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July 6, 2010

VIA HAND DELIVERY

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

100346-EQ

Re: Petition of Progress Energy Florida, Inc. for approval of a second negotiated purchase power contract with Hathaway Renewable Energy, Inc.; Docket No. _____

Dear Ms. Cole:

Please find enclosed for filing on behalf of Progress Energy Florida, Inc. ("PEF") the original and seven (7) copies of the petition for approval of a second negotiated purchase power contract with Hathaway Renewable Energy, Inc. ("Hathaway").

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-5184 should you have any questions.

Sincerely,

John T. Burnett lms
John T. Burnett

COM _____
APA _____
ECR 2 JTB/lms
GCL 1 Attachments
RAD 3
SSC _____
ADM _____
OPC _____
CLK *Grant*

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy
Florida, Inc. for approval of a second
negotiated purchase power contract
with Hathaway Renewable Energy, Inc.

Docket No. 100346-EQ

Filed: July 6, 2010

P E T I T I O N

On June 22, 2010, Progress Energy Florida, Inc. ("PEF", or "the Company") signed three separate negotiated power purchase contracts with Hathaway Renewable Energy, Inc. ("Hathaway") each with different locations within the state of Florida and each with different in-service dates.

Pursuant to Rule 25-17.0832, F.A.C., PEF hereby petitions the Florida Public Service Commission ("the Commission") for approval of a negotiated purchase power contract for the purchase of firm capacity and energy between Hathaway and PEF, dated June 22, 2010 ("Contract #2"). A copy of Contract #2, pursuant to Rule 25-17.0832(1)(b), F.A.C., is attached hereto as Exhibit A. In support of this petition, PEF states as follows:

1. Petitioner, PEF, is an investor-owned utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes. PEF's general offices are located at 299 First Avenue North, St. Petersburg, Florida, 33701.
2. All notices, pleadings and other communications required to be served on petitioner should be directed to:

John T. Burnett, Esquire
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5184
Facsimile: (727) 820-5249

DOCUMENT NO. DATE
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For express deliveries by private courier, the address is as stated in paragraph 1.

3. Pursuant to the terms of the Contract, Hathaway will construct and own a biomass power production generating facility (“the Facility”) located in Florida, which it will operate as a Qualifying Facility (“QF”) pursuant to regulations of the Commission. The Facility will have a maximum generating capability of approximately 16 MW, using a gasified biomass product as its primary fuel. Hathaway will sell firm capacity and energy from the Facility to PEF for a 25-year term from June 1, 2013 through May 30, 2038, with a committed capacity of 16 MW. The expected annual energy from the Facilities is 131,753 MWh.

4. Exhibit B to this petition summarizes a comparison of projected capacity and energy costs under Contract #2 against the costs of the comparative avoided unit, a nominal 178 MW combustion turbine gas-fired plant with an estimated in-service date of June, 2014 (taken from PEF’s 2009 Standard Offer Contract). The comparison in Exhibit B was modeled at a committed capacity of 16 MW and a capacity factor of 94%. The comparison shows that Contract #2 provides savings with a net present value of \$8,000 over a 25-year term based on current (the 2010 Ten Year Site Plan) fuel forecasts.

5. Exhibit C to this petition summarizes Contract #2 which includes the required information as set forth in Rule 25-17.0832(1)(b), F.A.C.

6. The rates, terms, and conditions of Contract #2 can reasonably be expected to contribute toward the deferral or avoidance of additional capacity construction or other capacity-related costs by PEF at a cost to PEF’s ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by Hathaway under Contract #2.

WHEREFORE, PEF respectfully requests that the Commission approve Contract #2
as set forth in Exhibit A.

Respectfully submitted,

PROGRESS ENERGY FLORIDA, INC.

By John T. Burnett *ms*

John T. Burnett

Fla. Bar No. 173304

Post Office Box 14042

St. Petersburg, FL 33733-4042

Telephone: (727) 820-5184

Facsimile: (727) 820-5249

Counsel for Progress Energy Florida, Inc.

EXHIBIT A

THE HATHAWAY CONTRACT #2

(REDACTED)

**NEGOTIATED CONTRACT FOR THE
PURCHASE OF CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY**

Dated: June, 2nd 2010

by and between

FLORIDA POWER CORPORATION

d/b/a

PROGRESS ENERGY FLORIDA, INC.,

a Florida Corporation

and

HATHAWAY RENEWABLE ENERGY, INC.,

a Tennessee Corporation qualified in Florida

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**NEGOTIATED CONTRACT FOR THE
PURCHASE OF CAPACITY AND ENERGY FROM A QUALIFYING FACILITY**

This Negotiated Contract the Purchase of Capacity and Energy From a Qualifying Facility, including any Appendices and attachments hereto (collectively, the "Agreement") is made this 22 day of June 2010 ("Execution Date"), by and between Florida Power Corporation d/b/a Progress Energy Florida, Inc., a Florida corporation ("Buyer"), whose principal place of business is 299 First Avenue North, PEF 155, St. Petersburg, Florida 33701 and Hathaway Renewable Energy, Inc. ("Seller") whose principal place of business is 45 Franks Road, Leoma, Lawrence County, Tennessee 38468. Buyer and Seller may each be referred to as a "Party" or collectively as the "Parties."

WHEREAS:

Seller intends to design and construct a power generation facility of approximately 16MW gross electric output at a location in Florida interconnected with the Transmission System owned and operated by Buyer;

Seller shall procure the interconnection of the Facility to the Transmission System operated by the Buyer; and,

Seller desires to generate and sell energy and capacity from the Facility to Buyer and Buyer desires to receive and purchase the same from Seller, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1. Defined Terms

Unless otherwise defined herein or in any exhibit, schedule or appendix hereto, the following terms, when used herein or in any attachment, exhibit or appendix hereto shall have the meanings set forth below.

"Act" means the legislation and statutory policy relating to renewable energy contained in Florida Statutes Annotated Sections 366.051, 366.91, and 366.92, and all related rules promulgated by the FPSC, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.

"Additional Maintenance Outages" has the meaning assigned to it in Section 6.5.

"Affiliate" of any Person shall mean a Person (other than a natural person) that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

"Agreement" means this Negotiated Contract for the Purchase of Capacity and Energy From a Qualifying Facility, and the Appendices, Exhibits, and other attachment hereto, as maybe amended from time to time.

“Ancillary Services” means the generation and transmission related services required by the Transmission Provider to maintain stable, secure and reliable operation of the Transmission System, including but not limited to, any system services referred to in the Project Contracts, frequency-sensitive operation, automatic generation control, spinning reserve, generators with fast-start capability or low frequency relays, reactive power capability and production and emergency services.

“Annual Capacity Billing Factor” has the meaning assigned to it in Appendix 2.

“Appendix” means an appendix attached to this Agreement.

“Applicable Law” shall include any and all constitutions, charters, acts, statutes, laws (including, but not limited to, all environmental laws), decrees, ordinances, rules, codes, regulations, orders, conditions, standards and/or objective criteria applicable to this Agreement or to any Party’s obligations, performance, or rights under this Agreement and/or contained in any Project Consent (where any such items have enforceable legal effect), including any final decree, judgment or order of any court or Government Agency of competent jurisdiction.

“As-Available Energy Rate” means the rate calculated by Buyer in accordance with FPSC Rule 25-17.0825, F.A.C., and Buyer’s Rate Schedule COG-1, as they may each be amended from time to time.

“Authorization to Construct” means any Government Approval required by any appropriate Government Agency to construct and operate the Facility.

“Avoided Unit Energy Cost” has the meaning assigned to it in Section 12.1.

“Avoided Unit Fuel Cost” has the meaning assigned to it in Section 12.1.

“Bankrupt” means with respect to a Party or entity, such Party or entity that: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (c) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (d) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (e) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or, (f) otherwise becomes bankrupt or insolvent (however evidenced).

“Business Day” means any Day except a Day upon which banks licensed to operate in the State of Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a public holiday in the State of Florida.

“Buyer” has the meaning assigned thereto in the opening paragraph of this Agreement.

“Buyer Non-Remediable Event” has the meaning assigned to it in Section 17.1(d).

“Buyer Remediable Event” has the meaning assigned to it in Section 17.1(c).

“Capacity” means the total continuous generating net MW capability of the Facility.

“Capacity Commencement Date” means the date that the Facility has achieved Capacity Commencement Status.

“Capacity Commencement Status” means that (i) the Facility is in compliance with all applicable Project Consents and Government Approvals; (ii) the Facility has maintained an hourly MW output, as metered at the Electrical Interconnection Point, equal to or greater than the Committed Capacity over the Committed Capacity Test Period; and (iii) such twenty-four (24) hour period reasonably reflects the Facility’s day-to-day operations, which status must be achieved no later than the Required Capacity Commencement Date.

“Change in Environmental Law” has the meaning assigned to it in Section 12.

“Claims” means any claims, judgments, losses, liabilities, costs, expenses (including reasonable legal fees) and damages of any nature whatsoever, including but not limited to, in relation to breach of contract, personal injury, death, property damage incurred or other legal or equitable claims made by third parties.

“Commissioning” means, with respect to the Facility, the commencement of the period during which any Unit of the Facility has begun Testing and ending when such Unit has been approved for the production of energy and authorized to commence delivery of energy pursuant to *inter alia* the provisions of Sections 6 and 14 hereof; provided, however, the Commissioning of the Facility shall be completed when all of the units have completed such Commissioning.

“Committed Capacity” means the minimum electrical Capacity of the Facility guaranteed to be provided by Seller being total net electric Capacity of approximately 16MW, subject to increase or decrease in accordance with Section 6.2.

“Committed Capacity Test Period” has the meaning assigned to it in Section 6.2(b).

“Conditions Precedent” means the conditions specified in Section 3.1.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, third party transaction costs, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys’ fees and other legal costs incurred by the Non-Defaulting Party in connection with the such termination and replacement of the transaction(s).

“Credit Rating Change” has the meaning assigned to it in Section 6.9(g).

“Credit Rating” means the Seller’s Senior Debt Rating.

“Day” means a period beginning at 12:00 a.m. Eastern Prevailing Time on any day and ending at 11:59 p.m. Eastern Prevailing Time on the following day.

“Default Rate” has the meaning assigned to it in Section 13.6.

“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).

“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” shall be the date that this Agreement is properly executed by both Parties.

“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 at such physical point that Seller and Buyer may agree upon.

“Emergency Condition” means a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission System or otherwise be required in accordance with the requirements of the FPSC or any system condition not consistent with Prudent Utility Practices.

