to provide the following endorsement items in all comprehensive or commercial general liability and, if applicable, umbrella or excess liability policies required by this Section 5 relating to the ownership, construction, operation and maintenance of the Facility:

- (a) Buyer, its directors, officers and employees shall be additional insureds under such policies.
- (b) The insurance shall be primary with respect to the interests of Buyer, its directors, officers, and employees, and any other insurance maintained by them shall be excess and not contributory with such policies.
- (c) A cross liability clause substantially to the effect set forth below shall be made a part of the policy:

"In the event of Claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or

- (d) Buyer shall have the right and Seller shall be required to monitor the financial condition of the Issuer(s) in the event any Letter of Credit is provided by Seller. In the event the Senior Debt Rating of any Issuer(s) has deteriorated to a level below the level stated in clause (b) of this Section 6.9, Buyer may require Seller to replace the Letter(s) of Credit. Replacement Letter(s) of Credit must meet the requirements listed in clause (b) of this Section 6.9 within ten (10) Days following written notification to Seller of the requirement to replace.
- (e) Failure by Seller to comply with the requirements of this Section 6.9 shall, absent a cure by Seller in accordance with Section 17 hereof, be grounds for Buyer to draw in full on the existing Letter of Credit and will constitute a Seller Remedial Event. In the event of any other Seller Remedial Event, Buyer shall not be entitled to receive, draw upon or retain, as the case may be, any portion of the applicable security until such Seller Remedial Event shall be deemed a Seller Non-Remedial Event, as described in Section 17.1(b)(iii) hereof. In the case of any Seller Non-Remedial Event, Buyer shall be entitled immediately to receive, draw upon or retain, as the case may be, one hundred percent (100%) of the applicable security.
- (f) Buyer covenants that, in the event its credit rating by Moody's and Standard & Poor's should fall below the Minimum Investment Rating (a "Downgrade Event") then, upon written request by Seller, Buyer shall, within ten (10) Days of receipt of such request, post security in the form of a Letter of Credit in favor of and reasonably acceptable to Seller. Such Letter of Credit shall be in the amount no greater than [REDACTED] Buyer's failure to post or maintain such security in the form, at the time, and at the level described in this Section 6.9 shall constitute a Buyer Remediable Event. If and when Buyer's credit rating is thereafter restored to the Minimum Investment Rating, the Letter of Credit will no longer be required and shall be cancelled. In the event of a subsequent Downgrade Event, Buyer shall again be required to post security in the form of a Letter of Credit as herein described. Should a Downgrade Event continue for a period in excess of sixty (60) Days, and any payments required hereunder by Buyer to Seller shall not have been made, or cured within the applicable period specified herein, and such Downgrade Event shall have become a Buyer Non-Remediable Event, Seller shall be entitled to draw upon the Letter of Credit to satisfy any payments that are due and owed to Seller.

- (b) In the event that Seller should determine that the expected Capacity Commencement Date is unfeasible or inappropriate, Seller shall promptly notify Buyer and shall advise Buyer of the new expected Capacity Commencement Date, which shall be on or before the Required Capacity Commencement Date.
- (c) The receipt of the above schedules, data, certificates and reports by Buyer shall not be construed as an endorsement by Buyer of the design of the Facility, does not constitute a warranty by Buyer as to the safety, durability or reliability of the Facility, otherwise relieve Seller of any of its obligations or potential liabilities under the Project Contracts or the Financing Documents or, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

7. FUEL

7.1. Compliant Fuel

All Energy to be supplied by Seller to Buyer under this Agreement, other than Energy produced using Start-Up Fuel, which shall not exceed five percent (5%) of the total annual thermal Energy production output of the Facility during a Contract Year, shall be produced using Fuel.

7.2. Fuel Storage

During the Term of this Agreement, Seller shall maintain sufficient Fuel at the Facility Site to deliver the Capacity and Energy associated with the Committed Capacity for an uninterrupted [REDACTED] period. At Buyer's request, Seller shall demonstrate this capability to Buyer's reasonable satisfaction.

