

**EXECUTION COPY**

**LONG-TERM AGREEMENT FOR  
FULL REQUIREMENTS ELECTRIC SERVICE**

**DATED AS OF FEBRUARY 7<sup>th</sup>, 2011**

**BY AND BETWEEN**

**FLORIDA POWER & LIGHT COMPANY**

**AND**

**FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.**

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## **LONG-TERM AGREEMENT FOR FULL REQUIREMENTS ELECTRIC SERVICE**

This AGREEMENT is dated as of February 7<sup>th</sup>, 2011 ("Effective Date") and is by and between Florida Power & Light Company (together with its successors and permitted assigns, hereinafter referred to as "Company"), and Florida Keys Electric Cooperative Association, Inc. (together with its permitted successors and permitted assigns, hereinafter referred to as "Customer") (Company and Customer each individually referred to herein as a "Party," or collectively, the "Parties").

### **RECITALS:**

**WHEREAS**, Company is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 700 Universe Blvd., Juno Beach, Florida 33408, and owns and operates facilities for the generation, transmission and distribution of electric power and energy in the State of Florida;

**WHEREAS**, Customer is a rural electric cooperative, with its principal place of business at 91630 Overseas Highway, Tavernier, Florida 33070;

**WHEREAS**, Customer currently purchases electric service from Company pursuant to the Long Term Agreement To Provide Capacity and Energy by Florida Power & Light Company To Florida Keys Electric Cooperative Association Inc. dated August 15, 1991 as amended "Superceded Agreement");

**WHEREAS**, Customer desires to purchase Full Requirements Electric Service (as hereinafter defined) from Company to meet Customer's Retail Load at the Delivery Point (as hereinafter defined) which purchase shall replace and supersede all electric service previously provided to Customer by Company pursuant to the Superceded Agreement;

**WHEREAS**, Company has proposed to supply Full Requirements Electric Service, including generation capacity planning resources associated with such services, to Customer, subject to the terms and conditions set forth herein; and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree that this Agreement, together with the Appendices attached hereto, sets forth the terms under which Company will supply Full Requirements Electric Service including associated generation capacity planning resources to Customer during the Delivery Period.

### **ARTICLE 1 DEFINITIONS**

The following words and terms shall be understood to have the following meanings when used in this Agreement or in any associated documents entered into in conjunction with this Agreement, unless a different meaning is plainly required by the context.

"Affiliate" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the

direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

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

“Agreement” means this Long-Term Agreement for Full Requirements Electric Service, including the Appendices, all as amended, modified or supplemented from time to time in accordance with the provisions hereof.

“Ancillary Services” means those services as defined in the OATT.

“Annual Capacity Availability Factor” has the meaning set forth in Section 3.3(b).

“Billing Demand” has the meaning set forth in Section 4.8(a).

“Billing Energy” has the meaning set forth in Section 4.8(b).

“Billing Period” means the calendar month, which shall be the standard period for all payments and metering measurements under this Agreement unless otherwise agreed to by the Parties or specifically required by the OATT of the Transmission Provider.

“Business Day” means a day ending at 5:00 p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by NERC.

“Calendar Year” means a twelve-consecutive-month period commencing at the start of hour ending (“HE”) 0100 on January 1 and ending at the conclusion of HE 2400 on December 31.

“CFO” means the chief financial officer or similar official.

“Change in Control” has the meaning set forth in Section 16.1(e).

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Agreement, and the resulting losses, damages, expenses, reasonable attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether

such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Claiming Party” has the meaning set forth in Section 8.2.

“Clean Air Act” has the meaning set forth in 42 USC 7401, et seq.

“Company” has the meaning set forth in the Preamble.

“Company’s Customers” means Company’s retail electric customers.

“Company Generation Resources” means, during the Term, the generation assets owned by Company and Company’s share of any jointly-owned units, as changed from time to time during the Term; capacity and energy purchases by Company pursuant to power purchase agreements; and to the extent of the sale of electric power to Company therefrom, all generating plants of co-generators, qualifying facilities, and independent power producers that are not owned by Company, but that produce electric power and sell it to Company. The individual elements of Company Generation Resources are expected to change during the Term of this Agreement and any such changes shall be automatically taken into account in determining the elements that comprise Company Generation Resources. The generation assets owned by Company and Company’s share of any jointly-owned units are set forth in Appendix E. Whenever there is a change in such generation assets, Appendix E automatically shall be amended to reflect such change and, if necessary, be submitted to FERC.

“Confidential Information” means such information about a Party’s business or future plans and reports or other information compiled or prepared by a Party which is identified as confidential at the time of disclosure. Notwithstanding the foregoing, the following shall not constitute Confidential Information:

- (a) Information which was already in a Party’s possession prior to its receipt from another Party and not subject to a requirement of confidentiality;
- (b) Information which is obtained from a third Person who, insofar as is known to the receiving Party, is not prohibited from transmitting the information to the Party by a contractual, legal or fiduciary obligation to a Party; and
- (c) Information which is or becomes publicly available through no fault of the Party.

“CP Demand” has the meaning set forth in Section 4.8(c).

“Creditworthy Bank” means a bank which satisfies the requirements of being (i) a member bank of the Farm Credit System, provided such Farm Credit System continues to be a Government Sponsored Enterprise or (ii) a U.S. commercial bank or a foreign bank with a U.S. branch, or (iii) the National Rural Utilities Cooperative Finance Corporation, with such banks or entities described in (ii) and (iii), above, having and maintaining a Credit Rating of at least A- from S&P or A3 from Moody’s.

“Credit Rating” means, with respect to any Person on any date of determination, the respective rating then assigned to its unsecured senior long-term debt obligations (not supported by third party credit enhancement) by S&P or Moody’s; and if no rating is assigned to such Person’s unsecured, senior long-term debt obligations by such agency, the lower of the general corporate credit rating or issuer rating, as applicable, assigned by such rating agency to such Person.

“Customer” has the meaning set forth in the Preamble.

“Customer Adjusted Load Management Capability” has the meaning set forth in Section 3.6(a).

“Customer Billing Demand Schedule” means the page of Appendix B to this Agreement entitled “Calculation of Customer’s Billing Demand.”

“Customer CP Demand Schedule” means the page of Appendix B to this Agreement entitled “Calculation of Customer’s CP Demand.”

“Customer Charge” has the meaning set forth in Section 4.2.

“Customer Peak Demand” means that in the immediately preceding Calendar Year, the single highest 60-minute kW demand measured over a 60-minute period at all of the Delivery Points.

“Customer Share” means the allocation of costs to Customer, that have been incurred by Company and assigned as fixed, variable or fuel costs such that the

(i) Customer Share of the annual production fixed costs is as defined in Appendix B, Sheet A-1 for the applicable period;

(ii) the Customer Share of annual production variable costs is defined as the ratio of (a) Customer’s annual Billing Energy expressed in kWh and measured at the Receipt Points to (b) the Company’s annual net kWh generation and purchases less kWh sales defined in Appendix B, Sheet A-2 for the applicable period and measured at the Receipt Points; and

(iii) the Customer Share of fuel costs for the applicable period is defined as the ratio of (c) Customer’s Billing Energy expressed in kWh and measured at the Receipt Points to (d) the Company’s system net generation as defined in Appendix C, Paragraph 1(f) expressed in kWh and measured at the Receipt Points.

“CWIP” has the meaning set forth in Section 4.7(a).

“Debt Service Coverage Ratio” has the meaning set forth in Appendix D.

“Defaulting Party” means the Party which has caused an Event of Default or with respect to which an Event of Default has occurred.

“Delivery Period” means the period defined in Section 2.2(a).

“Delivery Point” means the point designated on Appendix A, as amended from time to time in accordance with Section 2.4.

“Direct Load Management” has the meaning set forth in Section 3.6(d).

“Dispute” has the meaning set forth in Section 15.1.

“Early Termination Date” has the meaning set forth in Section 7.2.

“Eastern Prevailing Time” means the prevailing time in the City of Juno Beach, Florida.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in kWhs.

“Equity Ratio” has the meaning set forth in Appendix D.

“Event of Default” means those events by or with respect to the Defaulting Party, as set forth in Section 7.1.

“FPA” means the Federal Power Act, as amended from time to time.

“FERC” means the Federal Energy Regulatory Commission, and any successor entity.

“Florida Keys” means for the purpose of this Agreement that area within Monroe County, Florida that excludes the Everglades National Park.

“Force Majeure” means an event or circumstance that is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome, avoid, or cause to be avoided in a commercially reasonable manner, and without limiting the scope of this definition, includes acts of God or of the public enemy, or insurrection, war, riot, acts of terrorism, acts of sabotage, civil disobedience or disorder, strikes, lockouts, work stoppages, freezes, fires, earthquakes, lightning, tornadoes, floods, hurricanes, storms or other natural disasters, explosions, failure or imminent threat of failure of equipment, or actions or restraints by court order or governmental authority or arbitration award. Nothing contained herein shall be construed so as to require a Party to settle any strike, lockout, work stoppage or other dispute in which it may be involved, or to seek review of or take an appeal from any administrative, arbitral or judicial action. Force Majeure shall not include (i) the loss or failure of Company’s generation in the absence of a Force Majeure event, (ii) Company’s ability to sell Energy to another market at a more advantageous price, (iii) the loss of any load by Customer, or (iv) Customer’s inability economically to use the Energy.

“FPSC” means the Florida Public Service Commission and any successor entity.



“FRCC” means the Florida Reliability Coordinating Council and any successor entity.

“Fuel Adjustment Charge” has the meaning set forth in Section 4.5.

“Fuel Charge” has the meaning set forth in Section 4.5.

“Full Requirements Electric Service” means the supply of firm Energy and firm capacity required to supply to Customer at the Receipt Points during the Delivery Period to serve all of Customer’s Retail Load, as the same may fluctuate in real time, as measured at the Delivery Point, and as grossed-up for Losses from the Receipt Points to the Delivery Point based on the demand loss factor for all transmission delivery points on the Company’s system for the applicable period as set forth in Appendix B, together with all associated Generation-Related Services and the capacity related thereto and all generation capacity planning reserves associated with providing firm Energy and firm capacity under this Agreement.

“Generation Demand Charge” means the monthly charge determined as the product of the Billing Demand and the Generation Demand Charge Rate.

“Generation Demand Charge Rate” means the rate in \$/kW-month determined from Schedule A-1 of the Generation Demand Charge and Generation Energy Charge Formula Rate set forth in Appendix B that is used to calculate the Generation Demand Charge.

“Generation Energy Charge” means the monthly charge determined as the product of the Billing Energy and the Generation Energy Charge Rate.

“Generation Energy Charge Rate” means the rate in \$/kWh determined from Schedule A-2 of the Generation Demand Charge and Generation Energy Charge Formula Rate set forth in Appendix B that is used to calculate the Generation Energy Charge.

“Generation-Related Services” means those ancillary generation services set forth in Schedules 3 through 6 of the OATT required to maintain reliability within and among the control areas affected by the transmission service in the transmission of Full Requirements Electric Service.

“Good Utility Practice” means any of the practices, methods, techniques and standards (including the practices, methods, techniques and standards approved by a significant portion of the electric power generation industry, the Transmission Provider and/or NERC) that, 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 and having due regard for, among other things, contractual obligations, applicable Laws and equipment manufacturer’s recommendations, could have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, safety, environmental protection, economy and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather to be a range of possible practices, methods, techniques or standards within which a Party shall conduct its activities under this Agreement.

“Government Sponsored Enterprise” means an entity that is chartered by the United States Congress to serve a public purpose and is officially sponsored by the United States of America.

“HE” means hour ending.

“Interconnection Agreement” means the Revised Interconnection Agreement, as may be further revised from time to time, among Florida Power & Light Company, Florida Keys Electric Cooperative, Inc., and the Utility Board of the City of Key West, Florida, dated April 29, 1998.

“Investment Grade Credit Rating” means a Credit Rating from each of S&P and Moody’s equal to or higher than “BBB-” by S&P (or its equivalent under any successor rating category of S&P) and/or “Baa3” by Moody’s (or its equivalent under any successor rating category of Moody’s).

“kW” means kilowatt.

“kWh” means kilowatt-hour.

“Law” means any statute, rule, regulation, ordinance, order, writ, judgment, decree or other legal or regulatory determination, authorization or approval by a court, regulatory agency, or any other governmental authority of competent jurisdiction.

“Lenders” means the National Rural Utilities Cooperative Finance Corporation, CoBank A.C.B. or any other financial institution or bank in the United States or a foreign financial institution or bank with a branch in the United States, in each case extending credit to Customer.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit, substantially in the form attached hereto as Appendix H, equal to or greater than the Required Amount, and issued by a Creditworthy Bank.

“Load Management” means programs which allow the applicable service provider the ability and right to control the load of customers participating in the programs in order to temporarily reduce overall system requirements.

“Losses” means any transmission loss, transformation loss, sub-transmission and/or distribution loss or other loss of electrical energy incurred in providing Full Requirements Electric Service hereunder, including without limitation the demand loss factor for all transmission delivery points on Company’s system for the applicable period as set forth in Appendix B; provided, however, except for such demand loss factors set forth in Appendix B, Losses shall only include losses incurred at and from the Receipt Points to the Delivery Points. In no case shall Losses include losses that may be incurred from the Delivery Points to the Members.

“Members” means the Persons taking retail electric service from Customer, any retail customer or member of Customer, any Person that takes retail electric service from

Customer pursuant to a franchise or similar arrangement granted to Customer or any Person that Customer has a statutory, contractual or other right or obligation to provide retail electric service, in each case irrespective of whether such Persons are members of Customer.

“Monthly Bill” shall have the meaning set forth in Section 4.9 of this Agreement.

“Monthly Charges” means the monthly charges set forth in Article 4 of this Agreement or that Company is otherwise permitted to charge Customer pursuant to this Agreement.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“MW” means Megawatt.

“MWh” means Megawatt-hour.

“NERC” means the North American Electric Reliability Corporation and any successor entity.

“Non-Defaulting Party” means, with respect to an Event of Default, the Party that is not the Defaulting Party.

“OATT” means the Transmission Provider’s Open Access Transmission Tariff on file at FERC, as amended from time to time.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Performance Assurance” means security in the form of either Letter(s) of Credit, weekly prepayment of charges pursuant to Section 6.4(a), or other security acceptable to the Company in its sole discretion.

“Person” means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity or authority, limited liability company or any other entity of whatever nature.

“Points of Receipt” or “Receipt Points” means the points at which Full Requirements Electric Service is first delivered to the Transmission System from Company Generation Resources interconnected with the Transmission System or from points of interconnection with other transmission systems.

“Qualifying Facility” shall mean a qualifying small power production facility or a qualifying cogeneration facility as defined in Section 210 of the Public Utility Regulatory Policies Act of 1978 and FERC’s implementing regulations, as amended from time to time.

“Renewable Benefits” has the meaning set forth in Section 3.5(a).

“Required Amount” has the meaning set forth in Section 6.3(b).

“Retail Competition” means that Company no longer has the exclusive right to serve Company’s Customers as a class in its service territory and that instead alternative suppliers of capacity and energy are entitled to make sales directly to such retail end-use customers. “Retail Competition” does not refer to the loss of Company’s Customers whether to a municipal entity, electric cooperative, investor owned utility or otherwise in the event of a change in Company’s service territory boundaries, such that Company’s retail end-use customers located within a geographically distinct portion of its service territory will be served by a different electric supplier.

“Retail Load” means Energy metered at the Delivery Point to meet all requirements of Customer’s Members for Energy as described in Appendix A, taking into account losses within the Customer’s system.

“ROE” has the meaning set forth in Section 4.7(b).

“RPS Compliance Costs” has the meaning set forth in Section 3.5(a).

“RPS Requirement” has the meaning set forth in Section 3.5(a).

“Rules” has the meaning set forth in Section 15.4(a).

“RUS” means the Rural Utilities Service of the United States Department of Agriculture or any agency succeeding to the functions of RUS.

“S&P” means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC company and its successors.

“Summer Months” means the months of April through October of the current Calendar Year.

“Superceded Agreement” has the meaning set forth in the Recitals.

“Tax” or “Taxes” means any tax, charge, assessment, duty, levy, or fee (including any interest, additions to tax or penalties thereon) of the United States or any state, county or local taxing jurisdiction therein, or of any other nation or any jurisdiction therein, including without limitation any income, net worth, franchise, margin, ad valorem, property, occupational, business, severance, emissions, carbon based fee, generation, first use, conservation, energy, transmission, gross or net receipts, utility, privilege, sales, use, excise, capital gain, transfer, license, permit, production, employment, social security, payroll, registration, governmental pension or insurance, withholding, royalty, stamp or documentary, value added, or other tax, charge, assessment, duty, levy or fee (including any interest, additions to tax or penalties thereon) of the United States or any state, county or local taxing jurisdiction therein, or of any other nation or any jurisdiction therein.

“Term” has the meaning set forth in Section 2.1.

“Transmission Provider” means the entity or entities that transmit the Full Requirements Electric Service, and provide certain Ancillary Services associated with the delivery of Full Requirements Electric Service, from the Receipt Points to the Delivery Points.

“Transmission System” means the transmission system of Transmission Provider.

“Winter Months” means the months of November and December of the immediately prior Calendar Year and the months of January through March of the current Calendar Year.