“Emission Reduction Credits” means any offset, allowance, or credit of any kind created or administered under any current or future voluntary standard, statutory and/or regulatory regime, associated with the underlying Fuel used for the generation of electricity and pursuant to which the generation of electricity using the Fuel is recognized as avoiding the emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes shall *exclude* (i) any energy or capacity of the Facility, or (ii) investment, production, or other tax credits, grants, benefits, and/or deductions associated with the construction, ownership, and/or operation of the Facility and other financial incentives, including without limitation, credits, reductions, or allowances associated with the Facility that are applicable to local, state or federal tax obligations

“Energy” means megawatt-hours generated by the Facility of the character commonly known as three-phase, sixty hertz electric energy that is delivered at a nominal voltage at the Electrical Interconnection Point.

“Environmental Attributes” means all attributes of an environmental or other nature, including without limitation the Emission Reduction Credits, that are created or otherwise arise from the Facility’s generation of Energy using the Fuel, in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources and the displacement of conventional Energy by the Energy generated by the Facility. Such attributes include, and are not limited to, the Emission Reduction Credits and Renewable Energy Certificates, however defined under any voluntary standard or local, state or federal law, regulation or ordinance.

“EPC Contract” means the turnkey Engineering, Procurement and Construction Contract entered into between Seller and the contractor selected by Seller in regards to the engineering, procurement and construction of the Facility.

“Event(s) of Default” means *inter alia* any of the Seller Remediable Events of Default, Seller Non-Remediable Events of Default, Buyer Remediable Events of Default, or Buyer Non-Remediable Events of Default collectively as set forth in Section 17 hereof.

“Execution Date” has meaning assigned to it in the opening paragraph of this Agreement.

“Facility” means Seller’s electric generating facility to be located in the State of Florida that will generate Energy using the Fuel as defined herein.

“Facility Site” means the site on which the Facility is to be constructed and operated.

“Financial Closing” means the fulfillment of each of the following conditions:

- (a) the execution and delivery of the Financing Documents; and,
- (b) all conditions to the availability of funds under the Financing Documents (other than relating to the effectiveness of this Agreement) are satisfied.

“Financial Closing Date” means the date upon which Financial Closing is achieved.

“Financing Documents” shall mean documentation with respect to any private equity investment in Seller, any loan agreements (including agreements for any subordinated debt), notes, bonds, indentures, guarantees, security agreements and hedging agreements relating to the financing or refinancing of the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility or any guarantee by any Financing Party of the repayment of all or any portion of such financing or refinancing.

“Financing Parties” means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of Seller for the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility (whether limited recourse, or with or without recourse).

“Force Majeure Event” means an event, condition or circumstance described in Section 14.

“Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver, Energy that is not the result of (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, or (c) an Emergency Condition.

“FPSC” means the Florida Public Service Commission.

“Fuel” means woody biomass feedstock including, but not limited to the woody biomass forms of forestry residue, understory, mill residue, urban wood waste, short rotation woody crops and pulpwood, so long as such fuel sources meet the requirements of the Act, including, without limitation, the definition of “Biomass” set forth in FSA 366.91(2)(a).

“Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to the terminated transaction(s) hereunder, determined in a commercially reasonable manner.

“Government Agency” means the United States of America, the State of Florida, any quasi-governmental body of the State of Florida, court of competent jurisdiction or any political subdivision of the State of Florida,

including without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

“Governmental Approval” means any authorization, consent, approval, license, ruling, appeal, permit, exemption, variance, order, judgment, instruction, condition of approval, direction, directive, decree, declaration for regulation by any Governmental Agency relating to the construction, development, ownership, occupation, start-up, testing, operation or maintenance of the Facility or the execution, delivery or performance of this Agreement.

“IEEE” means the Institute of Electrical and Electronic Engineers, Inc.

“Independent Engineer” means such independent consulting engineering firm of national repute and appropriate expertise in integrated gasification and fuel cell power production and technology as is appointed by Buyer from time to time after consultation with and upon the prior written consent of Seller (not to be unreasonably withheld or delayed).

“Issuer” has the meaning assigned to it in Section 6.9.

“Interest Rate” means, for any date, 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.

“kW” means one or more kilowatts of electricity, as the context requires.

“Letter(s) of Credit” has the meaning assigned to it in Section 6.9.

“Losses” means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to the terminated transaction(s) hereunder, determined in a commercially reasonable manner.

“Maintenance Outage” means a time period during which the Facility is shut down or its output reduced to undergo maintenance and repairs necessary for the reliable operation of the Facility in accordance with Section 6.4 or as otherwise agreed by the Parties.

“Metering Equipment” shall mean such meters and other equipment required or installed by the Transmission Provider to measure and record the output of the Facility, including that which may be required pursuant to the Electrical Interconnection and Operating Agreement and Buyer’s communications media, remote terminal unit, and access to metering data.

“Minimum Investment Rating” is the credit rating assigned to a Party’s unsecured, senior long-term debt obligations of at least BBB- by Standard & Poor’s, a division of the McGraw-Hill Companies (“S&P”) or Baa3 by Moody’s Investors Service, Inc. (“Moody’s”).

“Month” means a calendar month.

“Monthly Billing Period” means 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., on the Capacity Commencement Date and ending with the last calendar day of such month.

“Monthly Capacity Factor” has the meaning assigned to it in Appendix 2.

“MW” means one or more megawatts of Energy, as the context requires.

“MWh” means one or more megawatt-hours of Energy, as the context requires.

“Operating Parameters” has the meaning assigned to it in Section 6.8.

“Operation and Maintenance Agreement” means that certain operation and maintenance agreement, if any, between the Seller and the Person selected by the Seller relating to the operation and maintenance of the Facility.

“Party” has the meaning assigned to it in the opening paragraph of this Agreement.

“Person” means any individual, partnership, corporation, association, joint stock company trust, joint venture, unincorporated organization, or Governmental Agency (or any department, agency, or political subdivision thereof).

“Point of Metering” means the point(s) where Energy made available for delivery to Buyer is measured.

“Project Consents” means the Governmental Approvals authorizing the Seller to construct, operate, maintain, and use the Facility for the generation or transmission of electricity to the Transmission System, including, without limitation, those associated with the delivery, storage, and use of the Fuel.

“Project Contracts” means the EPC Contract, the Electrical Interconnection and Operating Agreement, the Fuel supply agreement, and the Operation and Maintenance Agreement, to the extent applicable.

“Prudent Utility Practices” means the practices, methods, standards and acts that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the required result reliably, economically, safely, expeditiously and consistent with good business practices, which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by the Facility’s equipment suppliers and manufacturers, the design limits, applicable Governmental Approvals and Applicable Law.

“Qualifying Facility” or “QF” means a generator of Energy that meets certain ownership, operating and efficiency criteria established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”), as amended, and as further provided for under applicable regulations; and, applicable provisions under the laws, rules, and regulations of the State of Florida.

“Remedial Notice” has the meaning assigned to it in Section 17.1(e).

“Remedial Program” has the meaning assigned to it in Section 17.1(b)(iii)(D).

“Required Capacity Commencement Date” means the date that is not less than Twenty One (21) Months after Seller’s receipt of Project Consents or June 1, 2013, whichever is sooner.

“Restoration” has the meaning assigned to it in Section 14.6(b).

“Restoration Report” has the meaning assigned to it in Section 14.8.

“Restoration Schedule” has the meaning assigned to it in Section 14.6(b).

“Schedule” or “Scheduling” means the act of Seller arranging for, notifying, and confirming a specific event, such as, but not limited to, a quantity of Energy to be delivered to Buyer during a specified period of time.

“Scheduled Maintenance Outage” means a time period during which the Facility is shut down or its output reduced to undergo a pre-scheduled Maintenance Outage in accordance with Section 6.4 or as otherwise agreed by the Parties.

“Security Documentation” has the meaning assigned to it in Section 12.6.

“Seller” has the meaning assigned to it in the opening paragraph of this Agreement.

“Seller Non-Remediable Event” has the meaning assigned to it in Section 17.1(b).

“Seller Remediable Event” has the meaning assigned to it in Section 17.1(a).

“Senior Debt Rating” means the rating assigned to an Issuer’s senior unsecured long-term debt obligations (not supported by third party credit enhancements) or, if Issuer does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such Issuer by S&P, Moody’s or any other rating agency agreed to by the Parties.

“Start-Up” means the ignition of the Facility, for the purpose of synchronization of the output of the Facility to the Transmission System and to produce Energy.

“Start-Up Fuel” means an energy/fuel source other than the Fuel, which may include distillate oil, natural gas or other fossil fuels; provided, however, the aggregate amount of Start-Up Fuel that may be used by the Facility during any rolling twelve-month period shall not exceed five percent (5%) of total Fuel used in such contract year.

“Tax” or **“Taxes”** means any tax, charge, impost, tariff, duty, levy or fee of any kind charged, imposed or levied, directly or indirectly, by any Government Agency or Taxation Authority.

“Taxation Authority” means any revenue, customs, fiscal, statutory, federal, state, local governmental or municipal authority having the legal right to impose any tax, charge, impost, duty, levy or fee in the nature of taxation payable in the United States.

“Term” has the meaning assigned to it in Section 2.1.

“Termination Fee” means the fee described in Section 12.5.

“Termination Notice” has the meaning assigned to it in Section 17.1(f)(i).

“Termination Security” has the meaning assigned to it in Section 12.6.

“Test” or **“Testing”** means those tests, evaluations and measurements of the Facility’s output capability that are undertaken in connection with the Commissioning of the Facility pursuant to this Agreement, which shall include such tests as are consistent with Prudent Utility Practices and generally applicable standards for such tests followed by utilities, independent power producers, and manufacturers of electrical generating equipment in the United States and other parts of the developed world.

“Test Date” means the date on which Seller shall commence Testing of the Facility for Commissioning purposes, which date shall not be later than the date that is forty-five (45) Days before the Capacity Commencement Date.

“Transmission Provider” means the operator(s) of the Transmission System(s) or any successor thereof or any other entity or entities authorized to transmit Energy on behalf of Seller from the Electrical Interconnection Point.

“Transmission System” means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection owned by the Transmission Provider, but shall in no event include any lines which the Transmission Provider has specified to be part of the Distribution System.