8. ENVIRONMENTAL ATTRIBUTES

8.1. Limited Sale of Environmental Attributes

Other than as specified in Sections 8.2(d) and 8.2(e) below, effective from the Capacity Commencement Date, Buyer shall purchase all Energy from Seller and Buyer shall retain the right to market and sell all of the Environmental Attributes (defined below) associated with the generation of Energy by the Facility; provided, however, that nothing in this Section shall have any effect upon the monetary amounts for the Capacity Payment or Firm Energy Rate, as the same may otherwise be provided for herein.

8.2. Retention of Environmental Attributes

- (a) The Parties understand and agree that the Facility is a "renewable" electricity generation source that produces "green electricity" using Municipal Solid Waste. Other than as specified in clauses (d), (e) and (f) below, Buyer shall retain all right, title, and interest in and to all Environmental Attributes associated with the

- (d) Environmental Attributes in the form of Production Tax Credits as defined under Section 45 of the Internal Revenue Code of the United States as in effect on the date of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from Municipal Solid Waste shall be owned by Seller.
- (e) Environmental Attributes in the form of RECs shall initially be owned by Seller and may be purchased by Buyer, pursuant to the terms of this Section 8.2(e). Buyer's purchase rights with respect to the RECs are as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. SCHEDULING AND DELIVERY

9.1. Energy Sale and Delivery

In accordance with the terms and conditions hereof, commencing on the Capacity Commencement Date and continuing throughout the Term, Seller shall sell and deliver to the Electrical Interconnection Point, and Buyer shall purchase at the Electrical Interconnection Point, Committed Capacity and all of the Energy produced by the Facility.

- (b) Except as otherwise provided in this Agreement, for each Monthly Billing Period commencing on or after the Capacity Commencement Date, Buyer shall pay Seller for all Energy delivered to the Electrical Interconnection Point as follows:
 - (i) The calculation of payments to Seller for Energy delivered to Buyer on and after the Capacity Commencement Date shall be the sum over all hours of the Monthly Billing Period, as defined in Appendix 12.1, of the product of (A) each hour's Firm Energy Rate (\$/MWh); and (B) the amount of Energy (MWh) delivered to Buyer from the Facility during that hour.
 - (ii) The Firm Energy Rate (\$/MWh) shall mean [REDACTED]

12.2. Regulatory Changes

- (a) Buyer's payment obligations under this Agreement are expressly conditioned upon the mutual commitments set forth in this Agreement and upon Buyer being fully reimbursed for the retail service portion of all payments to Seller through the Fuel Adjustment Clause (as herein defined) and the Capacity Cost Recovery Clause (as herein defined) or other authorized rates or charges.
- (b) For purposes of this Agreement, "Fuel Adjustment Clause" shall mean the clause set forth in FPSC Order No. 2515-A dated April 24, 1959, that is intended to compensate Buyer for day-to-day fluctuations in the cost of fuel incurred in serving its retail customers, which cost cannot be anticipated in base rates; the Fuel Adjustment Clause shall be constructed and applied so as to reimburse Buyer for the increase in the cost of fuel as related to the generation of Energy for retail customers and operates so as to pass on to the retail customers the allocated portion of any savings realized by Buyer from any decrease in the cost of fuel.
- (c) For purposes of this Agreement, "Capacity Cost Recovery Clause" shall mean the clause set forth in FPSC Order No. 25773 dated February 24, 1992, that is intended to compensate Buyer for day-to-day fluctuations in the cost of Capacity related purchase power costs related to service to Buyer's retail customers that is not currently being recovered through fuel or oil backout charges. The Capacity Cost Recovery Clause shall be constructed and applied so as to reimburse Buyer for the increase in the cost of capacity-related purchased power costs related to service to its retail customers and operates so as to pass on to the retail customers the allocated portion of any savings realized by the utility from decreases in the cost of capacity-related purchased power.
- (d) Notwithstanding any other provisions of this Agreement, should Buyer at any time during the Term be denied authorization by FPSC (or any other regulatory bodies having future jurisdiction over Buyer's retail rates and charges) to recover from its retail customers all payments required to be made to Seller under the terms of this Agreement, payments to Seller from Buyer shall be reduced accordingly. Neither

Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, Change(s) in Environmental Law(s) will not be deemed to have occurred unless the Increased Environmental Costs resulting from such Change(s) in Environmental Law(s) exceed [REDACTED] in the aggregate during the Term.