“Worksheet” has the meaning set forth in Section 6.2.

## **ARTICLE 2 TERM, SERVICE, DELIVERY PROVISIONS AND CONDITIONS PRECEDENT**

**2.1 Term.** The term of this Agreement shall begin as of the Effective Date and extend through and include the end of the Delivery Period (the “Term”); provided, however, Company shall have no obligation to provide Full Requirements Electric Service unless and until the conditions precedent set forth in Section 2.5 have been satisfied or waived. Prior to the commencement of the Delivery Period, the rights and obligations of the Parties shall be limited to those rights and obligations set forth in the Sections and Articles enumerated in the first paragraph of Section 2.5. To the extent Full Requirements Electric Service has been provided and the Delivery Period has commenced, whenever the Term of this Agreement ends, subject to Section 17.10, the applicable provisions of this Agreement shall continue in effect for one (1) year to the extent necessary to provide for final accounting, billing (including any “true-up” billing provided for in this Agreement), billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, or payments pertaining to liability and indemnification obligations arising from acts or events that occurred in connection with this Agreement during the Term. Nothing in this Section is to be construed as extending the time permitted to raise Disputes or as extending the period for providing Full Requirements Electric Service.

### **2.2 Delivery Period.**

(a) The “Delivery Period” means the period commencing the first day of the calendar month following the satisfaction or waiver of the Conditions Precedent in Section 2.5(a), and extending thereafter through December 31, 2031, from HE 0100 through HE 2400 Eastern Prevailing Time, and extending further thereafter through December 31, 2051 (an additional period of twenty (20) Calendar Years) unless (i) this Agreement is terminated earlier in accordance with Section 2.2(b), hereof, in which event the Delivery Period shall automatically terminate and expire by its terms as of HE 2400 Eastern Prevailing Time on the effective termination date set forth in the notice provided for in Section 2.2(b); or (ii) an Early Termination Date becomes effective in accordance with the provisions of Section 7.2 of this Agreement, in which event the Delivery Period shall automatically terminate and expire by its terms as of HE 2400 Eastern Prevailing Time on the Early Termination Date. In no event

shall the Delivery Period commence on or before the satisfaction or waiver of the conditions precedent set forth in Section 2.5.

(b) This Agreement may be terminated effective on the last day of any Calendar Year on or after December 31, 2031 at HE 2400 by either Party giving the other Party at least seven (7) years prior written notice.

(c) Upon termination of service under this Agreement pursuant to the provisions of Section 2.2(b) or Section 7.2, if Company has a wholesale requirements tariff of general application on file with the FERC, and such tariff, according to its terms, is potentially applicable to the Customer, subject to the provisions of the then-effective FERC electric tariff, Customer may request Company to provide wholesale electric service to Customer pursuant to Company's then-effective FERC electric tariff, or applicable successor rate schedule; however, nothing in this Section 2.2(c) or in any other provision of this Agreement shall be construed as requiring Company to provide any service, including without exception any capacity and energy beyond the termination of this Agreement under the terms and conditions of this Agreement. Nothing in this Section 2.2(c) shall be construed as affecting, in any way, Company's right to unilaterally file for changes in the rates, terms, and conditions of its FERC electric tariff of general application, as described above in this Section 2.2(c), or Customer's rights to participate in and to oppose such filing, pursuant to Section 205 of the FPA and the FERC's regulations thereunder. Customer agrees unconditionally that: (1) it will not request any regulatory authority to require Company to continue service under this Agreement beyond the Term specified in Section 2.1; (2) it will not lend support or aid to any other person or party to require Company to continue service under this Agreement beyond the Term specified in Section 2.1; and (3) it will support before all regulatory authorities the termination of this Agreement and the cancellation of the associated rate schedules in accordance with the provisions specified in this Article 2. By entering into this Agreement, Company does not commit to plan its system to meet Customer's loads served hereunder beyond the Term of this Agreement and does not assure Customer that capacity on Company's system will be available for Customer's use beyond the Term.

### **2.3 Planning.**

(a) The Parties understand and agree that, as a result of this Agreement and subject to the satisfaction or waiver of the conditions precedent set forth in Section 2.5, Company shall plan to provide Full Requirements Electric Service to Customer during the Delivery Period of this Agreement. Upon the termination or expiration of this Agreement, in addition to such rights and obligations enumerated elsewhere in this Agreement, the grant of any and all rights and interest to Company to supply Full Requirements Electric Service under this Agreement shall cease. Customer and Company shall cooperate, in advance to the extent possible, to make all necessary filings with the Transmission Provider and to perform all other acts necessary to transfer all such rights and interests back to Customer in a timely manner.

(b) At the end of the Term of this Agreement (whenever such event shall occur), Company's obligation to serve Customer under this Agreement shall automatically terminate by the terms of this Agreement, and Customer expressly waives any and all rights to raise in any forum a claim that Company must provide any level or amount of service (including Full

Requirements Electric Service) to Customer under the terms and conditions of this Agreement subject to the provisions Section 2.2(c).

(c) In order to allow Company to plan to meet the requirements of Customer's Retail Load, Customer agrees to provide Company, by September 15, of each Calendar Year during the Term, a forecast of Customer's expected Retail Load and adjustments to such forecast (if any) related to any and all Load Management programs for the following ten (10) Calendar Years for each Delivery Point or for such period remaining in the Term of this Agreement, whichever is shorter. Upon request by Company, Customer shall provide such reasonable supporting detail and assumptions underlying the forecast.

**2.4 Delivery Point.** The Delivery Point for the Full Requirements Electric Service to be provided hereunder is set forth on Appendix A. In coordination with the Transmission Provider, if necessary, and subject to the execution of any necessary agreements, the Parties may mutually agree to add or delete Delivery Points and to make other changes regarding Delivery Points. Any costs imposed by the Transmission Provider to implement the change in Delivery Points shall be the responsibility of Customer and not under any circumstances borne by the Company. Consent by either Party to changes regarding Delivery Points shall not be unreasonably withheld. Whenever there is any change in Delivery Points, Appendix A hereto automatically shall be amended to reflect such change and, if necessary, be submitted to FERC.

**2.5 Conditions Precedent.** Except for Customer's obligations under this Agreement to provide information or data and for each Party's rights and obligations expressly set forth in this Section 2.5, Section 2.6, Section 2.7, Section 6.3(b), Section 16.1, Article 10, Article 12, Article 13, Article 17 and Article 19 (and, with respect to such rights and obligations, the disclaimers, limitations, rights, remedies and dispute resolution and other provisions set forth in Article 7 and Article 15), neither Party shall have any rights or obligations under this Agreement unless and until each of the following conditions precedent are satisfied or waived by the Parties; provided, however, the conditions precedent set forth in 2.5(b), and 2.5(c) shall apply only to Company and may be waived only by Company in its sole discretion and the condition precedent set forth in Section 2.5(a) shall apply only to Customer and may be waived only by Customer in its sole discretion:

(a) Customer has been granted transmission service from the Receipt Points to the Delivery Point by the Transmission Provider reasonably acceptable to Customer, including the designation of this Agreement as a "Network Resource" (as such term is defined in the OATT) on or before April 30<sup>th</sup> 2011 and the Customer and Transmission Provider shall have executed a Network Integration Transmission Service Agreement ("NITS Agreement") pertaining to which the FERC shall have issued an order accepting or approving the NITS Agreement for filing and permitting it to become effective as filed or on such modified terms as are reasonably agreeable to Customer and Company.

(b) On or before February 28<sup>th</sup> 2010, Company shall have filed this Agreement and the notice of termination of the Superceded Agreement with FERC.

(c) On or before April 30<sup>th</sup> 2011, FERC shall have issued an order accepting or approving this Agreement for filing and permitting it to become effective as filed without modification, suspension, investigation or any condition (including setting this Agreement, or part thereof, for hearing) unacceptable to Company in its sole discretion and FERC shall have issued an order accepting or approving the termination of the Superseded Agreement as filed without modification, suspension, investigation or any condition (including setting the Superseded Agreement, or part thereof, for hearing) unacceptable to Company in its sole discretion.

**2.6 Cooperation.** If requested by Company, Customer shall undertake commercially reasonable efforts to cooperate with and assist Company in Company's efforts to secure acceptance of this Agreement by FERC and request FERC action on these filings and, upon Company's request, shall make a timely submittal at FERC affirmatively supporting the acceptance of this Agreement by FERC in each case without modification, suspension, investigation, or condition. To the extent that FERC requires modifications to this Agreement that are acceptable to Company, the Parties shall promptly execute an amendment to this Agreement that implements such modifications.

**2.7 Termination for Failure of Condition Precedent.**

(a) In the event any of the above conditions precedent set forth in Section 2.5 are not satisfied or are not waived in writing by the dates provided above, this Agreement, except for those provisions that expressly survive, shall terminate automatically under the terms of this Agreement without any need by either Party to declare an Early Termination Date or take any further action, and this Agreement shall have no further force and effect.

Customer expressly waives any and all rights to raise in any forum a claim that Company must provide service (including without limitation Full Requirements Electric Service) to Customer under:

- (i) any terms or provisions of this Agreement; or
- (ii) except as provided in Section 2.7(c) of this Agreement, any previous agreements, if any, between Customer and Company, including, but not limited to, any previous electric service agreements, any settlement agreements resolving FERC proceedings or any settlement agreements resolving any State or Federal court suits.

(b) In the event that FERC issues an order requiring modifications or conditions on its acceptance or approval of this Agreement or the NITS Agreement and Company does not, within 90 days of order issuance, provide written notice to Customer that such modifications are acceptable to Company in its sole discretion, then the Parties shall negotiate in good faith to accommodate such modifications or conditions to the Agreement or the NITS Agreement. Such modifications shall endeavor to restore the Parties to the relative economic positions of the Parties when they entered into the Agreement. If the Parties are unable to reach agreement after a reasonable period of negotiations (not to exceed 60 days), then this Agreement, except for those provisions that expressly survive, shall terminate automatically under the terms of this Agreement without any need by either Party to declare an Early Termination Date or take any further action, and this Agreement shall have no further force and effect.



(c) In the event of a termination pursuant to section 2.7(a) or (b), and (notwithstanding the provisions of section 2.7(d)) in the event that service under the Superseded Agreement has not been terminated, Company shall continue to provide, and Customer shall continue to purchase, service under the rates, terms and conditions of the Superseded Agreement.

(d) Notwithstanding any provision of this Agreement to the contrary, in the event this Agreement terminates pursuant to this Section 2.7, subject to Section 17.10, the Parties shall be released and discharged from any and all obligations arising or accruing hereunder from and after such date and shall not incur any additional liability to each other as a result thereof, except to the extent of any claims arising with respect to Section 2.7, Article 10 or Article 13. With respect to any such claims, Articles 1, 7, 10, 13, 15, 17 and 19 shall survive and continue to apply.

### ARTICLE 3 SALE AND PURCHASE

#### 3.1 Full Requirements Electric Service.

(a) During the Delivery Period, except as permitted by Sections 3.3, 3.4, 3.5, 3.6 and 3.7, Company shall sell and deliver to Customer and Customer shall receive and purchase from Company, Full Requirements Electric Service at the Receipt Points sufficient to serve Customer's Retail Load at the Delivery Point, as such load may be verified by Company. As a provider of Full Requirements Electric Service, Company is solely responsible for satisfying all requirements and paying all costs incurred or to be incurred to provide Full Requirements Electric Service to the Receipt Points and Customer shall pay for such Full Requirements Electric Service as provided in this Agreement, including without limitation as provided in Article 4.

(b) Company understands that Customer's Retail Load may change from time to time. Subject to Sections 3.3, 3.4, 3.5, 3.6 and 3.7, except as specifically provided herein, at no time during the Delivery Period shall Customer use, directly or indirectly, including through any of its Affiliates (i) constructed or purchased generation resources, (ii) power purchases or power purchase agreements, or (iii) any other source of generation, energy or capacity to reduce or supply Customer's Retail Load, provided, however, that Customer may use Customer-owned generation facilities or the output of other generation to serve Retail Load in the event that Company is precluded, in whole or in part, from providing Full Requirements Service as a result of Force Majeure, or in the circumstances described in Sections 3.10 or 16.3. Except to the extent arising from a Force Majeure or as set forth in Sections 3.10 or 16.3, Company is responsible for Full Requirements Electric Service regardless of changes in Retail Load arising from daily fluctuations, increased or decreased usage, extreme weather and/or similar events. Notwithstanding the foregoing, the provisions of items (i), (ii) and (iii) above shall not apply to energy obtained by Customer from any generation resource during any period when (x) the FRCC (or other successor entity with similar responsibilities) declares a "Generating Capacity Emergency", as such term is defined in the FRCC Generating Capacity Shortage Plan adopted by the FPSC in April 2003, (y) the Transmission Provider has requested a curtailment of Customer's Retail Load for any reason other than economic curtailment or (z) the Customer as operator of the transmission facilities owned by Customer and/or as operator of transmission facilities owned by the Utility Board of the City of Key West determines a

reduction in Full Requirements Electric Service is necessary for any reason other than an economic curtailment.

(c) Customer shall promptly provide notice to Company as soon as practical of any new Member to be included within Retail Load that by itself would reasonably be expected to cause a load increase exceeding 6 MW to be served by Company. Notwithstanding the foregoing and except as provided in Section 16.3, Company shall be obligated to serve the requirements of such Member included within Customer's Retail Load.

(d) Customer shall not resell the Full Requirements Electric Service purchased hereunder except to its Retail Load.

### **3.2 Transmission Service and Ancillary Services.**

(a) It is Customer's responsibility to arrange and pay for, enter into and maintain all necessary agreements for the delivery and transmission of Full Requirements Electric Service under this Agreement at and from the Points of Receipt to the Delivery Points (and at and from the Delivery Points) for the Term and to arrange and pay for transmission and Ancillary Services for (and enter into and maintain all necessary agreements for) the delivery of Energy under this Agreement at and from the Points of Receipt to the Delivery Points (and at and from the Delivery Points), including without limitation the designation of this Agreement as a "Network Resource" (as such term is defined in the OATT). Except as set forth in this Section 3.2(a), there shall be no reduction in Customer's payment or performance obligations under this Agreement as a result of curtailments, interruptions, or reductions of transmission service or Ancillary Services at and from the Points of Receipt to the Delivery Points (or at and from the Delivery Points), whether as a result of Force Majeure or otherwise. However, in the event that Energy to be delivered to Customer hereunder cannot be delivered because of contingencies or limitations due to Force Majeure, curtailments, interruptions, or reductions of transmission service or Ancillary Services at and from the Points of Receipt to the Delivery Points (or at and from the Delivery Points) for a period greater than an entire calendar billing month, the Generation Demand Charge and Generation Energy Charge specified in Section 4.9 for that calendar month shall be zero.

(b) Customer shall enter into, and file with the Transmission Provider and other applicable entities, all documents necessary for Customer to fulfill its obligations to take Full Requirements Electric Service at and from the Points of Receipt.

(c) Notwithstanding any contrary provision set forth in this Agreement, in the event of a failure to perform, breach or default by Company of any of its obligations in its capacity as the Transmission Provider such failure, breach or default shall not constitute a failure to perform, breach or default of Company's obligations under this Agreement. Any liability or obligations of Company in its capacity as Transmission Provider shall be solely as set forth in any transmission services agreement between Customer and Transmission Provider or as set forth under the OATT.

(d) Each Party shall provide the other Party access to information the other Party reasonably requests to facilitate the administration of this Agreement with respect to the Transmission Provider.

### 3.3 Qualifying Facility Purchases.

(a) So long as Customer is receiving Full Requirements Electric Service from Company, if Customer has an obligation under Law, and only if it has an obligation under Law, to purchase electrical output from a duly licensed and operating Qualifying Facility connected directly to Customer's electric system, Customer may purchase the electrical output from such Qualifying Facility connected to Customer. Company shall not be obligated to purchase from any Qualifying Facility on Customer's electric system.