1.2. Interpretation

- (a) Words singular and plural shall be deemed to include the other, and pronouns having masculine or feminine gender shall be deemed to include the other.
- (b) Article or section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- (c) Any reference in this Agreement to any Person, whether or not a Party to this Agreement, includes its permitted successors and assigns and, in the case of any Government Agency, any Person succeeding to its functions and capacities.
- (d) Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.
- (e) Other grammatical forms of defined words or phrases have corresponding meanings.
- (f) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- (g) Unless otherwise provided, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.
- (h) A reference to a document, code, contract or agreement, including this Agreement, includes a reference to that document, code, contract or agreement as novated, amended, modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant provisions thereof.
- (i) Unless otherwise expressly provided for as set forth herein, if any payment, act, matter or thing hereunder would occur on a Day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next succeeding Business Day.
- (j) Where reference is made to an Applicable Law, such reference to give meaning to the intent of the Parties hereto, shall be deemed to include all prior and subsequent enactments, amendments and modifications pertaining thereto.
- (k) Any reference to the word “include” shall be interpreted to mean “including without limitation.”

2. TERM

2.1. Term

This Agreement shall be in full force and effect as of the Effective Date and shall continue to remain in full force and effect for a period ending on the date that is Twenty-Five (25) years from the Capacity

Commencement Date (the "Term"), unless otherwise extended or terminated earlier in accordance with the provisions of this Agreement, including, without limitation, due to Seller's failure to satisfy the conditions precedents set forth herein.

2.2. QF Status

The continuation of this Agreement is contingent on the Facility achieving and maintaining its status as a Qualifying Facility in accordance with this Agreement. Buyer shall submit this Agreement and related documentation to the FPSC for approval within ten (10) Days of the Execution Date. The Seller agrees and acknowledges that Buyer's obligation to purchase Energy from the Facility is expressly contingent on the Facility meeting the requirements of the Act.

2.3 Regulatory Approvals

(a) The obligations of the Parties hereunder, including but not limited to Buyer's obligation to perform under this Agreement shall be conditioned upon the Buyer obtaining any regulatory approvals it, acting in its sole discretion, deems necessary or desirable, including but not limited to, a final non-appealable order or other regulatory determination from the FPSC that Buyer shall have cost recovery associated with its performance under this Agreement. With respect to the FPSC, Buyer shall petition the FPSC for approvals relating to this Agreement within ten (10) business Days of the Effective Date. Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request. If any such regulatory approval is not obtained to Buyer's satisfaction, in its sole discretion, within [REDACTED] of such request, then this Agreement shall terminate upon ten (10) Days notice, with neither Party having any liability under this Agreement and neither Party having any further obligations relating to this Agreement.

3. CONDITIONS PRECEDENT

3.1. Conditions Precedent

This continuation of this Agreement shall be contingent upon no Event of Default having occurred or continuing, and Seller's satisfaction of the following conditions precedent ("Conditions Precedent") to the satisfaction of the Buyer, acting in its sole commercially reasonable discretion, unless expressly waived in writing by Buyer in its sole discretion:

- (i) Seller shall have developed a Buyer-approved plan for the transmission service necessary to deliver Capacity and Energy from the Facility to the Electrical Interconnection Point by [REDACTED];
- (ii) Seller having entered into Financing Documents relative to the construction of the Facility and having achieved Financial Closing by [REDACTED];
- (iii) Seller having entered into the Project Contracts;
- (iv) Seller having obtained insurance policies or coverage in compliance with Section 5 by no later than [REDACTED];
- (v) Seller obtaining Qualifying Facility Status as set forth in Section 2.2 of this Agreement by no later than [REDACTED].

3.2. Capacity Commencement Date

Seller shall achieve the Capacity Commencement Date on or before the Required Capacity Commencement Date, after which date if the Facility has not achieved Commissioning status then Buyer may

terminate this Agreement with fifteen (15) days notice to Seller, but without any further obligation and/or liability to Buyer to perform hereunder.

3.3. Commencement Obligations

Seller shall ensure that on or before the Test Date:

- (a) the Facility shall have been constructed in accordance with the applicable Project Contracts so that Commissioning may be duly and properly undertaken in accordance with Section 6; and,
- (b) an operable physical connection from the Facility to the Transmission System shall have been effected in accordance with the Electrical Interconnection and Operating Agreement, provided, however, that such physical connection shall be made consistent with the terms hereof.

4. REPRESENTATIONS AND WARRANTIES

Mutual: Each Party represents and warrants to the other Party that as of the Effective Date and throughout the Term of this Agreement that:

- a) It is duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;
- b) It has all authorizations under the Applicable Laws, necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;
- c) The execution, delivery, and performance of this Agreement will not conflict with or violate any Applicable Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;
- d) This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- e) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
- f) No Event or Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- g) There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any permitted Affiliate, that could materially adversely affect its ability to perform its obligations under this Agreement;
- h) It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- i) It is an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12);

- j) It is an “eligible commercial entity” within the meaning of Section 1a (11) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000; and,
- k) Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

5. INSURANCE

5.1. Maintenance of Insurance Policies

- (a) In addition to other insurance carried by Seller in accordance with this Agreement, Seller shall deliver to Buyer, at least fifteen (15) Days prior to the commencement of any work on the Facility, a certificate of insurance certifying Seller’s coverage under a liability insurance policy issued by an insurer acceptable to Buyer that is authorized to do business in the State of Florida with an AM Best rating of no less than A- and naming Seller as a named insured and Buyer as an additional insured, 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 comprehensive or commercial liability insurance, including bodily injury and property damage, in an amount not less than USD\$1,000,000.00 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 (including, without limitation, its directors, officers and employees) shall be an additional insured 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 in form and 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 may be made in the same manner as if separate policies had been issued to each insured hereunder, except with respect to the limits of insurance.”

- (d) The insurer shall waive all rights of subrogation against Buyer and its officers, directors and employees.
- (e) Notwithstanding any provision of the policy, the policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) Days prior written notice to Buyer. All other terms and conditions of the policy shall remain unchanged.

5.4. Endorsements to Fire and All Perils and Machinery Breakdown Policies

Seller shall insure the Facility against all risks of physical loss or damage, including, without limitation, machinery breakdown, and cause its insurers and/or insurance brokers to provide the endorsements referred to in Section 5.3(a), (b), (d) and (c) in such policies covering the Facility, as applicable, and such coverage and endorsements shall be reasonable and customary in the power generation industry for projects of the size and scope of the Facility and, further, shall cause its insurers and brokers to provide standard thirty (30) Day non-cancellation provisions in such policies naming Buyer as an additional named insured.

5.5. Certificates of Insurance

- (a) Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the policies and endorsements required by this Section 5.
- (b) If Seller is unable to obtain the insurance coverage required by this Section 5, it shall promptly notify Buyer.
- (c) Failure by Seller to obtain the insurance coverage or certificates of insurance required by this Section 5 shall not in any way relieve or limit obligations and liabilities of Seller under any provision of this Agreement.
- (d) If Seller should fail to procure or maintain any insurance required pursuant to this Section 5, then Buyer shall have the right, but not the obligation, to procure such insurance and shall be entitled to recover the premiums paid for such insurance as if the same were a debt due and payable against any amounts owed to Seller pursuant to the terms of this Agreement.

5.6. Insurance Reports

Seller shall provide Buyer with copies of any technical underwriters' reports or other technical reports received by it from any insurer; provided, however, that Buyer shall not disclose such reports to any other Person except as necessary in connection with administration and enforcement of this Agreement or as may be required by any Governmental Agency or other relevant authority having jurisdiction over Buyer, and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

6. FACILITY CONSTRUCTION, COMMISSIONING AND OPERATION

6.1. Construction of the Facility

- (a) No later than one (1) Month after the Seller proceeds with construction of the Facility, and thereafter at monthly intervals, Seller shall report to Buyer on the construction of the Facility during the previous Month and shall provide progress reports and an updated completion schedule for the Facility. Such monthly reports shall provide a schedule showing items completed and to be completed and a time-frame within which Seller expects the items to be completed. Seller shall, from time to time, upon reasonable advance request from Buyer, meet with Buyer to discuss the progress of the construction of the Facility.
- (b) Seller shall obtain any permits and land rights necessary for the Facility configured substantially as set forth in Appendix 1.

6.2. Commissioning Tests

- (a) Seller shall give Buyer at least three (3) Months' prior notice of the Test Date and of any Tests relating to the Facility. Buyer's representatives shall have the right to be present at all such Testing that takes place. Seller shall promptly notify Buyer of any changes to the Test Date or the date of any Tests relating to the Facility in order that Buyer may arrange for its representatives to attend.
- (b) The results of the Tests for Commissioning purposes shall determine the Committed Capacity. The Commissioning Test results shall be based on a test period of twenty-four (24) consecutive hours at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility (the "Committed Capacity Test Period"). Unit auxiliaries, including, without limitation, heat exchangers, and other equipment required by law shall be in normal service during the Committed Capacity Test Period. The Capacity of the Facility shall be the minimum average hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period. If the Test results demonstrate net electrical generating Capacity capable of being delivered to the Electrical Interconnection Point of less than 16 MW, then the Committed Capacity shall be set equal to the amount of net generating Capacity demonstrated by the Test, but not less than 14 MW. If the Test results demonstrate net electrical generating Capacity capable of being delivered to the Electrical Interconnection Point of greater than 16 MW, then Seller, in its sole discretion, may establish the Committed Capacity at greater value up to and including the net generating Capacity demonstrated by the Test but not to exceed 20 MW.
- (c) During the period ending two (2) years immediately following the Capacity Commencement Date, Seller may, on one occasion only, increase or decrease the initial Committed Capacity by no more than fifteen percent (15%) of the Committed Capacity established pursuant to the procedures set forth in Section 6.2(b) above. Seller shall give Buyer at least thirty (30) days written notice of any such increase or decrease in the Committed Capacity. Except during a Force Majeure Event, the Committed Capacity shall not be less than 16 MW, or greater than 20 MW. It is further provided, however, that nothing herein shall prevent or limit the Parties, upon their mutual written agreement to same, from establishing a new Committed Capacity at any level that they mutually agree is appropriate and desirable under this Agreement.
- (d) During a Force Majeure Event declared by Seller, Seller may temporarily redesignate the Committed Capacity for up to twenty-four (24) consecutive months; provided, however, that no

more than one such temporary redesignation may be made by Seller within any twenty-four (24) month period, unless Buyer otherwise agrees to such additional temporary redesignation in writing. Within three (3) months after any such Force Majeure Event is cured, Seller may, on one occasion, and without penalty, designate a new Committed Capacity to apply for the remainder of the Term; provided, however, that such new Committed Capacity shall be at least seventy percent (70%) and no more than one hundred percent (100%) of the Committed Capacity at the time of the Force Majeure Event. Any temporary or final re-designation of the Committed Capacity pursuant to this Section must be directly attributable to the Force Majeure Event and of a magnitude commensurate with the scope and impact of the Force Majeure Event. Any Dispute regarding the amount of such temporary or final redesignation shall be settled in accordance with Section 16 of this Agreement.