- (d) If a Party's Increased Environmental Costs should meet the threshold requirements set forth in Section 12.3(c) above, the Parties may renegotiate the terms of this Agreement. In the event the non-affected Party does not agree, in its sole discretion, to renegotiate this Agreement or to compensate the affected Party for such Increased Environmental Costs, then the affected Party may terminate this Agreement upon one hundred and eighty (180) Days written notice to the other Party in the manner provided for in Section 18.3.

12.4. Payment Adjustments

Payments to be made under this Agreement shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties or resolved in accordance with the provisions of Section 16 hereof.

12.5. Survival on Termination

The provisions of this Section 12 shall survive the repudiation, termination or expiration of this Agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

13. BILLING AND PAYMENT

13.1. Statements and Payment of Electricity Payments

- (a) Buyer shall read or have read on its behalf the Metering Equipment at the Electrical Interconnection Points at midnight Eastern Prevailing Time on the last Day of each Month, unless otherwise mutually agreed by the Parties.
- (b) Payments due shall be determined and adjusted in accordance with Appendix 12.1.
 - (i) From and after the Capacity Commencement Date, Buyer shall pay to Seller, monthly in arrears, Payments in accordance with the provisions of clause (c) below.
 - (ii) Prior to the Capacity Commencement Date, Buyer shall pay to Seller, monthly in arrears in accordance with the provisions of clause (d) below, for all Energy delivered to Buyer.

14.6. Force Majeure Restoration

- (a) In the event that, as a result of one or more Force Majeure Event(s) or its or their effects or by any combination thereof, the construction or operation of the Facility or any part thereof is affected and is not restored or remedied within thirty (30) Days following the date the Force Majeure Event(s) began, then Seller shall prepare and deliver a Restoration Report pursuant to Section 14.8 and provisions (c)-(e) of this Section 14.6 shall apply.
- (b) Subject to the terms of the Financing Documents and clauses (c) and (d) below, Seller shall proceed with the remedying of the construction or operation of the Facility ("Restoration") in accordance with a schedule contained in the relevant Restoration Report, as defined in Section 14.8 hereof (the "Restoration Schedule"). The cost of such Restoration shall be the sole responsibility of Seller and no compensation shall be payable by Buyer to Seller with respect to any damage to the Facility as a result of the Force Majeure Event.
- (c) If Buyer does not agree with the Restoration Schedule contained in the Restoration Report, then Buyer shall notify Seller within fifteen (15) Days of receipt of the Restoration Report and shall, in such notice, propose an alternative Restoration Schedule. If the Parties cannot agree upon a revised Restoration Schedule within the fifteen (15) Day period following the notice, then either Party may submit the matter to arbitration pursuant to Section 16 to determine the proper Restoration Schedule. Notwithstanding the foregoing, Seller shall, subject to satisfying any of the conditions or requirements of the entity providing the financing for the Restoration (including any insurance company paying a claim to Seller), have the option to proceed with the Restoration or while the issue of the Restoration Schedule is being resolved.
- (d) If Restoration of the Facility is not technically feasible or the Restoration cost estimate is greater than [REDACTED], then Seller shall have the right to terminate this Agreement. Seller shall not be entitled to any compensation from Buyer unless Buyer, at its option, elects that Seller shall sell the Facility to Buyer or its designee. If Buyer does not give notice of its election to purchase within ninety (90) Days of the effective date of termination, Buyer shall have no further rights with respect to the Facility.
- (e) Where Seller is prevented from complying with its obligations under this Agreement as a result of one or more Force Majeure Event(s) or its or their effects or by any combination thereof for a continued period of one hundred eighty (180) Days, then either Party shall have the right to terminate this Agreement.

14.7. Restoration Project Consents

Notwithstanding anything herein to the contrary, Seller shall not be required to proceed with any Restoration unless and until it shall have received all necessary Additional Project

- (b) Each Party (the "Indemnifying Party") agrees, to the extent permitted by Applicable Law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "Buyer Entities" and "Seller Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:
- (i) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;
 - (ii) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system;
 - (iii) any defect in, failure of, or fault related to, the Indemnifying Party's generation system; or
 - (iv) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees.