(b) If Customer is receiving electrical output from a Qualifying Facility connected directly to Customer's electric system, Customer shall pay the Qualifying Facility directly for all such services. Customer's monthly Billing Energy calculated pursuant to Section 4.8(b) of this Agreement shall not include any amounts of energy purchased by Customer from the Qualifying Facility; but the calculation of the Generation Demand Charges that Customer is obligated to pay Company shall be computed as though Company were serving that portion of the Retail Load displaced by Customer's receipt of electric output from any Qualifying Facility. In calculating the Generation Demand Charge paid by Customer, the Billing Demand (and the Customer Billing Demand Schedule set forth as part of Appendix B) and the CP Demand (and the Customer CP Demand Schedule set forth as part of Appendix B) shall include any purchases made or electrical output received by Customer from any Qualifying Facility, reduced by an amount of up to five (5) MW in the aggregate for the amount of any purchases made or electrical output received by Customer from all Qualifying Facilities as further described in Sections 4.8(a) and 4.8(c). The calculation of the Generation Demand Charge that Customer is obligated to pay Company under Article 4, shall continue to be computed as though Company were serving that portion of the Retail Load displaced by Customer's receipt of output from any Qualifying Facility until such time that the FPSC, in a proceeding, recognizes Company's generation that has been displaced by any such Qualifying Facility as being needed and serving to satisfy Company's system wide generation requirements for the benefit of Company's Customers and permits Company to recover the costs (including ROE) associated with any such displaced generation through the retail rates payable by Company's Customers. To the extent such a finding has been made by the FPSC, in the event that the Qualifying Facility fails to maintain an Annual Capacity Availability Factor of at least eighty-five percent (85%) over the previous twelve-month period during the Term, Company shall have the right to reinstitute the Generation Demand Charge until such time, if ever, as the Qualifying Facility again achieves an Annual Capacity Availability Factor of at least eighty-five percent (85%). The term "Annual Capacity Availability Factor" shall mean, for purposes of this provision, (x) the sum of the capacity that is deemed available from generation (subject to certification or audit rights of Company) from the applicable Qualifying Facility during each hour of the previous twelve months, divided by (y) the sum of the rated capacity as recognized by the FRCC for each hour of the previous twelve months for the applicable Qualifying Facility. Until a full twelve months have elapsed for purposes of the aforementioned calculation, the months that have occurred to date shall be used for purposes

of defining the Annual Capacity Availability Factor. As a result, the Annual Capacity Availability Factor formula can be summarized as follows:

Annual Capacity Availability Factor =

$$\frac{\text{(Sum of hourly available capacity for previous 12 months)}}{\text{(Sum of hourly rated capacity for previous 12 months)}}$$

(c) Upon a request from any Qualifying Facility, Customer shall notify Company of the proposed connection of any Qualifying Facility to Customer's electric system. Notification shall be in writing as soon as practical. Company shall have the right, but not the obligation, to act as Customer's operations and/or administrative services provider (in whole or in part) with respect to any Qualifying Facility, including without limitation with respect to the negotiation of applicable terms and conditions and operational requirements, instructions and interface with Customer.

(d) Customer shall not engage in activities to promote the construction or installation of any Qualifying Facility.

### **3.4 Distributed Generation and Renewable Energy Resources.**

(a) Customer shall notify Company of the proposed purchase or receipt of energy and/or capacity to be delivered to Customer's electric system from any distributed generation resource or any renewable energy resource (e.g., solar, wind, hydrostatic, hydrokinetic, fuel cells, biomass, etc.) of a Member of Customer, or the Customer, that is connected directly to Customer's electric system on Customer's side of the Delivery Point. Notification shall be in writing as soon as practical, but at least ninety (90) days prior to the commencement of the purchase. Company shall not be obligated to purchase from any renewable energy resource or distributed generation on Customer's system. Customer's monthly Billing Energy calculated pursuant to Section 4.8(a) of this Agreement shall not include any amounts of energy purchased by Customer from such renewable energy resource or distributed generation resources; but, the calculation of the Generation Demand Charges that Customer is obligated to pay Company shall be computed as though Company were serving that portion of the Retail Load displaced by Customer's receipt of electrical output from any renewable energy resource and distributed generation resource. In calculating the Generation Demand Charge paid by Customer, the Billing Demand (and the Customer Billing Demand Schedule set forth as part of Appendix B) and the CP Demand (and the Customer CP Demand Schedule set forth as part of Appendix B) shall include any purchases made or electrical output received by Customer from any renewable energy or distributed generation resource, reduced by an amount of up to five percent (5%) of Customer Peak Demand in the aggregate for the amount of any purchases made or electrical output received by Customer from all such renewable energy and distributed generation resources as further described in Section 4.8(a) and 4.8(c).

(b) During any period when the FRCC (or other successor entity with similar responsibilities) declares or has declared a "Generating Capacity Emergency", as such term is defined in the FRCC Generating Capacity Shortage Plan adopted by the FPSC in April 2003, or during the period when the Transmission Provider has requested a curtailment of Customer's Retail Load for any reason other than economic curtailment, Customer's Billing

Demand shall be reduced by the full amount of the capacity received by Customer from all renewable energy and distributed generation resources without regard to the five percent (5%) cap on the Billing Demand reduction otherwise applicable pursuant to Section 3.4(a).

### **3.5 Renewable Portfolio Standards.**

(a) If Company is required by Law to meet the requirements of any renewable (including without limitation clean energy) portfolio standards, including but not limited to the obligation to maintain a specific amount of renewable energy and/or renewable energy credits ("RPS Requirement"), Company shall comply (as described in this Section 3.5(a)) with such RPS Requirement and, in addition, Customer shall comply with the same terms and conditions of such RPS Requirement applicable to the Company in order to facilitate Company's compliance with Company's RPS Requirement. Subject to the conditions set forth in Sections 3.5(b) through 3.5(d), during the Delivery Period, Customer shall meet this obligation to comply with the RPS Requirement applicable to Company by paying its Customer Share of any and all costs and expenses associated with Company's compliance with the RPS Requirement, including but not limited to: (i) any investments by Company in renewable generation, including a return on equity equal to the ROE, and related operation and maintenance expenses; (ii) any capacity, energy and/or renewable credits acquired through purchase power agreements; (iii) the purchase of any renewable energy credit(s) and/or renewable energy; and (iv) any costs, expenses, charges, fees, assessments and/or Taxes of the type recoverable through Article 4 and Appendices B and/or C (collectively, "RPS Compliance Costs"). The Customer Share of the costs associated with Company's compliance with the RPS Requirement shall be charged to Customer as part of the Monthly Bill for Full Requirements Electric Service (and at the request of Customer on no more than an annual basis shall be separately itemized) provided, however, in its Monthly Bill, Customer shall receive a credit for its Customer Share, if any, of income received by Company from the sale of Renewable Benefits to third parties. Unless and until the RPS Requirement is implemented in Florida, both Parties acknowledge that it is unknown as to whether such a requirement will apply only to generators, to load serving entities or to both generators and load serving entities. As a result, to the extent that the RPS Requirement applies to Customer as well as Company such that Customer is required to make a separate demonstration of compliance, Company and Customer shall use commercially reasonable efforts to transfer to Customer its Customer Share of any renewable energy credits and similar related renewable portfolio credits that are created by statute as a result of the enactment of the RPS Requirement ("Renewable Benefits") such that Company and Customer are both able to mutually satisfy their respective renewable portfolio standard obligations; provided, however, that Company (following any such transfer) is released of any obligation to make a separate demonstration of compliance for the Customer Share of Company's generation or load (whether due to the generation required to support Retail Load or otherwise). Notwithstanding anything contained in this Agreement to the contrary, to the extent that the FPSC determines that Company's customers are incurring an incremental cost burden as a result of Customer's RPS Compliance Costs allocation and/or RPS Requirement's benefits allocation under this Section 3.5, and the FPSC disallows (either during or following the expiration of the Term) the recovery of such incremental costs from Company's retail customers, all such disallowed costs shall be paid by Customer to Company, providing that the Company shall not raise any objection to Customer seeking the right to participate for the sole purpose of addressing such FPSC disallowance, by

intervention or otherwise, in any FPSC proceeding in which such issues are addressed, to take any position Customer in its sole discretion deems necessary to dispute the FPSC's determination to disallow the recovery of such incremental costs from Company's retail customers, and to seek judicial review of any such FPSC action. The preceding sentence shall continue to apply as a Customer obligation pursuant to subsection (b), below notwithstanding any termination or expiration of this Agreement.

(b) Company's obligations to Customer with respect to the RPS Requirement as set out in this Section 3.5 shall terminate upon expiration or termination of this Agreement provided, however, Customer shall continue to pay its Customer Share of the RPS Compliance Costs to Company following the termination, for reasons other than expiration, of the Agreement if, but only if, (i) Company first offers to sell at market value (or, in the event that a market value is not available or discoverable, at net book value), and Customer declines to purchase Customer's Customer Share of the assets, attributes, rights, credits, energy, capacity or other means by which Company meets the RPS Requirement and for which RPS Compliance Costs are incurred, or (ii) Company otherwise is unable to sell such assets, rights, credits, energy, capacity or other means of RPS Requirement compliance, provided further that, if required to continue to pay, Customer shall continue to pay for so long, but only for so long as Company continues to incur such RPS Compliance Costs associated with Customer's Customer Share, and provided further, that, notwithstanding anything else contained herein, Customer shall receive a credit, if any, for its Customer Share of income received by Company from its sale of the Customer Share of the Renewable Benefits to third parties. Customer's Customer Share of the RPS Compliance Costs shall exclude RPS Compliance Costs attributable to any renewable energy power purchase agreements entered into by Company following the expiration or termination of the Term and any renewable energy generating resources acquired or constructed by Company following the expiration or termination of the Term.

(c) In no event shall Company be obligated to meet any renewable portfolio standards imposed upon or adopted by Customer that are different from those standards that are imposed by Law upon or adopted by Company.

(d) If Company determines, in its sole discretion (at any time during the Term), that it cannot accommodate Customer's renewable portfolio standard requirements due to (i) any inability to recover costs (including without limitation ROE) associated with Customer's Customer Share of Company's RPS Requirements, or (ii) any other legal or regulatory reasons, Customer shall be entitled to take such actions as Customer, in its sole discretion, deems necessary and appropriate to meet its own renewable portfolio standards. Subject to the limitations detailed in Section 3.4 nothing in this Agreement shall preclude Customer from planning, acquiring and/or installing resources with which to meet a RPS Requirement applicable to Customer provided that such resources shall not be operated or dispatched by Customer until after the termination of this Agreement or Company's determination pursuant to the preceding sentence.

### **3.6 Load Management.**

(a) Customer and Company agree that, in determining the Load Management impact on the Generation Demand Charge Rate in Appendix B, the Customer Adjusted Load Management

Capability (as defined below) for each month of the applicable Calendar Year shall be used to calculate the adjustments to the Generation Demand Charge Rate. For purposes of this Agreement, the term "Customer Adjusted Load Management Capability" shall be an amount equal to the lower of (x) or (y), where (x) is five percent (5%) of Customer's actual Full Requirements Electric Service coincident with the peak hour of Company's Summer Months or Winter Months, as applicable, depending upon whether such month is a Summer Month or a Winter Month, with the effect of any Customer Load Management activated removed; and where (y) is Customer's actual Load Management capability for the Summer Months or Winter Months, as applicable, depending on whether such month is a Summer Month or a Winter Month. Customer's actual Load Management capability shall be Customer's documented Load Management capability during such month until such time as Company conducts a verification test as set forth in Section 3.6(g), below, or until Company actually requests Customer implement all of Customer's Load Management capability during such month taking into account actual load conditions at the time of implementation. In the event Customer is required by Law to increase its Load Management capability, Customer Adjusted Load Management Capability shall be an amount equal to the lower of (x) or (y), where (x) is the amount required by Law; and where (y) is Customer's actual Load Management capability for the Summer Months or Winter Months, as applicable, depending on whether such month is a Summer Month or a Winter Month, as determined in accordance with this Section 3.6(a); provided, however, that Customer shall never receive an adjustment to its Generation Demand Charge Rate that is less than the adjustment produced by the Customer Adjusted Load Management Capability.

(b) Customer and Company agree that, in determining the Load Management impact on the Generation Demand Charge Rate in Appendix B, the following adjustments shall be made to the sum of the twelve (12) monthly coincident peaks of Company and Customer. First, the sum of the Customer monthly coincident peaks for the applicable Calendar Year shall be adjusted by the sum of the monthly Customer Adjusted Load Management Capability for the applicable Calendar Year. Second, the sum of Company's monthly coincident peaks (which includes the sum of Customer's monthly coincident peaks adjusted for losses) for the applicable Calendar Year shall be adjusted by the sum of the monthly Customer Adjusted Load Management Capability for the applicable Calendar Year and the sum of the monthly Company Load Management capability for the applicable calendar year (which does not include Customer's Adjusted Load Management Capability). For clarification, in calculating the impact of the Customer Adjusted Load Management Capability on the Generation Demand Charge Rate for the applicable Calendar Year, the value of Customer Adjusted Load Management Capability used for each month shall be the value that was actually in effect for that month.

For example, if in 2012, with no Load Management capability activation (i) the sum of Customer's monthly coincident peaks adjusted for losses totaled 600 MW; (ii) Customer's Adjusted Load Management Capability was 3 MW for the Summer Months and 5 MW for the Winter Months; (iii) the sum of Company's monthly coincident peaks (which includes the sum of Customer's monthly coincident peaks adjusted for losses) totaled 240,000 MW; and (iv) Company's Load Management capability for the Summer Months was 1810 MW and 2295 MW for the Winter Months (which does not include Customer's Adjusted Load Management Capability); then in determining the Generation Demand Charge Rate in Appendix B,

schedule A-1, the value for Customer monthly coincident peaks would be 554 MW (600 MW – 7x3 MW – 5x5 MW). The value for Company (total of 12 monthly coincident peak firm MWs @ generator) would be 215,809 MW (240,000 MW – 7x3 MW – 5x5 MW – 7x 1810 MW - 5x 2295 MW).

(c) Customer and Company agree that during the Delivery Period Company shall have the right to call on Customer's Load Management capability. Customer will, consistent with Customer's Load Management Program, implement Load Management as requested by Company within those time-frames described in Section 3.6(d) below. During the Delivery Period, Customer will not implement or utilize any Customer Load Management capability at any time unless requested by Company or when (i) the FRCC (or other successor entity with similar responsibilities) or the Transmission Provider has requested a curtailment of Customer's Retail Load for any reason other than economic curtailment or (ii) the Customer as operator of the transmission facilities owned by Customer and/or as operator of transmission facilities owned by the Utility Board of the City of Key West reasonably determines a reduction in Full Requirements Electric Service is necessary to maintain system stability or reliability reasonably necessary to relieve the increased transmission related costs identified in Section 5.1. During the Delivery Period, Company agrees to utilize Customer Load Management with respect to frequency and duration in accordance with Customer's Load Management program, and consistent with how Company utilizes Company's Load Management in Dade County, Florida. However, nothing contained herein this Agreement shall require Company to utilize Customer Load Management on any occasion or at all and Company reserves the right to make use of Customer Load Management only where practicable for Company.

(d) Customer, consistent with Customer's Load Management program, agrees to activate all load reduction that can be activated remotely by Customer electronically ("Direct Load Management") within fifteen (15) minutes of Company's electronic request to have the Direct Load Management reduction ramped in at the applicable Delivery Points following such request by Company, and to maintain such load reduction for the full duration requested by Company in accordance with Customer's Load Management program.

(e) Customer agrees to provide load reduction available from Customer's Members from whom Customer has a contractual right to request a reduction of load scheduled load management at the Delivery Points within one (1) hour, following the request by Company, and maintain such load reduction for the full duration requested by Company permissible under Customer's Load Management program.

(f) Customer agrees to be responsible for all costs incurred to implement Load Management on Customer's side of the Delivery Points.

(g) Customer agrees that Company may conduct verifications tests, in accordance with Appendix F, to ascertain the amount of actual Load Management capability to be used in determining the Customer Adjusted Load Management Capability in Section 3.6(a), above. Such verification tests shall be conducted by Company and shall take into account load conditions at the time of the test. Company may schedule one test during the Summer Months and one test during the Winter Months at Company's expense each Calendar Year for



continuing verification of said capability. Company shall provide Customer at least ten (10) Business Days notice of the proposed date and time for any test. Customer shall, within five (5) Business Days of receiving notice, advise Company whether it agrees to the proposed date and time for the test or, if not, Customer shall agree to a date and time (Monday through Friday, excluding holidays, between 7:00 A.M. and 6 P.M.) within five (5) Business Days of Company's proposed test date.

(h) The Parties recognize that local weather conditions will impact Customer's Load Management capability. Customer will be notified of the results of a verification test or a Load Management request and Customer may elect to have a confirmatory test performed by Company, at Customer's expense, within thirty (30) calendar days of such notification in order to demonstrate its Load Management capability. Any such test will be conducted and scheduled consistent with Section 3.6(g) and the results of such test shall be used to calculate the Customer Adjusted Load Management Capability. Company shall use commercially reasonable efforts to minimize the costs of such confirmatory tests.

**3.7 Environmental.** Except with respect to its Customer Share of any renewable energy credits pursuant to Section 3.5, Customer shall acquire no rights, title or interest in any emission allowances or other environmental credits that may be issued, under the Clean Air Act or otherwise, and whether pursuant to state or federal law, as a result of purchases of Full Requirements Electric Service from Company under this Agreement; provided, however, in its Monthly Charges for Full Requirements Electric Service, Customer shall receive a credit for its Customer Share of the value, if any, received by Company and bear its Customer Share of the burden, if any, of any costs incurred by Company with respect to emission allowances or other environmental credits as allocated pursuant to the cost-of-service formulas set forth in Article 4, Appendix B and Appendix C. Customer shall also be responsible for and pay its Customer Share of any other costs, charges or expenses incurred by Company with respect to applicable environmental compliance and emissions standards, regardless of whether such costs, charges or expenses are incurred in the form of a fee, levy, license charge, permit charge, Tax, carbon tax, allowance or any other cost, charge or expense or similar assessment, provided that Customer shall not be responsible for any liability or costs to the extent resulting from a violation of any environmental compliance standard, law or regulation caused solely by the actions or inactions of Company.