- (e) Energy produced prior to the Capacity Commencement Date shall be delivered by Seller to Buyer at the Electrical Interconnection Point, and Buyer shall purchase such Energy at Buyer's actual As-Available Energy Rate,.
- (f) Buyer shall have the right to require that Seller, not more than twice in any twelve (12) Month period beginning with the Capacity Commencement Date, re-demonstrate the Capacity Commencement Status of the Facility within sixty (60) Days of the demand; provided, however, that such demand shall be coordinated with Seller so that the sixty (60) Day period for re-demonstration avoids, if practical, previously notified periods of Scheduled Maintenance Outages and Additional Maintenance Outages pursuant to this Section 6.

6.3. Maintenance of the Facility

Seller shall maintain all Facility equipment or cause the same to be maintained at all times in accordance with manufacturers' recommendations and Prudent Utility Practices and otherwise in accordance with this Agreement.

6.4. Scheduled Maintenance

- (a) By October 1 of each year, Seller shall deliver to Buyer the projected operating schedule for the Facility for the next calendar year, including any Scheduled Maintenance Outages. Seller shall take manufacturers' recommendations and Prudent Utility Practices into account when establishing the proposed schedule for Scheduled Maintenance Outages. Scheduled Maintenance Outages and/or Additional Maintenance Outages may not be scheduled during the Months of January, February, June, July, August, or September unless agreed to by Buyer in its sole discretion.
- (b) Within thirty (30) Days of receiving the proposed operating schedule, including the Scheduled Maintenance Outages, Buyer may propose amendments thereto. Seller shall not unreasonably withhold its consent to Buyer's proposed amendments, provided that, for the avoidance of doubt, it shall not be unreasonable for Seller to withhold its consent to any proposed amendments of Buyer that would be contrary to Prudent Utility Practices.
- (c) In the event that Seller should reject any of Buyer's proposed amendments as set forth in Section 6.4(b) above, Seller shall promptly notify Buyer of its reasons for such rejection, whereupon Seller and Buyer shall in good faith negotiate a reasonable alternative schedule. If agreement between the Parties is not reached within ten (10) Days of receipt by Buyer of Seller rejection notice, Seller shall submit a final operating schedule based on Prudent Utility Practices, to the extent reasonably possible taking into account Buyer's proposed amendments.

- (d) After the operating schedule for the upcoming year is finalized, Seller may change such schedule, including the Scheduled Maintenance Outages, only if Buyer consents to the change acting in a commercially reasonable manner.

6.5. Additional Maintenance Outages

If the unavoidable need arises for Seller to conduct maintenance on the Facility in addition to the Scheduled Maintenance Outages (“Additional Maintenance Outages”), Seller shall notify Buyer of such maintenance, together with dates for carrying out such maintenance and the estimated duration of the work to be carried out. Seller and Buyer shall negotiate in good faith a reasonable schedule during which such Additional Maintenance Outages shall take place. If agreement is not reached within twenty (20) Days of initiating good faith negotiations, Seller shall prepare a schedule of such Additional Maintenance Outages based on Prudent Utility Practices taking into account the reasonable requests of Buyer to the extent reasonably possible.

6.6. Access and Information

- (a) Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility and data relating to the Facility. Buyer acknowledges that such access does not, except to the extent set forth herein, provide Buyer with the right to direct or modify the operation of the Facility in any way and further acknowledges that any exercise by Buyer of its rights under this Section 6.6 shall be at its own risk and expense.
- (b) Any inspections or testing by Buyer shall not relieve Seller of its obligation to maintain the Facility. In no event shall any Buyer statement, representation, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any Buyer inspection of property or equipment owned or controlled by Seller or any Buyer review of or consent to Seller plans, shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.
- (c) Seller shall reactivate the Facility at its own expense if the Facility is rendered inoperable due to actions of Seller or its agents or a Force Majeure Event.

6.7. Permits: Compliance with Laws

- (a) Seller shall acquire and maintain in effect for the Term all Governmental Approvals from all Governmental Agencies having jurisdiction over the Facility insofar as necessary (i) for the construction, operation, development and maintenance of the Facility in accordance with this Agreement and (ii) to permit the Facility to operate and for Seller to perform hereunder. Upon timely and reasonable request from Seller, Buyer may use, but shall not be obligated to use, commercially reasonable efforts to assist in procuring all Governmental Approvals for which Seller is responsible, provided that any reasonable expenses incurred by Buyer in providing such assistance shall be reimbursed by Seller.
- (b) Seller shall secure and maintain all Governmental Approvals and other Project Consents referenced in clause (a) above at its sole cost and expense.
- (c) In the event that the Parties are required to make any regulatory filings or are subject to the jurisdiction of any regulatory authorities, including but not limited to the FPSC, then each of Seller and Buyer agrees to abide by any applicable regulatory rulings or orders issued by such authorities.

- (d) Notwithstanding the foregoing, a Party shall not be deemed to be in breach of its obligations to acquire any Governmental Approvals or other Consents to the extent that such Party is in good faith contesting the application, interpretation, order or other legal direction that would mandate the obtaining of any such Governmental Approvals or other Project Consents.
- (e) Seller shall at all times comply with all Applicable Laws to which it or any part of the Facility may be subject, including but not limited to (i) all environmental laws in effect during the Term and (ii) all Applicable Laws pertaining generally to Fuel storage, back-up or security or otherwise relating to the generation of electric power. Notwithstanding the foregoing, Seller shall not be deemed to be in breach of its compliance obligations with respect to any Applicable Laws to the extent that it is in good faith contesting the application, interpretation, order or other legal direction pursuant to which it would be rendered subject to any such Applicable Laws.

6.8. Operating Parameters

- (a) Seller agrees to operate the Facility in accordance with Prudent Utility Practices and in compliance with all Applicable Laws and Governmental Approvals (the "Operating Parameters"); provided that Seller shall: (a) have the sole responsibility to, and shall at its sole expense, operate and maintain the Facility in accordance with all requirements set forth in this Agreement, and (b) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Seller agrees to operate the Facility in such a manner that Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, vars, ancillary services and other electrical specifications required by the Transmission Provider.
- (b) Seller shall operate the Facility in accordance with Prudent Utility Practices and with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, the Transmission System. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Facility's protective equipment shall meet IEEE and industry standards. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment at least once every twelve (12) months in accordance with Prudent Utility Practices. Seller shall perform a unit functional trip test after each overhaul of the Facility's turbine, generator and boilers and shall provide results to Buyer in writing prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with Prudent Utility Practices.

6.9. Security

- (a) As security for the achievement of the Required Capacity Commencement Date and satisfactory performance of its obligations hereunder, Seller shall provide Buyer with either: (i) one or more unconditional, irrevocable, direct pay Letter(s) of Credit (as herein defined), with the costs associated with any such Letter of Credit to be borne by Seller, or (ii) cash deposits in the amounts specified in this Section 6.9.
- (b) As used herein, a "Letter of Credit" (LC) shall mean a standby letter of credit issued by U.S. commercial banks or a foreign banks having a licensed U.S. branch, provided that any such bank shall have a credit rating of at least A- from S&P or A3 from Moody's (the "Issuer") or such other banks that Buyer deems acceptable to Buyer in its sole commercially reasonable discretion based on Buyer's review of such bank's financial condition; and, provided further, that any such letter of credit shall be in a form reasonably acceptable to the Party in favor of whom it is being issued.

- (c) For the period beginning on 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 and continuing until the term of this contract, twenty-five years after the Capacity Commencement Date, Seller shall maintain a Letter of Credit in the amount of [REDACTED].
- (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.

6.10. Submission of Data

- (a) Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:
 - (i) No later than Thirty (30) Days after the Financial Closing Date and ending on the Capacity Commencement Date, (A) monthly construction progress reports in such form as may be agreed to by the Parties, (B) such other reports as are submitted to Seller by the Independent Engineer, and (C) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Facility.
 - (ii) No later than Thirty (30) Days prior to the Capacity Commencement Date, evidence demonstrating that Seller has obtained all Project Consents then required to be obtained for the ownership, operation and maintenance of, and the supply of Energy from, the Facility in accordance with this Agreement.
 - (iii) On or before the Capacity Commencement Date, a certificate from the Independent Engineer to the effect that, based upon its monitoring and review of construction, the Facility has been constructed in all material respects in compliance with the specifications for the Facility such that it will operate in accordance with Prudent Utility Practices.
 - (iv) As soon as available, but not later than Sixty (60) Days following the Capacity Commencement Date, two (2) copies of all results of Commissioning Tests performed on the Facility, including Tests of major equipment included in the Facility and the Transmission System.
 - (v) Upon request by the Buyer and at least Thirty (30) Days following the Capacity Commencement Date, one (1) copy, as received by Seller pursuant to the EPC Contract,

of all manufacturers' specifications and manufacturers' operation manuals for all major items of equipment incorporated into the Facility.

- (b) 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. 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 fourteen (14) day period. At Buyer's request, Seller shall demonstrate this capability to Buyer's reasonable satisfaction.

8. ENVIRONMENTAL ATTRIBUTES

8.1. Ownership

Subject to the right of first refusal set forth in Section 8.2 below, Seller shall retain any and all rights to own and to sell any and all Environmental Attributes and Emission Reduction Credits associated with the Fuel consumed by the Facility and the generation of Energy by the Facility.

8.2. Sale

Seller hereby grants to Buyer an exclusive and irrevocable right of first refusal for Buyer to purchase the Environmental Attributes and Emissions Reduction Credits associated with the Fuel consumed by the Facility and the generation of Energy by the Facility. This right of first refusal shall terminate five (5) years from the Capacity Commencement Date, and the price and terms/conditions for such sale and purchase shall be as mutually agreed upon by the Parties. To exercise the right to purchase the Environmental Attributes and/or the Emissions Reduction Credits, Buyer must notify Seller in writing prior to the fifth anniversary of the Capacity Commencement Date. To the extent Seller desires to sell the Environmental Attributes and Emissions Reduction Credits during such five (5) year period and prior to Buyer having exercised its right to purchase the Environmental Attributes and Emissions Reduction Credits, Seller shall notify Buyer in writing, shall provide to Buyer the bona fide offer for the sale of the same, and shall give Buyer the right to either purchase the Environmental Attributes and Emissions Reduction Credits at the same price as the bona fide offer, with terms and conditions to be negotiated at such time.

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, the Committed Capacity and all of the Energy produced by the Facility.