15.3. Assertion of Claims to Exceed Minimum Indemnification Amount

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification for any loss that would otherwise be the subject of indemnification until all losses of such Party during the then-current Year exceed [REDACTED] in the aggregate, in which event such Party shall seek recovery for all its losses for such Year. For the purposes of this Section 15.3, a loss (or claim for indemnification) shall be deemed to arise in the Year the event giving rise to such loss (or claim for indemnification) occurred, or if the event is continuing in more than one (1) Year, in the Year such event ends.

15.4. Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of the other Party) for non-compliance with any municipal, state or federal laws shall be the sole responsibility of the non-complying Party.

15.5. Notice of Proceedings

Each Party shall promptly notify the other Party of any loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Section 15.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding and that such loss or proceeding may give rise to an indemnification, but in any event no later than fourteen (14) Days after the receipt by the Party seeking indemnification of notice of the commencement of any action for which indemnity may

then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures.

17. TERMINATION AND DEFAULT PROVISIONS

17.1. Termination upon Events of Default

- (a) Remediable Events of Default by Seller. Each of the Events of Default described below shall be deemed a "Seller Remediable Event":
- (i) the failure of Seller within One Hundred and Twenty (120) Days after its receipt of the Project Consents to commence construction of the Facility as evidenced by the undertaking of the activities usually and customarily undertaken under internationally accepted construction standards and practices applicable to projects similar to the Facility;
 - (ii) after commencement of construction of the Facility, a general suspension or abandonment by Seller or any Contractor of the construction of the Facility for more than one hundred and twenty (120) consecutive Days;
 - (iii) Seller fails upon request by Buyer pursuant to Section 6.2(f) hereof to re-demonstrate the Facility's Capacity Commencement Status to the satisfaction of Buyer;
 - (iv) the failure by Seller to make any payment under this Agreement when due and payable;
 - (v) Seller fails to perform or comply with any other material terms and conditions of this Agreement and fails to conform to said terms and conditions within sixty (60) Days after a demand by Buyer to do so or within another period as specified otherwise in this Agreement;
 - (vi) Seller materially changes or modifies the Facility from that provided in Recital (A) with respect to its type, location, technology or fuel source, without the prior written approval of Buyer;
 - (vii) Seller fails to satisfy its obligations to maintain sufficient fuel on the site of the Facility to deliver the Capacity and Energy associated with the Committed Capacity for an uninterrupted [REDACTED] period under Section 7.2 hereof;
 - (viii) Seller fails to provide the security and to comply with any of the provisions of Section 6.9 hereof;
 - (ix) the failure of the Seller to maintain QF status for the Facility;

- (x) Seller fails to achieve the Capacity Commencement Status on or before the Required Capacity Commencement Date;
 - (xi) Seller fails to maintain an Annual Capacity Billing Factor of at least █% for 12 consecutive months or more;
 - (xi) any of the representations or warranties made by Seller in this Agreement is false or misleading in any material respect as of the time made.
- (b) Non-Remediable Events of Default by Seller. Each of the Events of Default set forth below shall be deemed a "Seller Non-Remediable Event":
- (i) the occurrence of any of the following events:
 - (A) the voluntary passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to Seller, which resolution has not been reversed or rescinded within thirty (30) Days;
 - (B) the appointment of a trustee, liquidator, custodian, provisional manager or similar Person in a proceeding referred to in clause (A) above, which appointment has not been set aside or stayed within sixty (60) Days of such appointment; or
 - (C) the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of Seller, which order has not been set aside or stayed within sixty (60) Days;
 - (ii) after the Capacity Commencement Date, the Facility fails for twelve (12) consecutive Months to maintain an Annual Capacity Billing Factor, as described in Appendix 12.1, of at least █ (█%);
 - (iii) after a Seller Remediable Event shall have occurred and a Remedial Notice shall have been given by Buyer to Seller:
 - (A) in the case of a Seller Remediable Event described in Section 17.1(a)(i), the failure of Seller to commence construction of the Facility (evidenced as provided in Section 17.1(a)(i)) within thirty (30) Days after receipt of the Remedial Notice;
 - (B) in the case of an Seller Remediable Event described in Section 17.1(a)(ii), the failure of Seller to resume construction of the Facility within thirty (30) Days after receipt of the Remedial Notice;
 - (C) in the case of an Seller Remediable Event described in Section 17.1(a)(iv), the failure of such Event to have been