**3.8 Merchant Generating Facility.** Upon a request to Customer to interconnect to Customer's electric system from a generating facility owned and/or operated by an entity whose retail rates are not directly or indirectly subject to the jurisdiction of the FPSC, Customer shall notify Company of the proposed connection of such new generating facility to Customer's system. Notification shall be in writing as soon as practical. Any such connection shall not reduce, affect or otherwise excuse Customer's obligations under this Agreement, including without limitation its Full Requirements Electric Service obligations, or otherwise reduce or affect Customer's Billing Energy, Billing Demand or CP Demand.

**3.9 Monthly Information Obligation.**

(a) Customer shall provide Company with monthly detailed information on an hourly basis related to available capacity and energy produced from Qualifying Facilities, renewable energy, Customer and Member owned renewable energy generation and/or distributed generation sources in a manner which will enable the Company to make adjustments, if any, to the Generation Demand Charges as specified in Section 4.8(a) and 4.8(c).

(b) In that event that the output of any individual Qualifying Facilities, renewable energy resource, Customer or Member owned renewable energy generation and/or distributed generation capacity is less than 100 kW, then Customer need not meter such generation's hourly output and for the purpose of calculating the Generation Demand Charge such generation shall be treated as delivering 100% of its nameplate capacity on an hourly basis at the time of the Customer's monthly Billing Demand and Customer's monthly CP Demand.

(c) Customer further agrees, at the request of Company, to provide Company with access to its books and records and to provide such supporting documentation as reasonably requested by Company in order to verify generation amounts from such sources.

**3.10 Customer Rights In Service Interruption.** If the Parties determine that Company is not able to serve all or a portion of the Customer load due to transmission limitations, weather related conditions, or other circumstances, including but not limited to a FRCC declared "Generating Capacity Emergency" and the other circumstances identified in Section 3.1(b), Customer shall be allowed to use Customer-owned generating facilities or the output of other generation.

#### ARTICLE 4 MONTHLY CHARGES AND BILLING

**4.1 General Principles Regarding Monthly Charges For Full Requirements Electric Service.** The Monthly Charges for Full Requirements Electric Service supplied to Customer by Company hereunder during the Delivery Period of this Agreement shall include a Generation Demand Charge, a Generation Energy Charge (collectively, the "Generation Demand and Generation Energy Charges"), a Customer Charge and a Fuel Charge, all calculated in accordance with the terms of this Article, together with other charges set forth in this Agreement and subject to all other terms and conditions contained in this Agreement. For each Calendar Year, the Generation Demand and Generation Energy Charges for which Customer is responsible shall be determined using data from Company's FERC Form No. 1 for that Calendar Year, the costs as identified in the cost-of-service formulas set forth in Appendix B hereto and the ROE as specified in Section 4.7(b). Because of the time lag in availability of the FERC Form No. 1 data, Generation Demand and Generation Energy Charges will initially be assessed based on estimated monthly charges, and a "true-up" will subsequently be conducted for each Calendar Year, as provided in Section 4.4 hereof. The Generation Energy Charge shall exclude costs recovered through the Fuel Charge and the Fuel Adjustment Charge that are included in Appendix C attached hereto. All fuel-related costs shall be recovered through the Fuel Charge, which shall be "true-up" to more current actual fuel-related costs by means of the Fuel Adjustment Charge set forth in Section 4.5 hereof. The Generation Demand Charge Rate used to calculate the "Generation Demand Charge" and the Generation Energy Charge Rate used to calculate the "Generation Energy Charge"

shall be determined pursuant to the cost-of-service formulas set forth in Appendix B hereto. The monthly charges used to calculate the "Fuel Charge" and the "Fuel Adjustment Charge" shall be determined pursuant to the formulas set forth in Appendix C hereto. These formulas will be used for calculation of both estimated and actual ("true-up") charges. In no event shall the costs for Generation Related Services be recovered twice from Customer through inclusion both in the costs used to derive the Generation Demand Charge or the Generation Energy Charge in Appendix B and also in the payments by Customer to the Transmission Provider for Ancillary Services.

**4.2 Customer Charge.** Customer shall pay a monthly charge of \$2,500.00 per Delivery Point ("Customer Charge").

**4.3 Estimated Generation Demand Charge and Generation Energy Charge.** The estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate shall be developed for each Calendar Year. Each Calendar Year the estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate used to calculate the Generation Demand Charge and Generation Energy Charge applicable for the months of July through December of the current Calendar Year and the months of January through June of the following Calendar Year shall be determined by Company, pursuant to Appendix B, prior to the 31st day of May, provided to Customer by June 1st for its review, and shall become effective for the billing period commencing July 1. The estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate in effect during each Calendar Year shall be based upon the results for the most recent Calendar Year for which FERC Form No. 1 data is available. Customer shall have the rights set forth in Section 4.6 and Section 4.13 of this Agreement regarding the calculation of the estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate. For example, in Calendar Year 2011, for the first six (6) months (January through June) the estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate used to bill Customer will be based upon Calendar Year 2009 FERC Form No. 1 data, which estimate shall have been provided to Customer by June 1, 2010; beginning on July 1, 2011, the estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate for July through December of Calendar Year 2011 and January through June of Calendar Year 2012 shall be based upon Calendar Year 2010 FERC Form No. 1 data and provided to Customer by June 1, 2011 (and will remain in effect until July 1, 2012); and all the Generation Demand and Generation Energy Charges based on these estimated charges for Calendar Year 2011 will be subject to "true-up" of the Generation Demand Charge and Generation Energy Charge in 2012, pursuant to Section 4.4. Customer agrees, commencing in Calendar Year 2010 and continuing for the Term of this Agreement, to provide Company with good faith estimates of the sum of its system monthly maximum non-coincident peaks and the amount of Customer Adjusted Load Management Capability as provided in Section 3.6, and good faith estimates of its expected purchases or electric output received from the following: Qualifying Facilities as provided in Section 3.3(b), renewable energy resources as provided in Section 3.4 and/or distributed generation and renewable energy resources as provided in Section 3.4. Such amounts shall be in total and at each Delivery Point beginning in 2009 and shall be used in preparing the estimated Generation Demand Charge Rate and the billing determinants for such rate, including the estimated Billing

Demand and CP Demand. Such good faith estimates shall be based on the prior year's actuals for such amounts. Such good faith estimates shall be trued-up based on actuals pursuant to Section 4.4.

**4.4 True-Up of Generation Demand and Generation Energy Charges.** Because the Generation Demand and Generation Energy Charges initially collected during a Calendar Year will be the product of estimated charges based on data from previous Calendar Years as provided in Section 4.3, above, the Generation Demand and Generation Energy Charges shall be adjusted (or "trued-up") based upon (i) FERC Form No. 1 cost data from the Calendar Year in which the service was provided, (ii) the actual costs or other amounts as identified in the cost-of-service formulas set forth in Appendix B hereto and (iii) the ROE specified in Section 4.7(b). For the purposes of such true-up, while no Section 205 filing may be made with FERC pursuant to Section 4.7(b) to change the ROE under this Agreement until a new FPSC-approved ROE has become final and non-appealable, any change made to the ROE under this Agreement in accordance with Section 4.7(b) shall apply and the true-up shall be made from the date on which the FPSC first permits the ROE to become effective in retail rates. The true-up for Generation Demand and Generation Energy Charges shall be conducted by Company and provided to Customer by June 30<sup>th</sup> of each Calendar Year once the FERC Form No. 1 data for the prior Calendar Year is available, and shall be accomplished by recalculating the sums due to Company from Customer for service provided during the prior Calendar Year. The difference between the sum of the Generation Demand and Generation Energy Charges originally billed to Customer for service provided during the Calendar Year, based on the estimated Generation Demand Charge Rate and the estimated Generation Energy Charge Rate, and the sum of the Generation Demand and Generation Energy Charges for which Customer is ultimately responsible shall be billed to Customer or credited to Customer, as appropriate, in twelve (12) equal monthly amounts beginning with the month of July of the year immediately following the Calendar Year for which the "true-up" is calculated, unless otherwise agreed by the Parties. The amount to be billed or credited for any such over-collections or under-collections will include interest determined in accordance with Section 35.19a of FERC's regulations and charged or applied from the date of original payment to the date when the over-collections or under-collections are paid or credited, but excluding the date paid or credited. Customer may unilaterally elect to prepay any amounts owed to Company, and Company may unilaterally elect to credit, in advance, any amounts due to Customer, and any such prepayments or advance credits shall be reflected in any interest calculations hereunder. Customer shall have the rights set forth in Sections 4.6 and 4.13 of this Agreement regarding the calculation of the "trued-up" Monthly Charges. Trued-up Generation Demand and Generation Energy Charges shall always be based on Company's actual costs.

For example, the "true-up" of Generation Demand and Generation Energy Charges initially collected for service provided during Calendar Year 2011 shall be conducted by Company by June 30, 2012. The "trued-up" charges shall be calculated using (i) 2011 FERC Form No. 1 cost data, (ii) the actual costs or other amounts as identified in the cost-of-service formulas set forth in Appendix B hereto, and (iii) the ROE, as specified in Section 4.7(b). The difference between the sum of the Generation Demand and Generation Energy Charges originally billed to Customer for service provided during

2011 and the sum of the "trued-up" Generation Demand and Generation Energy Charges for Calendar Year 2011 will be divided into twelve (12) equal amounts and billed to Customer or credited to Customer, as appropriate and with interest, in invoices sent to Customer from July 2012 through June 2013, covering services provided during January 2011 through December 2011, unless otherwise agreed by the Parties or except to the extent a full prepayment is made by Customer or a full advance credit is refunded by Company.

**4.5 Fuel Charge and Fuel Adjustment Charge.** Customer shall pay Company a monthly Fuel Charge and Fuel Adjustment Charge based upon the fuel factors and the fuel adjustment factors determined pursuant to Appendix C. The "Fuel Charge" for each month shall be an amount equal to (i) the product of the estimated On-peak Fuel Charge Factor determined pursuant to Appendix C for the applicable month and the Billing Energy for the applicable month, plus (ii) the product of the estimated Off-peak Fuel Charge Factor determined pursuant to Appendix C for the applicable month and the Billing Energy for the applicable month. The "Fuel Adjustment Charge" shall be an amount equal to (i) the product of the actual On-peak Fuel Adjustment Charge Factor determined pursuant to Appendix C for the applicable month that the Fuel Charge is being trued-up and the Billing Energy for the applicable month that the Fuel Charge is being trued-up, plus (ii) the product of the actual Off-peak Fuel Adjustment Charge Factor determined pursuant to Appendix C for the applicable month that the Fuel Charge is being trued-up and the Billing Energy for the applicable month that the Fuel Charge is being trued-up. The fuel factors used to bill the Fuel Charges shall be projected by November 30th of every year for the following Calendar Year. The Fuel Charge shall then be subject to true-up through the Fuel Adjustment Charge. Customer shall be billed an estimated Fuel Charge each month for the energy delivered in the preceding month. Any difference between the estimated Fuel Charges and the Fuel Charges based on actual fuel costs shall be billed or credited to Customer through the Fuel Adjustment Charge on the first bill rendered after such actual fuel costs have been determined. If the Fuel Adjustment Charge is positive, such amount shall be billed to Customer and if the Fuel Adjustment Charge is negative, such amount shall be credited to Customer. The amount to be billed or credited for any over-collections or under-collections based on such estimates versus actual costs shall include interest accrued at the average of the Prime Rate as published in the Wall Street Journal for the last business day of the current and prior month and charged or applied to the average of the beginning and ending true-up balance for the month. Company shall use reasonable diligence when estimating monthly fuel charges so as to avoid any significant difference between estimated and actual monthly fuel charges to Customer. Fuel Adjustment Charges shall always be based on Company's actual costs for fuel and purchased power.

**4.6 Audit.**

(a) Customer shall have the right to audit, at Customer's expense, only those books and records that are necessary for verification of charges and costs included in bills or adjustments to bills rendered with respect to this Agreement. Audits shall, at the option of Customer and at Customer's expense be performed by a firm experienced in utility accounting practices. Auditors conducting such audits shall be formally retained by Customer and remunerated

solely on an hourly basis. The internal costs incurred by Company in facilitating and supporting audits shall be borne by Customer. Company shall be entitled to review the complete audit report and any supporting material. Customer may not conduct such an examination of Company's accounts and records except on at least sixty (60) days prior written notice to Company, and Customer may not conduct any such examination more than once in any 12 month period, except as otherwise mutually agreed by the Parties. Books and records shall be available for audit by Customer up to five (5) years after they were generated.

(b) After Company has been advised by written communication of the audit findings, Company will be responsible for arranging meetings between the representatives of the Parties hereto to discuss and resolve all audit findings in an expeditious manner. In the event the resolution of an audit finding results in an adjustment(s) to correct previous invoices or bills rendered under this Agreement, the adjustment(s) shall be made with interest accrued at the average of the Prime Rate as published in the Wall Street Journal for the last business day of the current and prior month and charged or applied to the average of the beginning and ending true-up balance for the month.

**4.7 Cost-of-Service Formulas.** The cost-of-service formulas set forth in Appendix B were designed primarily to use Company's FERC Form No. 1 costs. Certain costs that either are not reflected in Company's FERC Form No. 1, or that the Parties agreed were not appropriately stated for use in the cost-of-service formulas of this Agreement, were determined by negotiation and are described below:

(a) For purposes of calculating Company's charges used in Appendix B, the Parties agree that Company will include one hundred percent (100%) of its expenditures for Pollution Control Facilities and Fuel Conversion Facilities (as defined in Section 35.25 of the FERC's regulations) recorded on Company's books and records as construction work in progress ("CWIP"), and fifty percent (50%) of its expenditures for all other CWIP.

(b) The Return on Common Equity ("ROE") is deemed to be 11.75% upon execution of this Agreement and shall remain as such until adjustments, if any, are made by the FPSC to the Company's ROE after the date of execution of this Agreement in a retail base rate proceeding subsequent to that FPSC proceeding identified as docket numbers 080677-EI and 090130-EI and such adjustments become final, unappealable and binding on Company. In the event the midpoint ROE allowed by the FPSC pursuant to a retail base rate proceeding initiated subsequent to the execution of this Agreement is lower than the then-current value of ROE under this Agreement, by 25 basis points or greater, Company shall notify Customer and, if requested by Customer, shall file with FERC under Section 205 of the FPA to change the ROE under this Agreement to be consistent with the ROE approved by the FPSC. In the event the midpoint ROE allowed by the FPSC for Company's retail base rates is higher than the then-current value of ROE under this Agreement, by 25 basis points or greater, Company shall notify Customer and may file with FERC under Section 205 of the FPA to change the ROE under this Agreement consistent with the ROE approved by the FPSC.

(c) Company's total production costs as shown in Appendix B shall be reduced for a portion of its gains on non-separated wholesale power sales, excluding emergency sales. Non-separated wholesale power sales shall refer to wholesale power sales that are short-term (less

than one year in duration) and/or non-firm in nature. Consistent with the rate treatment applied to Company's Customers, an incentive shall apply to the gains on all non-separated wholesale power sales, firm and non-firm, excluding emergency sales. A three year moving average of gains on all non-separated wholesale power sales, firm and non-firm, excluding emergency sales, shall be established each year as the threshold for application of the incentive. All gains below this threshold shall be credited as a reduction to Company's total production costs as shown on Appendix B. Eighty percent (80%) of the gains above this threshold shall also be shown as a reduction to Company's total production costs as shown on Appendix B. Twenty percent (20%) of the gains above this threshold shall be retained by Company's shareholders. To the extent that the FPSC subsequently approves a different formula for sharing the gains on non-separated sales with Company's retail customers, Company reserves the right to file at FERC, pursuant to Section 205 of the FPA, to modify provisions of this paragraph, consistent with the FPSC approved methodology, and, on reasonable notice to Customer, Customer agrees that, subject to review by Customer of any filing, to support such filing if it is consistent with and seeks to implement nothing more than the methodology approved by the FPSC. To the extent that the FPSC approves a different formula for sharing the gains on non-separated sales with Company's retail customers which would reduce the gains to be retained by Company, Company shall notify Customer, and after review of filing by Customer prior to filing, shall make such filing at FERC if requested by Customer and Customer shall have the right to seek to intervene and represent its interests as they may arise with the exception that Customer agrees not to advocate for a reduction in the gains to be retained by Company that are greater than those resulting from the methodology approved by the FPSC. Company shall apply all allocations associated with the above referenced formula consistently across all Company's total load requirements and Customer shall only receive its Customer Share of these benefits.

(d) The method set forth in Appendix B to allocate costs as production-related and/or transmission-related shall be used throughout the Term of this Agreement; provided, however, that to the extent that any of the following circumstances occur during the Term of this Agreement, the Parties will meet and attempt to determine a mutually agreeable modification to Appendix B: (i) FERC determines in a rulemaking proceeding, or in a proceeding regarding Company's costs to be included in the Transmission Provider's OATT, or it is agreed in a FERC-approved settlement of any such proceeding, that items currently included in Appendix B as production-related should be treated as transmission-related; or (ii) FERC determines in a rulemaking proceeding, or in a proceeding regarding Company's costs to be included in the Transmission Provider's OATT, or it is agreed in a FERC-approved settlement of any such proceeding, that items currently excluded from Appendix B as transmission-related should be treated as production-related. If either or both of the circumstances in this Section 4.7(d) occurs and the Parties cannot agree upon a modification to Appendix B, then either Party may seek FERC review of Appendix B's treatment of the items addressed in such proceedings under the "just and reasonable" standard of Sections 205 and 206 of the FPA.