9.2. Scheduling

- (a) Scheduling shall be on a "must-run" basis, except for Forced Outages, Scheduled Maintenance Outages, Additional Maintenance Outages, and Emergency Conditions. At least thirty (30) Days prior to the anticipated Capacity Commencement Date, Seller shall provide Buyer with a good faith estimate of the quantity of Energy for the remainder of that year and, thereafter, by October 1 of each such Year, Seller shall provide Buyer with a good faith estimate of the quantity of Energy that Seller will deliver in each subsequent year.
- (b) Seller shall provide to Buyer its good faith, non-binding estimates of the quantity of Energy to be delivered by Seller to the Interconnection Point for each week (starting on Sunday) by 4:00 p.m. Eastern Prevailing Time on the date falling at least three (3) Days prior to the beginning of that week.
- (c) By 8:00 a.m. Eastern Prevailing Time on each Day, Seller shall submit a good faith schedule of the quantity of Energy to be supplied to Buyer for the next two (2) subsequent Days.
- (d) If, at any time following submission of a good faith estimate to Buyer on the Day preceding the next subsequent Day, Seller becomes aware of any change to any of the values contained in the good faith estimate or predicts that such values will be subject to change before the end of the next subsequent Day, then Seller shall promptly notify Buyer of such change or predicted change.

9.3. Forced Outages

Seller shall notify Buyer by telephone call and/or via e-mail message (with confirmation to follow by written notice in each case) immediately upon discovering that the Facility is unable to deliver all or part of any Scheduled quantity of Energy due to a Forced Outage and, as soon as reasonably practicable following such discovery, shall notify Buyer in writing of its best estimate of the expected duration of such Forced Outage. Such estimate by Seller shall be based on the best information available to it. Should Seller expect any further changes in the duration of any such Forced Outage, it shall promptly notify Buyer of the same.

10. ELECTRICAL INTERCONNECTION; OTHER AGREEMENTS

10.1. Electrical Interconnection Facilities

Pursuant to the Electrical Interconnection and Operating Agreement, Seller shall secure any and all Electrical Interconnection Facilities up to and including the Electrical Interconnection Point and shall assume all costs and expenses associated with the same, including any Transmission System network upgrade charges. Buyer shall be responsible for securing any transmission rights downstream of the Electrical Interconnection Point for Energy being transmitted on the Transmission System and Seller shall assume all costs and expenses associated with the same.

10.2. Electrical Interconnection Point

Seller shall deliver Energy into the Transmission System at the Electrical Interconnection Point.

10.3. Risk of Loss

Seller shall be deemed to be in exclusive control of the Capacity and Energy prior to and up to its arrival at the Electrical Interconnection Point and shall be responsible for any losses, costs, damages or injury arising therefrom. Buyer shall be deemed to be in exclusive control of the Capacity and Energy after its arrival at the

Electrical Interconnection Point and shall be responsible for any losses, costs, damages or injury arising therefrom.

10.4. Additional Agreements

- (a) Seller hereby covenants to perform its obligations under any Project Contracts to which it is a party, and to indemnify Buyer against and hold Buyer harmless against any Claims, costs, losses and penalties sustained by Buyer as a consequence of a material breach by Seller of any Project Contract, except to the extent that any such Claims, costs, losses and penalties are ultimately determined to have resulted from Buyer's bad faith or gross negligence.

11. METERING

Except as provided otherwise herein, the Parties agree that all requirements with respect to metering and Metering Equipment shall be set forth in the Electrical Interconnection and Operating Agreement. Seller shall be responsible for all metering costs in accordance with FPSC rules governing Qualifying Facilities.

12. PAYMENTS

12.1. Energy Payments

- (a) Except as otherwise provided in this Agreement, for each Monthly Billing Period prior to the Capacity Commencement Date, Buyer shall pay Seller the Buyer's actual avoided costs for all Energy delivered to the Electrical Interconnection Point, which costs shall be calculated by Buyer in accordance with the As-Available Energy Rate. The calculation of such payments due to Seller shall be based on the sum over all hours of the Monthly Billing Period of the product of each hour's avoided Energy cost and the amount of Energy delivered to Buyer from the Facility for that hour. All purchases shall be adjusted for losses from the Point of Metering to the Electrical Interconnection Point.
- (b) The calculation of payments to the 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, of the product of (a) each hour's Firm Energy Rate ($\$/kWh$); and (b) the amount of energy (kWh) delivered to Buyer from the Facility during that hour.

For any period during which energy is delivered by the Seller to Buyer on and after the Capacity Commencement Date, the Firm Energy Rate in cents per kilowatt hour ($\$/kWh$) shall, on an hour-by-hour basis, be the lesser of (a) the As-Available Energy Rate and (b) the Avoided Unit Energy Cost. The Avoided Unit Energy Cost, in cents per kilowatt - hour ($\$/kWh$) shall be defined as the product of (a) the Avoided Unit Fuel Cost and (b) 10,760 BTU/ kWh ; plus (c) 0.915¢ per kWh in mid-2014 dollars escalating annually at 2.25%.

For the purposes of this agreement, the Avoided Unit Fuel Cost shall be determined from gas prices published in Platts Inside FERC, Gas Market Report, first of the month posting for Florida Gas Transmission ("FGT") Zone 3, plus other charges that FGT may apply. An estimated and indicative rate range of such other charges (as provided by FGT and expressed as a 100% LF Rate, includes a Reservation Charge and a basic Usage Charge) is \$1.35/MMBtu up to \$1.50/MMBtu. This estimated and indicative recourse rate range is set forth herein for informational purposes only, and is subject to change. The stated estimated and indicative recourse rate range does not include FGT's Fuel Reimbursement Charge ("Fuel") which is estimated to be approximately 3.41% based upon the historical calendar 2008 average. The estimated and indicative recourse rate does not include any surcharges (i.e. ACA

~\$.0016/MMBtu or UFS or any other unspecified future surcharges). FGT's Surcharges and Fuel percentages are collected in accordance with the terms and conditions of FGT's FERC approved tariff, in effect from time to time for service under FGT's proposed Rate Schedule FTS-3 which, at this time, has not been filed with or approved by the FERC.

12.2. Capacity

Buyer agrees to pay Seller for the Capacity described in Section 6 in accordance with the rates and procedures contained in Appendix 2. The capacity rate shall be USD\$11.65 per kW/Month for the duration of the contract using the Early Levelized Capacity Payment method starting on the Capacity Commencement Date.

12.3. Payments for Energy and Capacity

Payments due Seller will be made monthly, and normally by the twentieth (20th) Business Day following the end of the billing period. The megawatt-hours sold by Seller and the applicable avoided energy rate at which payments are being made shall accompany the payment to Seller.

12.4. Payment Adjustment

Payments to be made under this Section 12.3 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. Termination Fee

The Parties agree that the Buyer has opted for early levelized capacity payments. Upon the termination of this Contract, the Seller shall owe and be liable to Buyer for the Termination Fee as calculated in Appendix 3. The Seller's obligation to pay the Termination Fee shall survive the termination of this Contract. Upon request of Seller, Buyer shall provide the Seller a calculation of the Termination Fee.

12.6. Termination Fee Collection

Upon any termination of this Contract following the Capacity Commencement Date, Buyer shall be entitled to receive (and in the case of the letter(s) of credit, bond, or any other performance and/or adequate assurance of performance draw upon such letter(s) of credit or bond) and retain one hundred percent (100%) of the Termination Security.

12.7. 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 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, as proposed by Buyer in its sole discretion and approved by the FPSC.

- (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, as may be amended, revised, and/or replaced from time to time by the FPSC.
- (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, as may be amended, revised, and/or replaced from time to time by the FPSC. 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 rates and charges) to recover from its 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 Party shall initiate any action to deny recovery of payments under this Agreement and each Party shall use its best efforts to defend all terms and conditions of this Agreement, *including without limitation*, the payment levels specified in this Agreement. Any amounts initially recovered by Buyer from its ratepayers, which recovery is subsequently disallowed by FPSC and charged back to Buyer, may be off-set or credited against subsequent payments made by Buyer for purchases from Seller or, alternatively, shall be repaid and returned by Seller to Buyer. If any disallowance is subsequently reversed, Buyer shall repay Seller such disallowed payments. Any repayments shall be with interest at a rate equal to the thirty (30) Day highest grade commercial paper rate as published in the *Wall Street Journal* on the first Business Day of each Month to the extent such payments and interest are recovered by Buyer. Such interest shall be compounded monthly.
- (d) If Buyer elects to reduce payments to Seller pursuant to this Section, Seller may terminate this Agreement upon one hundred eighty (180) Days notice; provided, however, that Seller gives Buyer written notice of said termination within one hundred eighty (180) Days after such payment reductions to Seller take effect

12.8. Change in Environmental Law

- (a) As used herein, "Change(s) in Environmental Law(s)" means: (i) the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any statute, rule, regulation, permit, license, judgment, order or approval by a governmental entity that specifically addresses environmental issues and that takes effect after the Effective Date; and (ii) the imposition on a Party by any governmental entity of any requirement with respect to compliance with the Clean Air Interstate Rule promulgated on May 12, 2005 (70 Fed. Reg. 25,162) or the Clean Air Mercury Rule promulgated on May 18, 2005 (70 Fed. Reg. 28,606) and any re-promulgation or re-issuance of such rules in response to a petition for reconsideration or litigation challenging such rules, regardless of the date on which such requirements are imposed.
- (b) The Parties acknowledge that Change(s) in Environmental Law(s) could significantly increase the costs of complying with the terms of this Agreement ("Increased Environmental Costs") and agree that, if any Change(s) in Environmental Law(s) should increase(s) a Party's cost of performing its obligations under this Agreement above the Threshold amount set forth in Section 12.9(c) below, the Party affected by such Change(s) in Environmental Law(s) may avail itself of the remedies set forth in Section 12.9(d) below as its sole and exclusive remedies for such Change(s) in Environmental Law(s).
- (c) The Parties recognize and agree that certain Change(s) in Environmental Law(s) may occur that do not rise to a level that the Parties desire to impact this 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 any single such Change(s) in Environmental Law(s) exceed ██████████ in the aggregate during the Term (the "Threshold"). Notwithstanding the foregoing, Seller shall be responsible for any and all costs relating to the operation and maintenance of the Facility, including, without limitation, environmental compliance costs.

- (d) If a Party's Increased Environmental Costs should demonstrably exceed the Threshold requirements set forth in Section 12.9(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, 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.

12.9. 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 2.
 - (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.
- (c) On or before the twentieth (20th) Business Day of each Month following the Month in which the Capacity Commencement Date occurs Seller shall prepare an invoice showing the Payment payable by Buyer pursuant to this Agreement (in Dollars) and payable to Seller for the preceding Month. Each such invoice shall show information and calculations, in reasonable detail.
- (d) Beginning with the first Month following the Month in which the first unit of the Facility has been Commissioned until an invoice is required to be prepared pursuant to clause (c) aforementioned, Buyer shall prepare an invoice showing the charges for Energy payable to Seller for the preceding Month in accordance with FPSC Rule 25-17.0825, F.A.C., which invoice shall show information and calculations, in reasonable detail.
- (e) Buyer shall, subject to Section 13.7, pay all invoices on or before the twentieth Business Day of the month. If Buyer should dispute a portion of the charges set forth on any invoice, it shall pay only those amounts not in dispute by the applicable Due Date.

- (f) All payments specified in this Section 13.1 shall be made to an account designated by Seller and notified to Buyer.

13.2. Miscellaneous Payments

Any amounts due to either Seller or Buyer under this Agreement, other than those specified in Sections 13.1 above, shall be paid within twenty (20) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

13.3. Currency and Timing of Payment

Notwithstanding anything contained in this Agreement:

- (a) all payments to be made by either Seller or Buyer under this Agreement shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this Agreement or, if no account is specified, into the account designated by the receiving Party; and
- (b) any payment that becomes due and payable on a Day that is other than a Business Day shall be paid on the next Business Day.

13.4. Records

Generally Accepted Accounting Principles (GAAP) and SEC rules can require the Buyer to evaluate various aspects of its economic relationship with the Seller, e.g., whether or not the Buyer must consolidate the Seller's financial information. In order to determine whether certain GAAP is applicable, the Buyer may need access to the Seller's financial records and personnel in a timely manner after the Execution Date. In the event that Buyer, in its sole discretion, determines that consolidation or other incorporation of the Seller's financial information is necessary or prudent under GAAP, Seller shall provide Buyer with the following for each calendar quarter in the Term, within 90 days after quarter end:

- (a) Complete financial statements, including notes, for such quarter on a GAAP basis;
- (b) Financial schedules underlying the financial statements; and
- (c) Access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002).

Any information provided to the Buyer pursuant to this section shall be considered confidential in accordance with the terms of this agreement and shall only be disclosed as required by GAAP. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

13.6 Default Interest

Except where payment is the subject of a bona fide Dispute (in which case it shall be treated under Section 13.7 below), if any payment due from Buyer to Seller or from Seller to Buyer under this Agreement shall not be paid when due then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at the Interest Rate, and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

13.7. Disputed Items

- (a) Either Party (the "Disputing Party") may dispute in good faith the accuracy of a reading of the Metering Equipment and/or the accuracy of an invoice. Where a reading or bill is the subject of a Dispute in good faith, the Disputing Party shall in accordance with Section 16 hereof give written notice to the other Party within ten (10) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such Dispute. Such Dispute shall be addressed in accordance with Section 16.
- (b) All amounts paid as a result of the settlement or resolution of a Dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made.

13.8. Statement Errors

In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of such error and shall rectify such error (whether in the form of an underpayment or overpayment) within thirty (30) Days of such notification.

13.9. Taxes

- (a) Seller shall pay or cause to be paid any public utility taxes or taxes on revenue imposed upon it in the State of Florida and shall pay or cause to be paid all Taxes on or with respect to the sale of Energy pursuant to this Agreement.
- (b) Buyer shall pay or cause to be paid all Taxes (other than those referenced in clause (a) above) on or with respect to the sale of Energy pursuant to this Agreement.
- (c) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. The Parties shall use all reasonable efforts to administer this Agreement and implement the provisions hereof in a manner that will minimize Taxes due and payable by all Parties.
- (d) The Parties shall provide each other, upon written request, with copies of any documentation that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit.

13.10. Survival on Termination

The provisions of this Section 13 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 that became due and payable prior to any such repudiation, termination or expiration.

14. FORCE MAJEURE

14.1. Definition of Force Majeure Event

- (a) A "Force Majeure Event" shall mean 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 and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events

or circumstances may include, but are not limited to: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including, but not limited to, arson and vandalism), epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered a Force Majeure Event.

- (b) Except as otherwise provided in this Agreement, each Party shall be excused from performance only to the extent non-performance was caused by a Force Majeure Event.

14.2. Effect of a Force Majeure Event

- (a) If Seller should suffer a Force Majeure Event that reduces the generating capability of the Facility below the Committed Capacity, Seller may, upon notice to Buyer, temporarily adjust the Committed Capacity as a result of such event. Such adjustment shall be effective upon the first Day immediately following Buyer's receipt of such notice or such later date as may be specified by Seller. Such adjustment shall not exceed the minimum amount necessary to accommodate the Force Majeure Event, and in accordance with the other limitations set forth in this Agreement.
- (b) If the Facility should be rendered completely inoperative as a result of a Force Majeure Event, Seller shall temporarily set the Committed Capacity at 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure Event.
- (c) Upon the cessation of a Force Majeure Event or upon its cure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to such Force Majeure Event. Notwithstanding any other provisions of this Agreement, upon such cessation or cure, Buyer shall have the right to require a Committed Capacity test to demonstrate the Facility's compliance with the requirements of this Section. Any Committed Capacity test required by Buyer under this Section shall be in addition to any Committed Capacity test required under any other Section.
- (d) Seller shall be solely responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with the Transmission Provider's system as a result of the Force Majeure event.

14.3. Notification Obligations

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party in writing, within five (5) Days of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure Event requires. A Party claiming that a Force Majeure Event has occurred shall not be entitled to any relief therefore unless and until notice is provided. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case within two (2) Business Days thereof.

14.4. Duty to Mitigate

The Party claiming that a Force Majeure Event has occurred shall use its best efforts to cure the cause(s) preventing its performance of this Agreement; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable. The Party claiming the Force Majeure shall keep the other Party advised as to the continuance of the Force Majeure event. If an event of Force Majeure persists for a continuous period of at least six (6) months, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving written notice to the other Party thirty (30) days in advance of the date of termination (which may be as early as the six (6) month anniversary of the Force Majeure event). Upon such termination becoming effective, neither Party shall have any further liability nor obligation to the other Party arising under or related to this Agreement, except as otherwise provided for in this Agreement.

15. LIABILITY AND INDEMNIFICATION

15.1. Limitation of Liability

THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, PROVIDED FOR IN THIS AGREEMENT ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

15.2. Indemnification

Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party, and each of the other Party's Affiliates, directors, officers, employees, agents and permitted assigns (collectively, the "Indemnified Party"), from and against any and all claims, losses, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements)

directly incurred in connection with or directly arising from or out of: (i) any breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Party; (ii) any violation of applicable law, regulation or order by said Party; and/or (iii) any claims by a third party arising out of any act or omission by said Party.

The Indemnified Party shall promptly notify the Indemnifying Party of any claim or proceeding in respect of which it seeks to be indemnified. Such notice shall be given in writing as soon as reasonably practicable after the Indemnified Party becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects or prejudices the Indemnifying Party's interests. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that in the context of such indemnification there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel; provided however, the foregoing shall not preclude the Indemnified Party from otherwise participating in any such proceeding at its own expense. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

All indemnity rights shall survive the expiration or any sooner termination of this Agreement in full for a period of twenty-four (24) months after the expiration date or effective date of such termination.

16. RESOLUTION OF DISPUTES

16.1. Notice of Dispute

In the event that any dispute (including payment dispute), controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the Parties (a "**Dispute**"), the Party wishing to declare a Dispute shall deliver to the other Party a written notice identifying the disputed issue.

16.2. Resolution by Parties

Following delivery and receipt of a notice of Dispute, executives of both Parties shall meet at a mutually acceptable time and place within ten (10) Business Days after receipt of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. If the matter has not been resolved in the aforementioned manner within thirty (30) Days of the disputing Party's notice having been issued, or if the Parties fail to meet within ten (10) Business Days as required above, either Party may initiate binding arbitration in St. Petersburg, Florida, as hereafter provided. The binding arbitration proceeding shall be conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures.

17. TERMINATION AND DEFAULT PROVISIONS

17.1. Events of Default

Events of Defaults. An "Event of Default" shall mean, with respect to a Party (such Party, the "**Defaulting Party**"), the occurrence of any one or more of the following:

- l) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within twenty-five (25) Business Days after the Defaulting Party's receipt of written notice;
- m) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- n) Except to the extent constituting a separate Event of Default or if the failure is excused by Force Majeure, the failure to perform any significant or material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) days after the Defaulting Party's receipt of written notice;
- o) Such Party becomes Bankrupt;
- p) The Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
- q) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, (i) the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the creditworthiness of the Party or the resulting, surviving, transferee or successor entity is materially weaker than that of the Party or such guarantor, as the case may be, immediately prior to such action; or (iii) the benefits of any guaranty fail to extend (without the consent of the other Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; and,
- r) The occurrence and continuation of a default, Event of Default or other similar event in respect of a Party (such Party, the Defaulting Party hereunder) under one or more agreements or instruments, individually or collectively, relating to indebtedness for any amount of borrowed money resulting in such indebtedness becoming immediately due and payable.

17.2 Early Termination.

Early Termination Date. For so long as an Event of Default has occurred and is continuing with respect to the Defaulting Party, the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (by providing the Defaulting Party with written notice thereof), which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective, as an early termination date (the, "Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement upon which date this Agreement shall terminate.

Limitations. Upon such early termination becoming effective, neither Party shall have any further liability to the other Party arising under or related to this Agreement, except for any liabilities and obligations accruing prior to such termination becoming effective or any liabilities and obligations which by their nature or the express terms of this Agreement extend beyond the termination of this Agreement. Notwithstanding the foregoing, where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, to the extent permissible under applicable law, an Event of Default and Early Termination Date shall be deemed to have occurred immediately prior to any such event as permissible under applicable law and no prior written notice shall be required. All of the remedies and other provisions set forth in this section shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, Lien, or other right to which any Party is at any time otherwise entitled, whether by operation of law or in equity, under contract, or otherwise.

Net Settlement Amount. If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination of each

terminated transaction as of the Early Termination Date, and shall aggregate such Gains or Losses and Costs with respect to all terminated transactions and any other amounts due under this Agreement and any Seller retail account with Buyer into a single net amount (the "Net Settlement Amount") and then notify the Defaulting Party of the Net Settlement Amount owed or owing. The Net Settlement Amount shall be a net present value calculation determined in a commercially reasonable manner. The Net Settlement Amount shall be due to or due from the Non-Defaulting Party as appropriate. Payment of the Net Settlement Amount shall be due within two (2) Business Days after the later of the Early Termination Date and the Defaulting Party's receipt of notice of the Net Settlement Amount.