#### **4.8 Billing Demand and Energy.**

(a) The monthly "Billing Demand" shall be an amount equal to the following for the applicable Billing Period: (1) the sum of the single highest 60-minute kW demand at all of the Delivery Points described in Appendix A during the same 60-minute period; plus (2) any

purchases made or electrical output received (expressed in kW) at or on Customer's side of the Delivery Points in that 60-minute period from Qualifying Facilities as provided in Section 3.3, distributed generation resources and renewable energy resources as provided in Section 3.4; and (3) grossed-up for Losses (expressed in kW), at and from the Receipt Points to the Delivery Points based on the demand loss factors for all transmission delivery points on Company's system for the applicable period as set forth in Appendix B. In determining the monthly "Billing Demand", the purchases described in Section 4.8(a)(2), above, shall be reduced as follows: (i) by up to five (5) MW for the first five (5) MW, in the aggregate, that are purchased or received by Customer from all Qualifying Facilities, and (ii) by up to five percent (5%) of Customer Peak Demand, in the aggregate, that are purchased or received by Customer from all renewable energy resources and distributed generation resources. Examples regarding the calculation of monthly Billing Demand are set forth in Appendix K.

(b) The monthly "Billing Energy" shall be the total kWhs of Full Requirements Electric Service, as measured during the applicable Billing Period, at all of the Delivery Points as described in Appendix A and grossed-up for Losses (expressed in kW) at and from the Receipt Points to the Delivery Points based on the energy loss factors for all transmission delivery points on the Company's system for the applicable period as set forth in Appendix B. Billing Energy shall not include: (i) Energy produced in accordance with the terms of Sections 3.3 and 3.4 of this Agreement; and (ii) in the circumstances identified in Sections 3.1(b)(iii), 3.4(b) and 3.10 of this Agreement.

(c) The monthly "CP Demand" shall be the total 60-minute kW demand measured at the time of Company's highest hourly system demand during the Billing Period: (1) at all of the Delivery Points as described in Appendix A; plus (2) any purchases made or electrical output received (expressed in kW) in that 60-minute period at or on Customer's side of the Delivery Points from Qualifying Facilities as provided in Section 3.3, and distributed generation resources and renewable energy resources pursuant to Section 3.4; and (3) grossed-up for Losses (expressed in kW) at and from the Receipt Points to the Delivery Points based on the demand loss factor for all transmission delivery points on the Company's system for the applicable period as set forth in Appendix B. In determining the monthly "CP Demand", the purchases or amounts received described in Section 4.8(c)(2), above, shall be reduced as follows: (i) by up to five (5) MW for the first five (5) MW, in the aggregate, that are purchased or received by Customer from all Qualifying Facilities, (ii) by up to five percent (5%) of Customer Peak Demand, in the aggregate, that are purchased or received by Customer from all renewable energy resources and distributed generation resources. In addition, the CP Demand shall be adjusted for Load Management as set forth in Section 3.6(b) and the Calculation of Customer's CP Demand Schedule attached to Appendix B. Examples regarding the calculation of monthly CP Demand are set forth in Appendix K.

(d) The meters at the Delivery Points shall be tested from time to time, and the results shall be reported to Company and Customer. The Transmission Provider's OATT shall govern the process for testing the meters at the Delivery Points. In the event such testing results in a need to correct prior meter readings, such corrections shall be made in accordance with Transmission Provider's OATT and Company's FERC Form No. 1 data shall be appropriately amended to reflect the effects of such corrections.



(e) Customer shall provide by e-mail to Company on the second Business Day of the month following the month of delivery all electronic metering information relating to electrical output received during the applicable Billing Period by Customer at and on Customer's side of the Delivery Points. Such metering information shall be sufficient to enable Company to calculate the adjustments, if any, to the monthly Billing Demand and monthly CP Demand resulting from the receipt by Customer of such electrical output on Customer's side of the Delivery Points from Qualifying Facilities as provided in Section 3.3, renewable energy resources and distributed generation resources as provided in Section 3.4.

#### **4.9 Determination of Monthly Bill.**

The Monthly Bill shall set forth charges for Full Requirements Electric Service, charges to reimburse costs incurred by Company on behalf of Customer in connection with Full Requirements Electric Service, and other charges associated with Full Requirements Electric Service. For purposes of this Agreement, the "Monthly Bill" shall be the total sum of the following:

- (a) The Generation Demand Charge;
- (b) The Generation Energy Charge;
- (c) The Fuel Charge;
- (d) The Fuel Adjustment Charge;
- (e) True-up of estimated versus actual charges as described in Section 4.4;
- (f) Customer Charge;
- (g) Not Used
- (h) Any applicable governmental Taxes, fees and assessments attributable or related to Full Requirements Electric Service to the extent not included in items (a) through (l);
- (i) Environmental and/or emissions charges, costs and expenses and value of credits and allowances as further described in Section 3.7 of this Agreement to the extent not included in items (a) through (l);
- (j) Customer's Customer Share of RPS Compliance Costs as further described in Section 3.5 to the extent not included in items (a) through (l); and
- (k) Any other amounts payable or due to Company pursuant to this Agreement.

**4.10 Payment Date.** Customer shall pay Company amounts due and payable hereunder on or before the fifteenth (15<sup>th</sup>) calendar day after receipt of invoice each month following the period of Full Requirements Electric Service or, if such due date is not a Business Day, then on the next Business Day. All invoices shall be delivered electronically to Customer on a Business Day, and all invoices shall be paid by electronic

funds transfer, or by other mutually agreeable methods, to the account designated by Company. If all or any part of any amount due and payable pursuant to this Agreement shall remain unpaid thereafter, interest shall thereafter accrue and be payable to Company on such unpaid amount at a rate determined in accordance with Section 35.19a of FERC's regulations.

**4.11 Payment in Event of Billing Disputes.** If Customer, in good faith, disputes the correctness of any invoice or adjustment to an invoice rendered under this Agreement for any arithmetic or computational error prior to the due date for payment, Customer shall immediately thereafter provide a written explanation of the basis for the dispute and pay the undisputed portion of such invoice no later than the due date; provided, however, Customer shall not withhold amounts in connection with any dispute under Section 4.6. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with any interest accrued at the rate determined in accordance with Section 35.19a of the FERC's regulations from and including the due date to, but excluding the date paid. Inadvertent overpayments shall be returned by Company or deducted at the option of Customer, in either case with interest accrued at the rate determined in accordance with Section 35.19a of the FERC's regulations until the date paid or deducted from and including the date of such overpayment to but excluding the date repaid or deducted by Company.

**4.12 Retail Competition.** In the event the State of Florida enacts a Law providing for the implementation of Retail Competition in the State of Florida, Company and Customer shall have the right to renegotiate the price of Full Requirements Electric Service hereunder as well as other terms hereof. If Company and/or Customer elect(s) to renegotiate this Agreement, the Parties shall renegotiate in good faith to attempt to reach an agreement on the proposed changes to this Agreement. In the event the Parties do not agree on new terms hereunder that restore the economic and other benefits reasonably anticipated by Company and Customer under this Agreement as of the date prior to Retail Competition within a commercially reasonable period of time, and in any event for a period not to exceed one (1) year, after the effective date of such Law (but not to extend beyond the commencement date of Retail Competition in the State of Florida), Company or Customer shall provide fifteen (15) days notice to the other Party that negotiations of a modified cost of capacity and energy are terminated. Upon termination of such negotiations, this Agreement will continue under the then current charges and the Term of this Agreement shall be automatically modified to extend until the date such Retail Competition commences in the State of Florida. Company shall have the right to file with FERC for changes to this Agreement pursuant to Section 205 of the FPA to incorporate any changes to the Full Requirements Electric Service pricing and other terms and conditions hereunder that are agreed to by both Parties and to incorporate the change in Term, if applicable.

**4.13 Customer's Right to Challenge Formula Inputs and Monthly Charges.**

(a) **Right to Challenge**

Except for the cost elements established pursuant to Section 4.7(a-d), which the parties agree may not be challenged under this Section 4.13, nothing in this Agreement, including the exhibits and schedules attached hereto, shall constitute or be construed as a waiver or limitation of the rights of Customer, to challenge the legality, justness and reasonableness, or consistency with and permissibility under this Agreement, of (i) any cost sought to be passed through or included in the charges produced by the terms of this Agreement, (ii) any cost, fuel, energy, load, transmission or other data or formula rate input or calculations or analyses employed in the determination of the charges under this Agreement, (iii) the interpretation and application of any term of this Agreement (as distinct from the terms and conditions themselves), including but not limited to the formulas in Appendices B and C of this Agreements, and (iv) any other charge or calculation affecting charges under this Agreement. Nothing in this section is intended to modify or limit Section 4.11 of this Agreement, which addresses billing disputes and not the matters addressed in this Section 4.13.

**(b) Challenge Procedures.**

(i) In order to initiate a challenge pursuant to this section 4.13, Customer shall provide Company with written notice that it is protesting one or more Monthly Charge or other charge produced by this Agreement's rates ("Challenge Notice"). Customer's Challenge Notice shall provide the month(s) of charges subject to challenge, the basis for its challenge to the charges in question and state, if feasible, the proposed adjustment to the charges.

(ii) Upon receipt of the Challenge Notice, all payments made by Customer for Monthly Charges or other charges shall be paid to Company subject to refund plus interest (calculated according to 18 CFR 35.19a) upon completion of a successful challenge. For purposes of this section, a successful challenge shall include any order of the FERC or any agency or court in which such challenge may be brought under this Agreement, or any settlement of such challenge, the effect of which is to reduce the charges to Customer.

(iii) Company shall have thirty (30) days to provide a written response to Customer's Challenge Notice either (i) agreeing to modify the charges under challenge as requested in the Challenge Notice; or (ii) providing the basis for Company's belief that the charges are accurate.

(iv) In the event that Company disputes Customer's challenge, the Parties shall have thirty (30) days from Customer's receipt of Company's response disputing the challenge to resolve the dispute.

(v) In the event the Parties do not resolve the dispute within thirty (30) days, Customer shall retain all legal rights it has to seek redress of the matter before FERC or a court of competent jurisdiction.

(vi) For the avoidance of doubt, any unilateral challenge to the rates, terms or conditions of this Agreement shall be in accordance with, and subject to the standard of review and limitations set forth in Section 15.3 of this Agreement.

## ARTICLE 5 CHANGE OF TRANSMISSION

### 5.1 Nodal Market.

In the event that a state-wide or regional wholesale electric market is established in which Company and Customer are or will be participants is accepted or approved by FERC or an applicable governing body, including but not limited to a nodal market employing locational marginal pricing or any form of locational marginal pricing differentials, incremental or marginal losses, and/or congestion costs, Company and Customer each shall have the right to renegotiate the rates, terms and conditions of Full Requirements Electric Service hereunder. If Company and/or Customer elect(s) to renegotiate this Agreement, the Parties shall renegotiate in good faith to attempt to reach an agreement on the proposed changes to this Agreement. If the Parties reach an agreement on the proposed changes to this Agreement Company shall have the right to file with FERC for changes to this Agreement pursuant to Section 205 of the FPA to incorporate any changes to the Full Requirements Electric Service pricing and other terms and conditions hereunder that are agreed to by both Parties. If the Parties are unable to reach an agreement on the proposed changes to this Agreement Company shall, at its own election or at the request of Customer, file with FERC pursuant to Section 205 of the FPA to amend this Agreement to incorporate any changes to the Full Requirements Service pricing and other terms and conditions hereunder that Company deems, in its sole discretion, necessary in order to accommodate such nodal market. Customer shall have the right to intervene and, if necessary, to oppose or otherwise to take such actions as are necessary, and to exercise its rights in order, to protect and otherwise represent its interests in any such proceeding.

### 5.2 Regional Transmission Organization.

(a) If an ISO, RTO, ITC or other future organization agency or authority is formed, created or otherwise implemented in Florida that has been approved by FERC to serve as the Transmission Provider, then Company and Customer shall reasonably cooperate to make or enter into arrangements with such entity to assist such entity with implementation of this Agreement.

(b) Nothing herein shall be construed in any way to relieve Customer of, or impose upon Company, the responsibility for any fees, costs, or charges (including but not limited to congestion costs, transmission losses, or the costs or charges to secure financial transmission rights or the equivalent thereof) that may be imposed on Customer by an ISO, RTO, ITC or other future organization, agency or authority that has been approved by FERC to serve as the Transmission Provider. Company shall have no right or interest in any financial transmission rights or the equivalent thereof that are allocated, assigned, transferred to, or acquired by Customer.

## ARTICLE 6 CREDITWORTHINESS

**6.1 Financial Information.** If requested by a Party ("Party X"), the other Party ("Party Y") shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial

statements for such fiscal year with respect to Party Y, and (ii) within sixty (60) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter with respect to Party Y. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles, except for accounting adjustments that the Party customarily makes only at fiscal year end in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default for a period of not more than forty-five (45) days so long as during such period Party Y diligently pursues the preparation, certification and delivery of the statements. Company's obligation to deliver financial statements as set forth in this Section 6.1 shall continue only for so long as Company has a legal obligation to prepare and publicly disclose such financial statements. In the event Company no longer has a legal obligation to prepare and publicly disclose such financial statements, Company shall deliver to Customer in satisfaction of the requirements of this Section 6.1, financial statements of its ultimate parent company.

**6.2 Financial Covenant Compliance Worksheet.** If Customer does not have a credit rating from either S&P or Moody's, Customer shall prepare, within one hundred and twenty (120) days from the end of each fiscal year, based on final audited data certified by its chief financial officer as being true and correct and prepared in accordance with generally acceptable accounting principles, a Financial Covenant Compliance Worksheet ("Worksheet") that contains the calculations of the covenants set forth in Section 6.3(c), a sample of which is attached hereto as Appendix D and shall continue to prepare such Worksheet in the same or similar format and with substantially the same type of content during and for the Term of this Agreement. In addition, Customer shall provide to Company, along with the Worksheet, Customer's audited financial statements used to prepare such Worksheet.

**6.3 Credit Assurances of Customer.**

(a) Customer shall meet or exceed each of the minimum financial covenants that are determined in accordance with Section 6.3(c).

(b) In the event Customer is required to secure its obligations to Company by Letter of Credit, the Letter of Credit shall be in a form reasonably acceptable to Company naming Company as the sole beneficiary, and shall at all times be in an amount equal to or greater than twice the highest total monthly bill incurred by Customer under this Agreement over the most recent prior twelve (12) month period (such amount, as the same is required herein to be adjusted from time to time, the "Required Amount"). The Letter of Credit shall, among other things, permit Company to make a drawing for the full amount of the Letter of Credit in the event that (a) Customer fails to renew or replace the Letter of Credit at least thirty (30) calendar days prior to the stated expiration of the Letter of Credit, (b) if, within the applicable period of grace provided therefore in this Article 6, Customer fails to provide Company with additional Performance Assurance as required pursuant to the provisions of this Article 6 of this Agreement, (c) an Event of Default by Customer has occurred and is continuing, or (d)

Company otherwise has the right to draw upon any Performance Assurance of Customer pursuant to the terms of this Agreement. Upon notice by Company to Customer from time to time of the amount of the highest monthly bill incurred by Customer over the most recent twelve (12) month period, Customer, if required to post and/or maintain a Letter of Credit, shall adjust the amount of the Letter of Credit to the Required Amount within thirty (30) calendar days if the available amount of the Letter of Credit does not then equal or exceed the Required Amount and provide Company evidence of such change. If Company draws upon the Letter of Credit, Customer shall restore and maintain the amount available for draw under the Letter of Credit to equal or exceed the Required Amount within five (5) Business Days after any such drawing so that the Required Amount is available at all times. All costs of a Letter of Credit shall be borne by Customer.

(c) Customer agrees to comply with each of the financial covenants set forth in this Section 6.3(c) and represents and warrants that such financial covenants are the most stringent criteria among Customer's Lenders for these two financial covenants. Customer shall meet or exceed each of the following minimum financial covenants that are included in the Worksheet and defined and calculated in accordance with Appendix D:

- (i) Debt Service Coverage Ratio of greater than 1.35 calculated within ninety (90) days following the end of the Calendar Year; and
- (ii) Equity Ratio equal to or greater than 30 percent of total assets.

#### **6.4 Remedies.**

(a) In the event that (1) an Event of Default by Customer occurs and is continuing, (2) Customer fails to satisfy any one or more of the financial covenants set forth in Section 6.3(c), or (3) Customer otherwise fails to comply with any of the other provisions of Section 6.3 (including, without limitation, the failure of Customer to replace any bank issuing a Letter of Credit with a Creditworthy Bank and provide a new Letter of Credit, within thirty (30) calendar days of the failure of such bank to satisfy the requirements set forth in the definition of Creditworthy Bank), upon the earlier to occur of (i) notice from Customer or Company to the other of any such event or (ii) actual knowledge of any such event by Customer, Customer shall (A) pay all amounts outstanding under this Agreement as of the date of notice or such knowledge within five (5) Business Days of receipt of such notice or such knowledge, (B) post and maintain a Letter of Credit in favor of Company for an amount equivalent to the Required Amount, and (C) commence prepaying Company weekly in advance for all amounts due as reasonably computed and invoiced by Company until such time as Customer satisfies the applicable requirements of Section 6.3(a) and each of the applicable events described in this Section 6.4(a) has been cured and is no longer continuing, unless otherwise agreed by Company. In the event that Company draws on the Letter of Credit from time to time, Customer shall post and maintain an additional Letter of Credit, or amend the existing Letter of Credit to reinstate the available amount thereunder by an amount equal to the Required Amount, for the amount drawn within three (3) Business Days after such drawing so that a Letter of Credit in an amount equal to the Required Amount remains available at all times.