17.3 Other Rights and Remedies

Upon the breach by either Party hereto of any obligation, covenant or warranty hereunder, the Party damaged by any such Event of Default may in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with Section 16 to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy).

18. MISCELLANEOUS PROVISIONS

18.1. Expenses of the Parties

Except as expressly provided for herein, all expenses incurred by or on behalf of each Party, including all fees and expenses of agents, representatives, counsel and accountants employed by the Parties in connection with this Agreement, including, without limitation, preparation of this Agreement, consummation of the transactions contemplated by this Agreement, and disputes relating to this Agreement, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof, except as otherwise agreed.

18.2. Confidentiality

Protected Information. Except as otherwise set forth in this Agreement, neither Party shall publish, disclose, or otherwise divulge any term or condition of this Agreement and, without limitation, any information relating to any transaction or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to a third person (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential), at any time during or for two (2) years after the expiration or early termination of this Agreement, without the other Party's prior written consent. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief) to enforce, or seek relief in connection with, this confidentiality obligation.

Non-Confidential Information. The following shall not be considered Protected Information, and receiving Party shall not be limited in the use or disclosure of the following information: (a) information which is or becomes part of the public domain through no act or omission of receiving Party; (b) information which demonstrably was known or was in the possession of receiving Party without obligation to maintain confidentiality prior to the Effective Date of this Agreement; (c) information which is subsequently rightly received by receiving Party from a third party who is not bound to maintain such information as confidential; (d) information independently developed by the receiving Party without reference to the Protected Information received under this Agreement; and/or, (e) information required to be disclosed by Buyer for its compliance obligations to the Commission and/or pursuant to the Act. Further, notwithstanding anything to the contrary, either Party may disclose to the public and third parties, at any time and from time-to-time, the following information in connection with the Parties' respective renewable energy business operations and management, technical evaluation, educational, public relations, and promotional programs: the name of the Parties and the

fact the Parties have entered into this Agreement for the sale and purchase of renewable power generated by the Facility, a description of the type of renewable energy technology used at the Facility, the Capacity of the Facility, and the amount of Energy actually generated by the Facility and/or delivered to Buyer.

Return of Confidential Information. Upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Parties agree that receiving party may retain one (1) copy of such Protected Information in receiving Party's files for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.

Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, any other applicable Requirement of Law, or any exchange, control area or independent system operator rule, in response to a court order, in connection with any court or regulatory proceeding, or as otherwise required by any Requirement of Law. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information thereafter falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.

18.3. Notices

- (a) All notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the Persons indicated below, and shall be delivered personally or sent by a nationally recognized overnight courier service or facsimile. The addresses of the Parties and their respective facsimile numbers shall be:

If to Buyer: Progress Energy Florida, Inc.
299 First Avenue North, PEF155
St. Petersburg, Florida 33701
Attn: Cogeneration Manager
Telephone: (727) 820-4597
Facsimile: (727) 820-4598

with a copy to: Progress Energy Florida, Inc.
299 First Avenue North, PEF 151
St. Petersburg, Florida 33701
Attn: Deputy General Counsel
Telephone: (727) 820-5587
Facsimile: (727) 820-4598

If to Seller: Hathaway Renewable Energy, Inc.
45 Franks Road
Leoma, Tennessee 38468
Attn: Kevin Hathaway
Telephone: (931) 852-4060
Facsimile: (931) 852-4160

with a copy to: Hathaway Renewable Energy, Inc.
P.O. Box 356
Leoma, Tennessee 38468
Attn: Laura Hathaway
Telephonc: (931) 852-4060
Facsimile: (931) 852-4160

Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered (i) when delivered by hand or by overnight courier, or (ii) if received during business hours on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number and, if received after business hours or on a Day that is not a Business Day for the receiving Party, on the receiving Party's first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number. Any notice given by facsimile shall be confirmed in writing, delivered personally or sent by courier, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to whom it is addressed.

- (b) Either Party may by written notice change the address, addressee and/or facsimile number to which such notices and communications to it are to be delivered or mailed.

18.4. Waiver

- (a) No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character nor shall it be effective unless in writing duly executed by a duly authorized representative of such Party.
- (b) Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach nor as an acceptance of any variation or as the relinquishment of any such right or any other right hereunder.

18.5. Relationship of the Parties

In executing this Agreement; Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller or any assignee of this Agreement, nor does it create any third party beneficiary rights with respect thereto. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture between the Parties.

18.6. No Third Parties

Other than as specified in the assignment provisions contained in Section 18.9 below, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed as creating any duty to, standard of care with reference to, or any liability to, or conferring any right of suit or action on any Person not a Party to this Agreement.

18.7. Further Assurances

If, after the execution hereof, it should prove necessary and proper to execute any additional documents or to take further action to effectuate the intent of this Agreement, the Parties agree to take such action so long as it is reasonable.

18.8. Assignment and Security

Neither Party shall have the right to assign its obligations, benefits, and duties without the written consent of the other Party, which shall not be unreasonably withheld or delayed; provided, however, that Seller may pledge its interests herein in favor of any Financing Parties who are parties to the Financing Documents.

18.9. Choice of Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to its conflict of laws rules or any principles that would trigger the application of any other law. Any action brought pursuant to this Agreement shall be brought in Pinellas County, Florida.

18.10. Severability

If any term or provision of this Agreement should be held by any court or other authority of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will remain in full force and effect and will in no way be adversely affected; provided, however, that the severance of such term or provision does not render the performance of a Party's material obligations impracticable or impossible.

18.11. Amendments

This Agreement may be amended only by written agreement among the Parties.

18.12. Counterparts


This Agreement may be executed in two (2) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

18.13. Entire Agreement

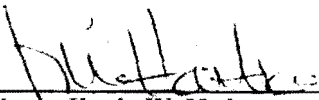
This Agreement is intended by the Parties as the final expression of their agreement, is intended also as a complete and exhaustive statement of their agreement with respect to the subject matter contained herein, and supersedes any previous agreements or understandings between the Parties.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

**FLORIDA POWER CORPORATION d/b/a
PROGRESS ENERGY FLORIDA, INC., a
Florida corporation**

By: 
Name: ROBERT F. CALDWELL
Title: VICE PRESIDENT

**HATHAWAY RENEWABLE ENERGY, INC.,
a Tennessee Corporation qualified in Florida**

By: 
Name: Kevin W. Hathaway
Title: President

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.....
.....
.....

APPENDIX 1

FACILITY CONFIGURATION

REDACTED

APPENDIX 2

MONTHLY CAPACITY PAYMENT CALCULATION

- A. After six months of operation from the Capacity Commencement Date, in the event that the Annual Capacity Billing Factor ("ACBF"), as defined below, is less than or equal to 74%, then no Monthly capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

- B. In the event that the ACBF is greater than 74% but less than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \$11.65 \cdot [1 - [5 \times (0.94 - \text{ACBF})]] \cdot \text{CC}$$

- C. In the event that the ACBF is equal to or greater than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \$11.65 \cdot \text{CC}$$

Where:

CC = Committed Capacity in kW.

ACBF = Annual Capacity Billing Factor. This 12 month rolling average shall be defined as the Energy actually received by Buyer for the 12 consecutive months preceding the date of calculation excluding any Energy received during a Force Majeure Event in which the Committed Capacity is temporarily set equal to 0 kW, divided by the product of the Committed Capacity and the number of hours in the 12 consecutive months preceding the date of calculation excluding the hours during a Force Majeure Event in which the Committed Capacity is temporarily set equal to 0 kW. If a Force Majeure Event occurs during the 12 consecutive months preceding the date of calculation in which the Committed Capacity is temporarily set to a value greater than 0 kW then the 12 month rolling average will be pro-rated accordingly. During the first 12 consecutive Monthly Billing Periods commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of 12-month rolling average Annual Capacity Billing Factor shall be performed as follows (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by Energy actually received by Buyer for the number of full consecutive months preceding the date of calculation excluding any Energy received during a Force Majeure Event in which the Committed Capacity is temporarily set equal to 0 kW, divided by the product of the Committed Capacity and the number of hours in the number of full consecutive months preceding the date of calculation excluding the hours during a Force Majeure Event in which the Committed

Capacity is temporarily set equal to 0 kW. If a Force Majeure Event occurs during the months preceding the date of calculation in which the Committed Capacity is temporarily set to a value greater than 0 kW then the 12 month rolling average will be pro-rated accordingly. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor.

MCF = **Monthly Capacity Factor.** The total Energy received during the Monthly Billing Period for which the calculation is made, divided by the product of the Committed Capacity and the total hours during the Monthly Billing Period.

Monthly Billing Period = The period beginning at 12:00:00 a.m. on the first calendar day of each Month and ending at 12:00:00 a.m. on the first calendar day of the next succeeding Month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m., on the Capacity Commencement Date and ending at 12:00:00 a.m. on the first day of the next succeeding Month.

APPENDIX 3

TERMINATION FEE

Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer or a Qualifying Facility less than 100 kW.

The "Termination Fee" shall be the sum of the values for each month beginning with the month in which the Capacity Commencement Date occurs through the month of the termination of this Agreement (or month of calculation, as the case may be) computed according to the following formula:

$$\sum_{i=1}^n (MCP_i - MCPC_i) \cdot (1 + r)^{(n-i)}$$

with: $MCPC = 0$ for all periods prior to June 1, 2014

where

- i = number of Monthly Billing Period commencing with the Capacity Commencement Date (i.e., the month in which Capacity Commencement Date occurs = 1; the month following this month in which Capacity Commencement Date occurs = 2 etc.)
- n = the number of Monthly Billing Periods which have elapsed from the month in which the Capacity Commencement Date occurs through the month of termination (or month of calculation, as the case may be)
- r = Buyer's incremental after-tax avoided cost of capital of 8.48%.
- MCP_i = Monthly Capacity Payment paid to SellerQF corresponding to the Monthly Billing Period i , calculated in accordance with Appendix 2.
- $MCPC_i$ = Monthly Capacity Payment in Appendix 3 corresponding to the Monthly Billing Period i , calculated in accordance with this Contract.