(b) **Reserved**

(c) Company shall apply the proceeds of the Performance Assurance realized upon the exercise of any such rights or remedies to reduce Customer's obligations under this Agreement (with Customer remaining liable for any amounts owing to Company after such application). Company shall return any surplus proceeds remaining after such obligations are satisfied in full (including interest on such surplus proceeds determined in accordance with Section 35.19a of FERC's regulations) provided that all required Performance Assurance has been posted, and provided further that no Event of Default or event, which with the giving of notice or the lapse of time, or both, would constitute an Event of Default, shall have occurred and then be continuing under this Agreement. Such surplus proceeds shall bear interest at the foregoing rate commencing on the date the surplus proceed is received by Company, but excluding the date, or any date thereafter, surplus proceed is applied to a Customer's obligations, and shall be calculated on a 365- or 366-day year, as the case may be, for the actual number of days elapsed.

(d) Prepayments made by Customer pursuant to Section 6.4(a) shall bear interest at a rate determined in accordance with Section 35.19a of FERC's regulations. Such prepayment shall bear interest at the foregoing rate commencing on the date the prepayment is received by Company, but excluding the date prepayment is applied to a Customer's obligations, and shall be calculated on a 365- or 366-day year, as the case may be, for the actual number of days elapsed.

(e) Customer shall invoice Company monthly setting forth the calculation of the interest amount due, and, provided that no Event of Default, or event which with the giving of notice or the lapse of time, or both, would constitute an Event of Default, shall have occurred and be continuing, Company shall credit Customer's account with the amount of interest due by the later of (i) the fifteenth day of the first month after the last month to which such invoice relates, or (ii) the fifteenth day after the day on which such invoice is received.

**6.5 Credit Assurances of Company.** Customer hereby waives any and all rights it may have at law or otherwise to require Company to provide financial assurances or security (including cash, letters of credit or other security) in respect of Company's obligations under this Agreement.

## ARTICLE 7 DEFAULT AND REMEDIES

**7.1 Events of Default.** Any one or more of the following shall constitute an Event of Default hereunder with respect to the Defaulting Party:

(a) The failure to make, when due, any payment required pursuant to this Agreement (other than payments disputed under Section 4.11) if such failure is not remedied within five (5) Business Days after written notice of such failure from the Non-Defaulting Party;

(b) Any representation or warranty made by a Party herein is false or misleading in any material respect when made, if such failure is not remedied within thirty (30) calendar days

after written notice of such false or misleading representation or warranty from the Non-Defaulting Party;

(c) Any certification made by Customer pursuant to Article 6, the Worksheet or the financial covenants is false or misleading in any material respect when made, if such failure is not remedied within five (5) Business Days after the earlier to occur of (i) receipt of written notice of such false or misleading certification from the Non-Defaulting Party and (ii) Defaulting Party's knowledge of such failure;

(d) The failure by Customer to comply with the provisions of Article 6 if such failure is not remedied within five (5) Business Days of written notice of such failure from Non-Defaulting Party, except that in the case of the failure to perform, maintain or replenish Performance Assurance within the time period set forth in Article 6, such failure shall be an Event of Default with no further cure period permitted;

(e) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above, and except to the extent Company's obligations to deliver Full Requirements Electric Service are excused by the provisions of Article 8 of this Agreement), if such failure is not remedied within thirty (30) calendar days after written notice of such failure from the Non-Defaulting Party; provided, however, if a period in excess of thirty (30) calendar days is required to cure such failure, the Defaulting Party shall have an additional amount of time not to exceed ninety (90) calendar days, as may be necessary to cure such failure, provided that the Defaulting Party uses reasonable diligence to remedy such failure;

(f) A Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it, which is not dismissed within ninety (90) days; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due;

(g) With respect to Customer, a default of Customer occurs under Customer's loan documents with any Lender and such Lender provides a notice of default to Customer or, if no such notice is provided, a default under Customer's loan documents that (if uncured or due to the lapse of time or both) could lead to an acceleration of the outstanding indebtedness by such Lender; or

(h) With respect to Customer, a breach of any of the requirements set forth in Article 16.

## **7.2 Declaration of an Early Termination by Company.**

(a) If an Event of Default by Customer as the Defaulting Party shall have occurred and be continuing, Company as the Non-Defaulting Party shall have the right to take one or more of the following actions or combinations of actions: (i) to designate a Business Day, no earlier than the day such notice of Early Termination is effective and no later than forty-five (45)



days after such notice of Early Termination is effective, as an early termination date ("Early Termination Date"); (ii) withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance under this Agreement; and/or (iv) pursue any remedy at Law or in equity under this Agreement. The declaration of an Early Termination Date shall, as of the Early Termination Date, automatically terminate this Agreement by its terms and Company shall have no obligation to provide service to Customer under this Agreement on any basis.

**7.3 Remedies of Company.** Notwithstanding any other provision of this Agreement, if an Event of Default by Customer as the Defaulting Party shall have occurred and be continuing, or an Early Termination Date has occurred, Company as the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right to take one or more of the following actions or combinations of actions in addition to a right set forth in Section 7.2:

- (a) To accelerate all amounts owed by Customer to Company to be due and payable immediately upon receipt of notice from Company;
- (b) Exercise any remedy available at Law, subject to the limitations set forth in Section 10.1 hereof, which remedies shall include without limitation the right to recover direct damages for the remaining Term (as if this Agreement had not been terminated (if terminated)); provided, however, Company shall use commercially reasonable efforts to mitigate its direct damages, if any, that may be payable pursuant to this Agreement;
- (c) To exercise any remedy available in equity;
- (d) To suspend performance under this Agreement;
- (e) Exercise its rights of setoff against any and all property of Customer in the possession of the Company or its agent;
- (f) Draw on any outstanding Performance Assurance issued for the Company's benefit; and/or
- (g) Exercise any of the rights and remedies with respect to Performance Assurance issued for the Company's benefit including liquidation of all Performance Assurance then held by or for the benefit of the Non-Defaulting Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party.

**7.4 Remedies of Customer.** If an Event of Default by Company shall have occurred and be continuing, Customer as the Non-Defaulting Party, upon written notice to Company, shall have the right to take the following actions;

- (a) Pursue its actual direct damages in an amount not to exceed fifty million dollars (\$50,000,000) in the aggregate for the Term of this Agreement including any extension thereof; or

- (b) Pursue specific performance of Company's obligations hereunder and injunctive relief.

**7.5 Sole and Exclusive Remedies.** ABSENT FRAUD THE REMEDIES SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION IN ARTICLE 6, THIS ARTICLE 7 AND SECTIONS 4.11, 4.12, 4.13, 8.1(c) AND 13.1(d), CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AGAINST THE OTHER FOR EVENTS OF DEFAULT, BREACH OF CONTRACT OR ANY FAILURE TO PERFORM ANY OF THE OBLIGATIONS UNDER THIS AGREEMENT.

**7.6 Defenses and Counterclaims; Dispute Resolution Authority.** Subject to the terms and conditions of this Agreement, including without limitation the limitation on remedies and liability set forth in Sections 7.4 and 7.5 and Articles 8 and 10 of this Agreement, in the event of a Dispute (including but not limited to any Dispute concerning the Non-Defaulting Party's right to take any action under Section 7.2), each Party reserves the right to assert affirmative defenses and compulsory counterclaims pursuant to the provisions of Article 15 of this Agreement. In addition, notwithstanding any contrary provision set forth in this Agreement, absent fraud the Parties agree that FERC's, the arbitrators' or any court's (as the case may be) authority to grant remedies (including the award of money damages) pursuant to Article 15 shall be limited to the remedies expressly set forth in this Agreement (including without limitation those set forth in Articles 7 and 8) and any such remedies (including any award of money damages) shall be made subject to the limitations of liability and remedies and disclaimer of damages set forth in Sections 7.4 and 7.5 and Articles 8 and 10 of this Agreement, provided however, that nothing in this Agreement shall be construed to limit the authority of FERC under the FPA, and the regulations promulgated thereunder, to order refunds, impose penalties, or, consistent with Section 15.3, take other action consistent with its statutory authority and responsibilities.

**7.7 Obligations At Expiration or Termination.** Upon the termination or expiration of this Agreement, in addition to such rights and obligations enumerated elsewhere in this Agreement, the grant of any and all right and interest to Company to supply Full Requirements Electric Service or any other level or amount of electric service under this Agreement shall automatically cease, except to the extent otherwise required under Section 2.2(c) or Section 3.5. In such event, Customer and Company shall cooperate, in advance to the extent possible; to make all necessary filings with the Transmission Provider and to perform all other acts necessary to transfer all such rights and interests back to Customer in a timely manner.

## **ARTICLE 8 CURTAILMENT, TEMPORARY INTERRUPTIONS AND FORCE MAJEURE**

### **8.1 Curtailment and Temporary Interruptions.**

- (a) If there is a shortage of capacity and/or energy requiring the curtailment of Company's Full Requirements Electric Service deliveries, then upon being notified by the Transmission Provider or Company, Customer shall institute procedures which will cause a corresponding curtailment of the use of Full Requirements Electric Service by its Retail Load, including

without limitation curtailment by Customer of its non-firm loads. It is the express intention of this provision that any curtailment of Full Requirements Electric Service shall fall equitably upon all firm loads served by Customer and all firm loads served by Company in the area affected by the curtailment, after, to the extent within Company's control, the curtailment of Company's and Customer's non-firm loads, and Company agrees that it will not curtail the supply of Full Requirements Electric Service to Customer in an unduly discriminatory manner as compared with Company's Customers in the area affected by the curtailment. If upon notification of a requirement to curtail, Customer fails to institute such curtailment, Company shall be entitled to limit deliveries of Full Requirements Electric Service to Customer in order to effectuate reductions in Energy deliveries, in the smallest amount that is operationally practical, equivalent to or greater than the reduction which would have been effected had Customer fulfilled its curtailment obligation hereunder during the period any shortage exists, and, in such event, Company shall not incur any liability to Customer in connection with any such action so taken by Company. Company shall not in any case be liable under this Agreement (whether in Company's capacity as Transmission Provider, due to Company's own negligence, due to strict liability or otherwise), (a) for any such temporary interruptions of service, or (b) for complete or partial failure or interruption of service, or for fluctuations in voltage or frequency.

(b) Company will use reasonable diligence in furnishing Full Requirements Electric Service to Customer, but Company does not guarantee that the supply of Full Requirements Electric Service furnished to Customer will be uninterrupted, or that voltage and frequency will be at all times constant. Company will not unduly discriminate against Customer, as among Company's Customers, when handling the impact of temporary interruptions that affect delivery of energy in the area of Customer. Temporary interruptions and fluctuations in voltage or frequency of Full Requirements Electric Service deliveries hereunder shall not constitute a breach of the obligations of Company under this Agreement.

(c) In the event of any shortage of or failure to provide capacity and/or energy by Company to Customer (whether pursuant to Section 8.1(a), (b) or otherwise) that is not excused pursuant to this Agreement (including without limitation pursuant to this Section 8.1) and that results from undue discrimination by Company, Company shall pay Customer its actual direct damages, if any, resulting from any such shortage or failure, included within and in accordance with the limitation on damages contained above in Section 7.4(a). It is the express intention of this provision that Company shall not be liable to Customer for the occurrence without regard to the cause (whether due to Company's own negligence, or strict liability), of any shortage of capacity and/or energy which will require or results from curtailment of any of the firm load served by Company, provided that Company curtails its available capacity and/or energy in a non-discriminatory manner in the manner provided in this Section 8.1.

## **8.2 Force Majeure.**

To the extent either Party is prevented by Force Majeure (or the effects of a Force Majeure) from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, but in no event later than thirty (30) days after the claimed Force Majeure event, then the Claiming Party shall be excused from the

performance of its obligations with respect to this Agreement (other than obligations to pay money). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. Until remedied by the Claiming Party, the non-Claiming Party shall not be required to perform or resume performance of its obligations (other than obligations to pay money) to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

**8.3 Transmission.** Customer recognizes that the Transmission Provider may curtail service to Customer's Retail Load and that upon notification of such a requirement to curtail, Customer and Company shall be obligated to do so, and if Customer fails to institute the required curtailment, the Transmission Provider will be entitled to limit deliveries during the period any shortage of capacity and/or energy exists. In no event shall Company be liable under this Agreement for any shortage of capacity and/or energy to the extent resulting from the transmission and/or distribution of capacity and/or energy, any acts or omissions of Company under the Limited Services Agreement or any acts or omissions of Company in its capacity as the Transmission Provider.

#### **ARTICLE 9 NOTICES, REPRESENTATIVES OF THE PARTIES**

**9.1 Notices.** Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. Such notice shall be sent by facsimile, courier, personally delivered or mailed, postage prepaid, to the representative of the other Party designated in this Article 9. Unless provided otherwise in this Agreement, any such notice, demand, or request shall be deemed to be given and effective (i) when received by facsimile; (ii) when actually received if delivered by courier, overnight mail or personal delivery; or (iii) three (3) days after deposit in the United States mail, if sent by first class mail.

(a) Notices and other communications to Company from Customer shall be addressed to:

Florida Power & Light Company  
700 Universe Blvd.  
Mail Stop EMT/JB  
Juno Beach, FL 33408  
Attention: Vice President  
Email: DL-EMT-Contracts@exchange.fpl.com

(b) With a copy to:

Florida Power & Light Company  
700 Universe Blvd.  
Mail Stop EMT/JB  
Juno Beach, FL 33408  
Attention: General Counsel Office

(c) Notices and other communications to Customer from Company shall be addressed to:

Physical Address:  
Florida Keys Electric Cooperative Association, Inc.

91630 Overseas Highway  
Tavernier, Florida 33070  
Attention: Chief Executive Officer

Mailing Address:

Florida Keys Electric Cooperative Association, Inc.  
Box 377  
Tavernier, Florida 33070  
Attention: Chief Executive Officer

(d) With a copy to:

Florida Keys Electric Cooperative Association, Inc.  
Box 377  
Tavernier, Florida 33070  
Attention: General Counsel for Florida Keys Electric Cooperative Association,  
Inc.

(e) Any Party may change its representative or address by written notice to the other Party.

**9.2 Authority of Representative.** The Parties' representatives designated in Section 9.1 shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. The Parties' representatives shall not, however, have the authority to amend, modify or waive any provision of this Agreement unless they are duly authorized by their respective entities and such amendment, modification or waiver is made pursuant to Section 17.6.

**ARTICLE 10 LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES**

**10.1 Limitation on Consequential, Incidental and Indirect Damages.** THE LIMITATIONS ON DAMAGES CONTAINED HEREIN ARE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER LIMITATIONS OF LIABILITY PROVIDED FOR ELSEWHERE IN THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR COMPANY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, CUSTOMERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, CUSTOMERS, SUCCESSORS, SUBSIDIARIES, AFFILIATES OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE MEMBERS, CUSTOMERS, PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS

AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, INDEMNITY (EXCLUDING THIRD PARTY INDEMNIFIABLE CLAIMS UNDER SECTION 10.2) OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN FOR THE DAMAGED PARTY, THE DAMAGING PARTY'S LIABILITY TO THE DAMAGED PARTY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS SECTION 10.1 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

#### **10.2 Indemnification.**

(a) Except for indemnifiable Claims pursuant to Section 10.2(c) and/or Section 10.2(d), to the extent permitted by Law, each Party shall indemnify, defend and hold harmless, on an After-Tax Basis, the other Party from and against any Claims arising from or out of any event, circumstance, act, omission, or incident, occurring or existing during the period when control and title to Full Requirements Electric Service is vested in such Party as provided in Section 10.3 of this Agreement.

(b) Each Party shall indemnify, defend and hold harmless, on an After-Tax Basis, the other Party from and against any and all Claims for injuries to person or property arising in any manner directly or indirectly by reason of the acts of such Party's authorized representatives while on the premises of the other Party under any rights of access provided herein to the extent of the indemnified Party's self-insured retention or deductible under its insurance policies.

(c) Customer shall indemnify, defend and hold harmless, on an After-Tax Basis, Company from and against any and all Claims by any Member or Person other than Customer arising in any manner directly or indirectly by reason of this Agreement, including without limitation a failure, interruption, curtailment, or deficiency in Company's supply of Full Requirements Electric Service under this Agreement for any reason.

(d) Neither Party assumes any responsibility of any kind with respect to the construction, maintenance, or operation of the system or other property owned or used by the other Party. To the extent permitted by Law, each Party agrees to indemnify, defend and hold harmless, on an After-Tax Basis, the other Party from any and all Claims for injuries to person or property by any Member or Person in any way resulting from, growing out of, or arising from or in connection with the construction, maintenance or operation of the other Party's system or other property. Customer agrees to indemnify, defend and hold harmless Company from any

and all Claims for injuries to persons or property by any Member or Person in any way resulting from, growing out of, or arising in or in connection with the use of, or contact with, Energy or Full Requirements Electric Service delivered hereunder after it is delivered to Customer and while it is flowing through the lines of Customer, or is being distributed by Customer, or is being used by Retail Load.