APPENDIX 4**AVOIDED UNIT NORMAL CAPACITY PAYMENT RATE**

| YEAR | RATE (\$/kW-month) |
|-------------|---------------------------|
| 2012 | 0.00 |
| 2013 | 0.00 |
| 2014 | 9.54 |
| 2015 | 9.91 |
| 2016 | 10.29 |
| 2017 | 10.68 |
| 2018 | 11.09 |
| 2019 | 11.52 |
| 2020 | 11.96 |
| 2021 | 12.42 |
| 2022 | 12.90 |
| 2023 | 13.39 |
| 2024 | 13.90 |
| 2025 | 14.45 |
| 2026 | 15.00 |
| 2027 | 15.60 |
| 2028 | 16.20 |
| 2029 | 16.80 |
| 2030 | 17.45 |
| 2031 | 18.15 |
| 2032 | 18.85 |
| 2033 | 19.55 |
| 2034 | 20.30 |
| 2035 | 21.10 |
| 2036 | 21.95 |
| 2037 | 22.80 |
| 2038 | 23.65 |

APPENDIX 5

SELLER'S CORPORATE INFORMATION

Hathaway Renewable Energy, Inc.

Physical Address: 45 Franks Road
 Leoma, Lawrence County, Tennessee 38468

Phone: (931) 231-5450

Fax: (931) 852-4160

E-mail: hathawaykw@msn.com

Mailing Address: P.O. Box 356
 Leoma, TN 38468-0356

State of Incorporation: Tennessee on October 26, 2009, control #616183

Qualified in Florida: January 26, 2010, control #F10000000444

EIN: [REDACTED]

DUNS: [REDACTED]

CAGE Code: [REDACTED]

CCR Registration: Completed December 23, 2009 good for one year

NAICS: [REDACTED]

SIC: [REDACTED]

Bank of Frankewing, Lawrenceburg, TN 38464

RTN: [REDACTED]

ACCT: [REDACTED]

Tax Year: 1 OCT to 30 SEP

EXHIBIT B

**CALCULATION OF COST SAVINGS
FROM THE HATHAWAY CONTRACT #2**

Comparison of Payments to Hathaway Biomass Under Contract 2 to PEF's 2009 Standard Offer

Contract MW: 16
 Capacity Factor: 94%
 Discount Rate 8.48%

| \$000 | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
|------------|-------------|---------------------|-------------------------------|-----------------------------|--|---------------------------------|------------------------------|----------------------------|---|--------------------------------|---------------------------------------|---|
| | # of Months | Contract Energy MWh | Contract Capacity Payments \$ | Contract Energy Payments \$ | (3) + (4) Contract Energy & Capacity Payments \$ | Contract Cumulative Payments \$ | Avoided Capacity Payments \$ | Avoided Energy Payments \$ | (7) + (8) Avoided Energy & Capacity Payments \$ | Avoided Cumulative Payments \$ | (9) - (5) Difference from Contract \$ | (10) - (6) Cumulative Difference from Contract \$ |
| Units | | | | | | | | | | | | |
| Year | | | | | | | | | | | | |
| 2010 | 0 | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| 2011 | 0 | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| 2012 | 0 | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| 2013 | 7 | 77,247 | \$ 1,366 | \$ 6,953 | \$ 8,319 | \$ 8,319 | \$ - | \$ 6,953 | \$ 6,953 | \$ 6,953 | \$ (1,366) | \$ (1,366) |
| 2014 | 12 | 131,753 | \$ 2,342 | \$ 11,047 | \$ 13,389 | \$ 21,708 | \$ 1,069 | \$ 11,047 | \$ 12,116 | \$ 19,069 | \$ (1,273) | \$ (2,639) |
| 2015 | 12 | 131,753 | \$ 2,342 | \$ 11,459 | \$ 13,801 | \$ 35,509 | \$ 1,902 | \$ 11,459 | \$ 13,361 | \$ 32,430 | \$ (440) | \$ (3,079) |
| 2016 | 12 | 132,114 | \$ 2,342 | \$ 10,701 | \$ 13,043 | \$ 48,552 | \$ 1,975 | \$ 10,701 | \$ 12,676 | \$ 45,106 | \$ (367) | \$ (3,446) |
| 2017 | 12 | 131,753 | \$ 2,342 | \$ 9,700 | \$ 12,042 | \$ 60,594 | \$ 2,051 | \$ 9,700 | \$ 11,751 | \$ 56,857 | \$ (291) | \$ (3,737) |
| 2018 | 12 | 131,753 | \$ 2,342 | \$ 9,730 | \$ 12,072 | \$ 72,666 | \$ 2,130 | \$ 9,730 | \$ 11,860 | \$ 68,717 | \$ (212) | \$ (3,949) |
| 2019 | 12 | 131,753 | \$ 2,342 | \$ 9,874 | \$ 12,216 | \$ 84,882 | \$ 2,212 | \$ 9,874 | \$ 12,086 | \$ 80,803 | \$ (130) | \$ (4,079) |
| 2020 | 12 | 132,114 | \$ 2,342 | \$ 10,115 | \$ 12,457 | \$ 97,339 | \$ 2,297 | \$ 10,115 | \$ 12,412 | \$ 93,215 | \$ (45) | \$ (4,124) |
| 2021 | 12 | 131,753 | \$ 2,342 | \$ 10,637 | \$ 12,979 | \$ 110,318 | \$ 2,385 | \$ 10,637 | \$ 13,022 | \$ 106,237 | \$ 43 | \$ (4,081) |
| 2022 | 12 | 131,753 | \$ 2,342 | \$ 10,998 | \$ 13,340 | \$ 123,658 | \$ 2,477 | \$ 10,998 | \$ 13,475 | \$ 119,712 | \$ 135 | \$ (3,946) |
| 2023 | 12 | 131,753 | \$ 2,342 | \$ 11,509 | \$ 13,851 | \$ 137,509 | \$ 2,572 | \$ 11,509 | \$ 14,081 | \$ 133,793 | \$ 230 | \$ (3,716) |
| 2024 | 12 | 132,114 | \$ 2,342 | \$ 11,272 | \$ 13,614 | \$ 151,123 | \$ 2,671 | \$ 11,272 | \$ 13,943 | \$ 147,736 | \$ 329 | \$ (3,387) |
| 2025 | 12 | 131,753 | \$ 2,342 | \$ 11,899 | \$ 14,241 | \$ 165,364 | \$ 2,774 | \$ 11,899 | \$ 14,673 | \$ 162,409 | \$ 432 | \$ (2,955) |
| 2026 | 12 | 131,753 | \$ 2,342 | \$ 12,326 | \$ 14,668 | \$ 180,032 | \$ 2,881 | \$ 12,326 | \$ 15,207 | \$ 177,616 | \$ 539 | \$ (2,416) |
| 2027 | 12 | 131,753 | \$ 2,342 | \$ 13,096 | \$ 15,438 | \$ 195,470 | \$ 2,992 | \$ 13,096 | \$ 16,088 | \$ 193,704 | \$ 650 | \$ (1,766) |
| 2028 | 12 | 132,114 | \$ 2,342 | \$ 13,127 | \$ 15,469 | \$ 210,939 | \$ 3,107 | \$ 13,127 | \$ 16,234 | \$ 209,938 | \$ 765 | \$ (1,001) |
| 2029 | 12 | 131,753 | \$ 2,342 | \$ 13,390 | \$ 15,732 | \$ 226,671 | \$ 3,227 | \$ 13,390 | \$ 16,617 | \$ 226,555 | \$ 885 | \$ (116) |
| 2030 | 12 | 131,753 | \$ 2,342 | \$ 13,692 | \$ 16,034 | \$ 242,705 | \$ 3,352 | \$ 13,692 | \$ 17,044 | \$ 243,599 | \$ 1,010 | \$ 894 |
| 2031 | 12 | 131,753 | \$ 2,342 | \$ 14,000 | \$ 16,342 | \$ 259,047 | \$ 3,482 | \$ 14,000 | \$ 17,482 | \$ 261,081 | \$ 1,140 | \$ 2,034 |
| 2032 | 12 | 132,114 | \$ 2,342 | \$ 14,349 | \$ 16,691 | \$ 275,738 | \$ 3,616 | \$ 14,349 | \$ 17,965 | \$ 279,046 | \$ 1,274 | \$ 3,308 |
| 2033 | 12 | 131,753 | \$ 2,342 | \$ 14,637 | \$ 16,979 | \$ 292,717 | \$ 3,756 | \$ 14,637 | \$ 18,393 | \$ 297,439 | \$ 1,414 | \$ 4,722 |
| 2034 | 12 | 131,753 | \$ 2,342 | \$ 14,966 | \$ 17,308 | \$ 310,025 | \$ 3,902 | \$ 14,966 | \$ 18,868 | \$ 316,307 | \$ 1,560 | \$ 6,282 |
| 2035 | 12 | 131,753 | \$ 2,342 | \$ 15,303 | \$ 17,645 | \$ 327,670 | \$ 4,053 | \$ 15,303 | \$ 19,356 | \$ 335,663 | \$ 1,711 | \$ 7,993 |
| 2036 | 12 | 132,114 | \$ 2,342 | \$ 15,685 | \$ 18,027 | \$ 345,697 | \$ 4,210 | \$ 15,685 | \$ 19,895 | \$ 355,558 | \$ 1,868 | \$ 9,861 |
| 2037 | 12 | 131,753 | \$ 2,342 | \$ 15,999 | \$ 18,341 | \$ 364,038 | \$ 4,373 | \$ 15,999 | \$ 20,372 | \$ 375,930 | \$ 2,031 | \$ 11,892 |
| 2038 | 5 | 54,506 | \$ 976 | \$ 6,306 | \$ 7,282 | \$ 371,320 | \$ 1,893 | \$ 6,306 | \$ 8,199 | \$ 384,129 | \$ 917 | \$ 12,809 |
| Total | 300 | 3,295,991 | \$ 58,550 | \$ 312,770 | \$ 371,320 | | \$ 71,359 | \$ 312,770 | \$ 384,129 | | \$ 12,809 | |
| NPV 2010\$ | | | \$ 19,727 | \$ 97,751 | \$ 117,478 | | \$ 19,735 | \$ 97,751 | \$ 117,486 | | \$ 8 | |

EXHIBIT C

HATHAWAY CONTRACT #2 SUMMARY

Hathaway Renewable Energy, Inc.
Contract #2 Summary

| | |
|--|--|
| Utility Signatory | Progress Energy Florida Robert F. Caldwell |
| Owner and Operator of the QF Signatory | Hathaway Renewable Energy, Inc. Kevin W. Hathaway, President |
| Committed Capacity | 16 MW |
| Facility Type | Fuel cell / CT |
| Fuel | Gasified Biomass |
| Location | To Be Determined |
| Transmission Requirements | To Be Determined |
| Expected Total Annual Energy | 131,753 MWH |
| Expected On-Peak Annual Energy | 60,387 MWH |
| Expected Off-Peak Annual Energy | 71,366 MWH |
| Avoided Unit | 178 MW Natural Gas Combustion Turbine with an in-service date of June 1, 2014 |
| Expected In-Service Date of Hathaway | June 1, 2013 |