(e) If a Party intends to seek indemnification under this Section 10.2 from the other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within thirty (30) calendar days of the commencement of, or actual knowledge of such Claim, whichever is earlier. Such Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such Claim. The Party seeking indemnification shall not compromise or settle any such Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld.

(f) The provisions of this Section 10.2 shall not apply to Company in its capacity as Transmission Provider.

**10.3 Title; Risk of Loss.** Title to and risk of loss related to the Full Requirements Electric Service provided hereunder shall transfer from Company to Customer at the Points of Receipt. Company represents and warrants that it will deliver Full Requirements Electric Service to Customer free and clear of all claims or any interest therein or thereto by any person arising prior to the Points of Receipt.

## **ARTICLE 11 REPRESENTATIONS, WARRANTIES AND COVENANTS**

**11.1 Company and Customer Representations and Warranties.** As of the date of this Agreement and assuming the satisfaction of the conditions precedent set forth in Section 2.5 that are applicable to Company or Customer (as the case may be), Company and Customer each represent and warrant to the other that:

- (a) It is duly organized, validly existing and in good standing under the Laws of the State of Florida;
- (b) It has all corporate (or cooperative in the case of Customer) and regulatory authorizations, consents, notices and approvals necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, including, but not limited to, any organizational documents, charters, by-laws, indentures, mortgages or any material contracts to which it is a party, or any Law applicable to it;
- (d) It has the necessary power and authority to enter into and deliver this Agreement and to perform its obligations under this Agreement;

(e) This Agreement, and each other document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(f) It is not bankrupt or insolvent 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 or insolvent;

(g) As of the Effective Date of this Agreement, there is not pending or, to its knowledge, threatened against it any legal proceedings or Claims that could materially and/or adversely affect its ability to perform its obligations under this Agreement;

(h) There is no Event of Default or events which, with the giving of notice or lapse of time or both, would constitute an Event of Default with respect to it, and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(i) It has no rights of sovereign immunity; and

(j) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether 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, and is capable of assessing the merits of and understands and accepts the terms, conditions and risks of this Agreement.

#### **11.2 Additional Company and Customer Representations and Warranties.**

(a) Company represents and warrants to Customer that this Agreement has been duly approved by the senior management of Company and the board is authorized under the organizational documents of Company to enter into this Agreement.

(b) Customer represents and warrants to Company that this Agreement has been duly approved by the board of trustees of Customer and the board is authorized under the organizational documents of the Customer to enter into this Agreement without further action or consent of the Members.

(c) Customer represents and warrants that it is a rural electric cooperative that is subject to, and entitled to the powers provided by, Chapter 425 of the Florida Statutes (the "Act").

#### **11.3 Additional Company and Customer Covenants.**

(a) Customer shall establish, maintain, and revise from time to time its rates, fees, and other charges for electric energy and/or capacity and distribution and other facilities, suppliers, equipment or services furnished by Customer so that Customer's cash flow shall be sufficient at all times to enable Customer to satisfy all of its obligations under this Agreement.

(b) Customer and Company hereby waive any rights of sovereign immunity, if any, for liability under contract or for torts.



(c) The Term of this Agreement does not extend beyond any applicable limitation on Customer imposed by Chapter 425 of the Florida Statutes or other relevant constitution, organic or other governing documents and applicable Law. Subject to Article 16, Customer shall maintain its status as a rural electric cooperative that is subject to, and entitled to the powers provided by, Chapter 425 of the Florida Statutes.

**11.4 Warranty Disclaimer.** EXCEPT AS SET FORTH IN THIS ARTICLE 11, COMPANY MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO FULL REQUIREMENTS ELECTRIC SERVICE, CAPACITY, ENERGY OR ANCILLARY SERVICES SOLD OR PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL WARRANTIES ARE DISCLAIMED.

## ARTICLE 12 ASSIGNMENT

**12.1 General Prohibition Against Assignments.** Except as provided in Section 12.2 and Section 12.3, below, no Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's prior written consent, which consent shall not be unreasonably withheld. Any assignment, pledge or transfer in contravention of the terms of this Article 12 shall be null and void.

**12.2 Exceptions to Prohibition Against Assignments by Company.** Company may, without Customer's prior written consent, (i) pledge, encumber or collaterally assign its interests in this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this agreement to an Affiliate of Company, where such Affiliate's Credit Rating is equal to or higher than that of Company but at a minimum is an Investment Grade Credit Rating; or (iii) transfer or assign this Agreement to any Person or entity succeeding by merger, consolidation, a change in control of Company or by acquisition of all or substantially all of the assets of Company; provided, however, that in each such case, any such transferee or assignee shall agree in writing to be bound by the terms and conditions hereof.

**12.3 Exceptions to Prohibition Against Assignments by Customer.** Customer may, without Company's prior written consent, (i) transfer or assign this Agreement to any Person or entity succeeding by merger, consolidation, a Change in Control of Customer, as defined in Section 16.1(e), or by acquisition of all or substantially all of the assets of Customer; provided, however, that in each such case, any such Successor Person shall comply with the conditions set forth in Section 16.1 of this Agreement; or (ii) pledge, mortgage or collaterally assign its interest in this Agreement as security to one or more of the Lenders or an indenture trustee under any indenture securing the obligations of Customer (the "Other Secured Party") if Customer is then a borrower of such Lender or Other Secured Party for any obligations secured by any indenture, mortgage or similar lien on its system assets; provided that Lender or Other Secured Party may not (a) have itself or its designee substituted for Customer under this Agreement, or (b) sell, assign, transfer or otherwise dispose of this Agreement to itself or a third party, in each case

without the prior written approval of Company (such approval not to be unreasonably withheld, delayed or conditioned) and unless itself and such third party satisfies the requirements set forth in Section 16.1. Upon any assignment for security to the Lender or the Other Secured Party, Company and Customer agree to enter into a consent and agreement, substantially in the form attached hereto as Appendix I, with such Lender or Other Secured Party and Customer.

## ARTICLE 13 CONFIDENTIALITY

### 13.1 Treatment of Confidential Information.

(a) Any Party seeking to classify information as Confidential Information must notify the other Party of such designation. Any and all Confidential Information must be so marked. If the notified Party challenges such designation, the Party claiming designation of Confidential Information shall bear the burden of proving such designation is proper. Any Dispute arising out of the designation of Confidential Information shall be resolved in accordance with Article 15.

(b) To the extent permitted by Law, all Confidential Information shall be held and treated by the Parties and their agents, counsel and consultants in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Party's prior written consent.

(c) Notwithstanding the foregoing, Confidential Information may be disclosed (i) to a third party for the purpose of effectuating the supply, transmission and/or distribution of Full Requirements Electric Service to be delivered pursuant to this Agreement; (ii) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable Law, including but not limited to state sunshine, open meeting, freedom of information, securities Laws or similar Laws; (iii) in response to any order or as part of any required, periodic filing or disclosure with or to any regulatory authority of competent jurisdiction; (iv) to rating agencies; and (v) to third parties in connection with merger, acquisition/disposition and/or financing transactions, provided that, in the case of (v), above, any such third party shall have signed a confidentiality agreement with the Disclosing Party containing customary terms and conditions that protect against the disclosure of the Confidential Information and that strictly limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance. Disclosing Party shall make all reasonable efforts to ensure that Confidential Information remains confidential even if disclosed, including marking such information confidential and requesting confidential treatment of such information.

(d) In the event that a Party ("Disclosing Party") is requested or required to disclose any Confidential Information pursuant to subsection (c)(ii) or (iii) of this Article 13, the Disclosing Party shall provide the other Party with prompt written notice of any such request or requirement, so that the other Party may seek an appropriate protective order, other confidentiality arrangement or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order, other confidentiality arrangement or the receipt of a waiver hereunder, the Disclosing Party, in the opinion of counsel, is compelled to disclose

Confidential Information, the Disclosing Party may disclose only that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose. Notwithstanding the above language, this provision does not permit a Disclosing Party to provide the other Party notice of a request or requirement of the FERC or its staff to disclose Confidential Information to the FERC or its staff.

(e) Subject to Article 15, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition to the foregoing, the Disclosing Party shall indemnify, defend and hold harmless the other Party from and against any Claims, threatened or filed, and, subject to Articles 7 and 10 of this Agreement, any direct losses, damages, expenses, attorneys' fees or court costs incurred by such Party in connection with or arising directly or indirectly from or out of the Disclosing Party's disclosure of the Confidential Information to third parties except as permitted above.

(f) Notwithstanding the above provisions, Company and Customer shall be permitted to communicate to the Transmission Provider any necessary information, including Confidential Information, with regard to implementation of this Agreement, and will make all reasonable efforts to ensure that such Confidential Information remains confidential.

(g) Notwithstanding anything in this Section to the contrary, if the FERC or its staff, during the course of an investigation, hearing, or settlement, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the FERC or its staff. In providing the information to FERC or its staff, the Party may, consistent with 18 C.F.R. 388.112, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Party shall notify the other Party to the Agreement when it is notified by FERC or its staff that a request for disclosure of, or decision to disclose, confidential information has been received, at which time either of the Parties may respond before such information is made public, pursuant to 18 CFR 388.112.

## ARTICLE 14 REGULATORY AUTHORITIES

### 14.1 Effect of Regulation.

(a) Each Party shall perform its obligations hereunder in accordance with applicable Law. Unless specifically provided otherwise in this Agreement, nothing in this Agreement affects, modifies or negates either Party's rights or obligations under the FPA and the regulations promulgated thereunder, or any other federal or state Law. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the Laws of the United States or any applicable state Laws, as those Laws may be amended, supplemented or superseded, or which violates any other Law.

(b) The Parties acknowledge that this Agreement is an agreement subject to the jurisdiction of the FERC under the FPA, that this Agreement is being entered into by Customer for the purpose of serving its Retail Load, and that neither Party shall terminate this Agreement except as provided in this Agreement and in accordance with 18 CFR 35.15.

(c) With the exception of Section 3.5(a), Customer shall not oppose before the FPSC, directly or indirectly, Company or any of its positions with regard to Company's provision of electric service or necessary ancillary activities in Company's retail tariff.

## **ARTICLE 15 DISPUTE RESOLUTION**

### **15.1 Negotiation by Officers of the Parties; Provisional Relief**

Except as specifically provided in Sections 4.6 and 4.11 herein, if any controversy, dispute, claim, counterclaim or cause of action involving the parties and/or their respective representatives ("Dispute") arises out of or relates to this Agreement or the interpretation, breach, validity or termination thereof, the Parties shall first seek to resolve the Dispute through negotiation; provided that all Disputes relating to termination of this Agreement shall be resolved by petition to or other appropriate filing with FERC directly without negotiation. Either Party shall provide the other Party with written notice setting forth the parameters of the Dispute, including where possible, a good faith quantification of any amounts at issue, a proposed means for resolving the same, and the support for such position ("Notice"). If such Dispute cannot be resolved through negotiation within sixty (60) days of the receipt by a Party of Notice (or such longer period as the Parties may agree to in writing), the Parties agree that any such Dispute shall be resolved pursuant to Section 15.2 and, if applicable, Section 15.4 of this Agreement. The procedures specified in this Article 15 shall be the sole and exclusive procedures for the resolution of Disputes; provided, however, either Party may, without prejudice to any negotiation, FERC or arbitration procedures commenced pursuant to this Article 15, proceed in a Florida state court of competent jurisdiction located in Palm Beach County, Florida to obtain temporary provisional injunctive relief (excluding permanent injunctive relief, including declaratory actions) if such action is necessary to avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of such negotiation, FERC proceeding or arbitration. Without being prejudiced or bound by such temporary provisional injunctive relief as may be available or granted under the exclusive jurisdiction of a Florida state court of competent jurisdiction located in Palm Beach County, Florida, and subject to the limitations set forth in this Agreement, including without limitation those set forth in Articles 7, and 10 and Section 8.1(c) hereof, either FERC or the arbitrators (as the case may be) shall have full authority to grant the remedies set forth in this Agreement (including without limitation those set forth in Articles 7 and 8.1(c)) or order the Parties to request that a court modify or vacate any temporary or preliminary relief issued by a court, and the Parties shall continue to participate in the procedures specified in this Article 15.

### **15.2 Procedures for Resolution of Disputes**

(a) Disputes within the primary or exclusive jurisdiction of FERC shall be resolved by petition to or other appropriate filing with FERC, subject to the further provisions of this paragraph. If FERC issues an order declining to act upon such a Dispute, (1) the Party that brought the matter before FERC may seek judicial review of FERC's decision, or (2) the Dispute shall be subject to binding arbitration in accordance with the procedures set forth in

Section 15.3(a). In addition, Disputes within the concurrent jurisdiction of FERC (which are those disputes subject to both FERC and court jurisdiction) shall be subject to binding arbitration in accordance with the procedures set forth in Section 15.3(a) if the Parties agree that the Dispute shall be arbitrated (each, an "Arbitrable FERC Dispute"). Disputes within the jurisdiction of FERC that are not Arbitrable FERC Disputes shall be resolved by petition to or other appropriate filing with FERC.

(b) All other Disputes that are not resolved by FERC pursuant to Section 15.2(a), above, shall be resolved by arbitration pursuant to Section 15.4; provided, however, that claims for breach of the confidentiality obligations set forth in Article 13, or claims for personal injury or tangible personal property damage arising in connection with this Agreement may at the election of either Party be resolved by any court of competent jurisdiction in the State of Florida, provided that exclusive jurisdiction for such claims shall reside with the courts of Palm Beach County, Florida, and each of the Parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such limited suit, action or proceeding involving such claims and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE SUBJECT TO COURT RESOLUTION HEREUNDER OR OTHERWISE.

### **15.3 Changes Subject to FERC and Standard of Review**

(a) Subject to the exceptions set out herein in Section 15.3(b), the Parties hereby waive any rights they may have to request that any changes be made to this Agreement pursuant to Sections 205 or 206 of the FPA, and pursuant to the rules and regulations promulgated thereunder, and Customer further agrees to waive its rights to seek or support: an order from FERC finding that the rate formulas or rate(s), classifications, terms or conditions agreed to by the Parties in this Agreement are unjust and unreasonable.

(b) Notwithstanding Section 15.3(a), the Parties expressly reserve their rights as follows:

(i) Customer reserves its rights to challenge the inputs to, calculations, and resulting levels of, the Monthly Charges and any other charge or calculation or other matters affecting charges under this Agreement as such rights are set forth in Section 4.13;

(ii) Either Party may file under Section 205 or 206 of the FPA, as applicable, to the extent permitted in Section 4.7(b), (c) and (d);

(iii) In the event that there is a change in Law or the FERC changes or adds any classification, rule or regulation or issues any order that impacts or otherwise affects the cost-of-service formulas provided for in Article 4, Appendix B or Appendix C or the FERC Form No. 1 data, Company may make a filing pursuant to Section 205 of the FPA to conform this Agreement or the associated Appendices to such changes or additions;

(iv) In the event that the FPSC changes or adds any classification, rule or regulation or otherwise issues any order that results in or otherwise recognizes or permits Company's recovery of additional or new costs, expenses, charges, Taxes, fees and/or assessments through Company's retail rates, Company may make a filing pursuant to Section 205 of the FPA to revise the cost-of-service formulas provided for in Article 4, Appendix B and Appendix C to permit the recovery of such costs, expenses, charges, Taxes, fees and/or assessments under this Agreement;

(v) (A) In the event that there is any change in Law that results in, or in the event any ISO, RTO, ITC or other future transmission organization creates, any additional or new costs, expenses, charges, Taxes, fees and/or assessments that are attributable or related to the production and/or provision of capacity, Energy and/or Generation-Related Services by Company to Company's retail and/or wholesale customers (including Full Requirements Electric Service to Customer); or (B) to the extent any production-related costs, expenses, charges, taxes, fees and/or assessments are incurred by Company that are not already provided for in the cost-of-service formulas provided for in Article 4, Appendix B or Appendix C, or are not reflected in the FERC Form No. 1 data, Company may make a filing pursuant to Section 205 of the FPA to revise the cost-of-service formulas provided for in Article 4 or the associated Appendices and/or to include the costs not reflected in the FERC Form No. 1 data in order to permit the recovery of such costs, expenses, charges, Taxes, fees and/or assessments under this Agreement;

(vi) The page, column and line number references to the FERC Form No. 1 data identified under the heading "Reference" in Appendix B shall be automatically amended to reflect any changes made by FERC that cause changes in the pagination, columns and line numbers of such FERC Form 1 data and Company will make a filing pursuant to Section 205 of the FPA to revise such page, column and line number references in Appendix B to reflect such changes in the FERC Form No. 1 data;

(vii) Company may file, pursuant to Section 205 of the FPA, to implement any changes permitted under Section 4.12 of the Agreement in the event of the advent of Retail Competition in Florida;

(viii) Company may file, pursuant to Section 205, to implement changes permitted under Section 5.1 of this Agreement; and

(ix) Company may file, pursuant to Section 205 of the FPA, to implement any changes to the Delivery Points pursuant to Section 2.4 or any changes to the Company Generation Resources as contemplated by the definition of such term.

(x) In the event that a filing is made pursuant to this Section 15.3(b), Customer and Company reserve their rights to oppose any such filing to the extent that such filing is inconsistent with the provisions of this Agreement; provided, however, that with respect to filings pursuant to Section 15.3(b)(vi), Company agrees to consult with Customer to finalize necessary changes to FERC Form No. 1 data in Appendix B and Customer agrees to support FERC's acceptance or approval of any such filing, including the effective date requested by Company.

(c) It is the intent of this Section and the Parties after a knowing, voluntary and due inquiry, to the maximum extent permitted by Law, that the provisions of this Agreement, except as enumerated in Section 15.3(b), shall not be subject to change under Sections 205 or 206 of the FPA, and that absent the written agreement of the Parties to change any of the exceptions enumerated in Section 15.3(b), above, the standard of review for changes to any of those enumerated exceptions proposed by a Party, or a non-party, or the FERC, acting sua sponte, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S.527 (2008) (the "Mobile-Sierra Doctrine").

In furtherance of the foregoing, each Party, for itself and its successors and assigns, knowingly, voluntarily, and, after due inquiry and to the maximum extent permitted by Law: (x) covenants and agrees not to seek unilaterally from FERC, or any other authority, relief of any kind changing the provisions set forth in this Agreement under the "public interest" application of the "just and reasonable" standard enumerated in the Mobile-Sierra Doctrine, notwithstanding any subsequent changes in applicable Law or market conditions that may occur; (y) completely and irrevocably waives any rights, it can or may have, now or in the future, under statute, regulation, state or federal constitution or common law to assert or to support directly or indirectly any complaint, claim, suit or other challenge in any regulatory, judicial or other forum, including without limitation, the public utility or service commission of any state, FERC, or any state or federal court, concerning or related in any way to unilateral abrogation or modification of the above enumerated provisions; and (z) acknowledges and agrees that acceptance for filing by FERC of this Agreement without change or condition shall be sufficient to constitute as between the Parties, FERC's approval of this Agreement

#### **15.4 Arbitration Procedure**

(a) In the event of a Dispute which is to be resolved by binding arbitration in accordance with this Article 15, such arbitration shall be held in accordance with the rules of the American Arbitration Association (AAA) then in effect (the "Rules"), except as modified herein, before a panel of three (3) arbitrators. The arbitration shall be held and the award shall be rendered in Palm Beach County, Florida.

(b) The Party initiating arbitration shall nominate one (1) arbitrator at the same time it initiates arbitration. This nominee shall be neutral and impartial, shall not be a current or former representative or agent of such Party, shall be a AAA panel member and shall be reasonably believed by such Party to possess the requisite experience, education and expertise in respect of the matters to which the claim relates to enable such person to perform arbitral duties competently. The other Party shall nominate one (1) arbitrator within twenty (20) calendar days of receiving the notice of arbitration. This nominee shall be neutral and impartial, shall not be a current or former representative or agent of such Party, shall be a AAA panel member and shall be reasonably believed by such Party to possess the requisite experience, education and expertise in respect of the matters to which the claim relates to enable such person to perform arbitral duties competently. The two arbitrators shall appoint a third, neutral and impartial arbitrator, who shall serve as the chair of the arbitral tribunal,

which arbitrator shall be a AAA panel member. The third, neutral arbitrator shall be a competent and experienced arbitrator, with at least fifteen (15) years of United States electric industry experience as a practicing attorney, and shall be unaffiliated with and without prior financial alliances with any Party, or either of the other arbitrators.

(i) If the two arbitrators are unable to agree on a third arbitrator within twenty (20) days of the appointment of the second arbitrator, a third arbitrator shall be selected by AAA with due regard given to the selection criteria above and input from the Parties and other arbitrators. The Parties shall undertake to request AAA to complete selection of the third arbitrator if possible, no later than forty (40) calendar days after the appointment of the second arbitrator. The costs charged by AAA for this service shall be borne equally by Company and Customer.

(ii) If prior to the conclusion of the arbitration any arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator shall be appointed in the manner described above and applicable to the original arbitrator being replaced.

(c) Discovery and other pre-hearing procedures shall be conducted as agreed by the Parties, or if they cannot agree, as determined by a majority of the arbitrators. The hearing shall be held, if practicable, thirty (30) calendar days after all prehearing discovery has been completed.

(d) The arbitrators' decision shall be made in accordance with the terms and conditions of this Agreement, and shall consider any relevant evidence and testimony, and the arbitrators shall, if practicable, render their decision within thirty (30) calendar days following close of the hearing. The decision and award rendered by a majority of the arbitrators, made in writing, shall be final and binding upon the Parties. Any such decision and award may be entered and enforced in any court of competent jurisdiction. The arbitrators shall have no authority to award special, exemplary, multiple, punitive or consequential damages, or any other damages or remedies that are not permitted or provided for under this Agreement.

(e) The expenses of arbitration shall be borne equally by the Parties, except that each Party shall bear the compensation and expenses of its nominated arbitrator, own counsel, witnesses and employees; provided further, that any costs incurred by a Party in seeking judicial enforcement of any decision and award rendered by the arbitrators, or a majority of the arbitrators, shall be chargeable to and borne exclusively by the Party against whom such court order of enforcement is obtained.

## **ARTICLE 16 CONSOLIDATION, MERGER, CONVEYANCE AND TRANSFER**

**16.1 Customer Consolidation, Merger, Conveyance, or Transfer Only to Certain Person.** Customer covenants and agrees that a Change in Control shall not occur with respect to Customer without the prior written consent of Company (such consent not to be unreasonably withheld or delayed) unless all of the following conditions are satisfied:

(a) The Person formed, succeeding, surviving or resulting from such Change in Control, including without limitation the Person resulting from any consolidation or into which or with which the Customer merges, that acquires all of or substantially all of the assets of Customer



(whether by asset transfer, liquidation, dissolution or otherwise), or that acquires a majority of the ownership in or control of Customer (collectively, the "Successor Person"), shall expressly assume this Agreement by instrument supplemental hereto executed and delivered to Company, which instrument shall be in a form satisfactory to Company, and shall provide for the performance and observance of every covenant and condition hereof on the part of Customer to be performed or observed and, in addition, shall provide Company with the representations and warranties set forth in Sections 11.1 and 11.2.

(b) The Successor Person shall meet or exceed the minimum financial covenants set forth in Section 6.3(c) and shall have equal or better creditworthiness to that of Customer.

(c) No Event of Default hereunder shall have occurred or be continuing as a result of such Change in Control.

(d) The Successor Person shall be organized, validly existing and in good standing under the Laws of the United States of America or any State or the District of Columbia and shall have sufficient means to satisfy the payment obligations of Customer under this Agreement.

(e) For purposes of this Section 16.1, the term "Change in Control" shall mean a merger or consolidation of Customer with or into another Person, a direct or indirect transfer or conveyance of all or substantially all of Customer's assets or the liquidation or dissolution of Customer, or a direct or indirect transfer, in one or a series of related transactions, of a majority of the ownership in or control of Customer.

**16.2 Successor Substituted.** Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of any Person substantially as an entirety in accordance with Section 16.1, the Successor Person shall succeed to, and be substituted for, and, subject to Section 16.3, may exercise every right and power of Customer hereunder with the same effect as if such Successor Person had been named as the Customer herein.

**16.3 Coordination.** Customer promptly shall notify Company of any proposed Change in Control. Company is not required, but shall have the option, to serve new Customer load that as of the Effective Date of this Agreement is being served by or is in the service territory of another electric provider that Customer proposes to serve; provided, however, to the extent that such new load is currently being served by another generator pursuant to a written power purchase agreement with such generator that was in effect prior to any proposed service by Customer, Company shall have no obligation to serve such new load. Company shall have one hundred eighty (180) days from the date of notification from Customer to determine whether to serve new Customer load under the terms and conditions of this Agreement. If Company does not elect to serve such new Customer load under the terms and conditions of this Agreement prior to the expiration of such one hundred eighty (180) days, Customer shall have the right to enter into other arrangements to serve such new load. The provisions of this Section 16.3 shall not apply to de minimis new Member load which Customer serves as a result of acquisition of Members from or adjustments of service territory with adjacent electric providers, and any such load shall be part of Customer's Retail Load.

**16.4 Non-Solicitation.** Company agrees that neither Company nor its affiliates shall, without the prior written consent of Customer or the board of trustees of Customer (or similar governing body of Customer), (1) acquire, offer to acquire, or agree to seek to acquire, directly or indirectly, all or substantially all of the assets of Customer or its Members; (2) make any public announcement with respect to, or enter into or agree to, offer, propose, or seek to enter into, directly or indirectly, any acquisition, transaction or other business combination for all or substantially all of the assets of Customer or its Members; or (3) make, or in any way participate in, directly or indirectly, any solicitation of proxies, votes, or gathering of consents, however denominated, seeking the vote of or consent of, or seeking to influence any member in connection with any election or vote related to the acquisition of all or substantially all of the assets of Customer or its Members. The provisions of this Section 16.4 are not intended to limit those rights which Company may obtain in the event of the adoption of Retail Competition in the State of Florida.

#### ARTICLE 17 GENERAL PROVISIONS

**17.1 Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and nothing herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party hereto. For the avoidance of doubt, neither Members nor the Lenders are third party beneficiaries of this Agreement.

**17.2 No Dedication of Facilities.** Any undertakings or commitments by one Party to the other under this Agreement shall not constitute the dedication of generation facilities or the transmission system or any portion thereof by either Party to the other Party.

**17.3 Effect of Waiver or Consent.** No waiver or consent by either Party, express or implied, of any one or more Events of Default by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver or consent of any other Event of Default whether of a like or different nature. The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

**17.4 Choice of Law.** The interpretation and performance of this Agreement shall be in accordance with and controlled by the Laws of the State of Florida, without giving effect to its conflict of Laws provisions.

**17.5 Severability.** If any Article, Section, term, or provision of this Agreement becomes or is declared by a court or a regulatory authority of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said Article, Section, term or provision; provided, however, subject to Section 2.5, the Parties hereby agree to negotiate in good faith any such modifications to this

Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

**17.6 Modification.** No modification to this Agreement will be binding on any Party unless it is in writing and signed by the Parties.

**17.7 Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and each of which shall be deemed to be an original instrument as against the Party that has signed it. Execution of this Agreement by facsimile or PDF signature is deemed to be, and has the same effect as, execution by original signature.

**17.8 Headings.** Article and Section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement.

**17.9 Records.** The Parties shall keep (or as necessary cause to be kept by their respective agents) records relevant to the Full Requirements Electric Service supplied pursuant to this Agreement in accordance with the requirements of applicable law and regulatory requirements. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is resolved.

**17.10 Survival.** The provisions of Article 7, Article 10, Section 11.3(b), Article 13, Article 3.5, 15, Section 17.4, Section 17.9, Section 18.2 and any other Section of this Agreement that specifies by its terms that it survives termination and any other Section of this Agreement that pertains to the obligation to pay amounts due for service rendered prior to termination, shall survive the cancellation, termination or expiration of this Agreement.

**17.11 Cooperation to Effectuate Agreement.** Each Party shall cooperate to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties.

**17.12 Stranded Costs.** If Company becomes entitled to receive compensation associated with stranded generation or other costs, the Customer shall have no claim or entitlement to any such compensation.

**17.13 Further Assurances.** If either Party determines in its reasonable discretion that any further instruments, assurances, or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments or assurances, and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

**17.14 No Joint Venture.** This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

**17.15 Joint Preparation.** This Agreement shall be considered for all purposes as having been prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of the negotiation, drafting or execution of this Agreement.

**17.16 Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereto and supersedes all previous oral and written negotiations, commitments, and understandings of the Parties (including any preliminary term sheet) with respect to the Parties' respective rights and obligations set forth herein. There exist no other understandings, terms or conditions, written or oral, related to the rights and obligations established by this Agreement, and neither Party has relied on any representation, express or implied, not contained herein.

## ARTICLE 18 TAXES

**18.1 General.** Company and Customer shall each use reasonable efforts to minimize Taxes applicable to the transactions to be carried out under the terms of this Agreement. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption including, but not limited to, an applicable affidavit approved by the Florida Department of Revenue, if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of Tax.

### 18.2 Applicable Taxes.

(a) Customer shall be responsible for Customer Share of any existing or new Taxes imposed or levied upon Company and Customer Share of such Taxes shall be included in the Monthly Bill as costs identified in and allocated pursuant to the cost-of-service formulas set forth in Article 4, Appendix B and Appendix C.

(b) Customer shall be responsible for all existing and any new Taxes, or other similar tax, fee or assessment 1) imposed or levied upon Customer, 2) up to Customer's Customer Share of such taxes fees or assessments attributable or related to Full Requirements Electric Service not included in any of the other elements of the Monthly Bill and/or 3) relating to the sale, use or consumption of Energy or Full Requirements Electric Service pursuant to this Agreement. In the event of a conflict between the provisions set forth in this subsection (b) and any other provision of this Agreement, this subsection (b) controls.

(c) If either Party is required to collect or remit any Tax ("Paying Party") on behalf of the other Party ("Non-Paying Party") as a result of the transactions contemplated in this Agreement, as agent or otherwise, the Non-Paying Party shall reimburse any Tax to the Paying Party through a surcharge or rebate to the Monthly Bill, as applicable, with such reimbursement to be made on an After-Tax-Basis.

(d) To the extent that either Party incurs a Tax liability due to denied or lost Tax benefits previously recognized or enjoyed by the other Party during the term of this Agreement, the Party who previously recognized the Tax benefits shall be responsible for all such Taxes. Additionally, in the event that either Party incurs interest expense or penalties on a Tax

deficiency related to denied or lost Tax benefit previously recognized or enjoyed by the other Party during the Term of this Agreement, the Party who previously recognized the Tax benefit shall be responsible for all such related penalties and interest expense. To the extent such Taxes, penalties and interest are not captured and reflected in the Monthly Bill pursuant to Section 4.9, such Taxes, penalties or interest expense shall be incorporated into the Monthly Bill as a surcharge or a rebate thereto, as applicable. To the extent any Taxes, penalties or interest is due from Customer to Company after termination of this Agreement, Company shall be paid all outstanding amounts for which Customer is responsible, in twelve (12) equal monthly payments, beginning with the month immediately following the month in which Customer is notified that such amount is due to Company. To the extent any Taxes, penalties or interest is due from Company to Customer after termination of this Agreement, Customer shall be paid all outstanding amounts for which Company is responsible, in twelve (12) equal monthly payments, beginning with the month immediately following the month in which Company is notified that such amount is due to Customer. In either case, such payments shall be made on or before the first day of each month. This Section 18.2 shall survive the termination or expiration of this Agreement.

#### **ARTICLE 19 RULES OF CONSTRUCTION**

**19.1** Terms used in this Agreement but not listed in this Article, or defined herein or in Article 1, shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice.

**19.2** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

**19.3** The masculine shall include the feminine and neuter.

**19.4** The words "include," "includes" and "including" are deemed to be followed by the words "without limitation."

**19.5** References to contracts, agreements and other documents and instruments shall be references to the same as amended, supplemented or otherwise modified from time to time.

**19.6** The Appendices attached hereto are incorporated in and are intended to be a part of this Agreement; provided, that in the event of a conflict between the terms of any Appendices and the terms of this Agreement, the terms of this Agreement shall take precedence.

**19.7** References to Laws and to terms defined in, and other provisions of, Laws shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.

**19.8** References to a Person shall include its permitted successors and assigns, and any entity succeeding to the functions and capacities of that Person.

19.9 References to "Articles," "Sections," or "Appendices" shall be to articles, sections, or appendices of this Agreement, or, as appropriate, to sections of the FPA or FERC's regulations.

19.10 Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number (and vice versa); terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular part of the same.

19.11 This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

19.12 The Parties acknowledge and agree that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder (including any Performance Assurance) shall each, and together, constitute one and the same "forward contract" within the meaning of the United State Bankruptcy Code, and Company shall constitute a "forward contract merchant" under the United State Bankruptcy Code.

19.13 **Press Release.** In the event that a Party intends to issue a press release in relation to the execution of this Agreement, then the contents of such press release shall be mutually agreed between the Parties. The Parties agree that they shall endeavor to provide the other Party reasonable notice of the anticipated press release.

Signature page follows

IN WITNESS WHEREOF, Company and Customer have caused this Agreement to be executed in three original copies by their respective duly authorized officers as of the Effective Date.

**FLORIDA POWER & LIGHT COMPANY**




BY: 

NAME: Sam A. Forrest

TITLE: Vice President, Energy Marketing & Trading

**FLORIDA KEYS ELECTRIC  
COOPERATIVE ASSOCIATION, INC.**

BY: 

NAME: David C. Ritz

TITLE: Board President, Florida Keys Electric Cooperative Association, Inc.

**APPENDIX A**  
**LIST OF DELIVERY POINTS**

Name: Card Sound Road Station

Description: Company's 138 kV Card Sound Road Metering Station

Location: Dade - Monroe County Line on Card Sound Road

Metering Data: See paragraph 2 below

Metered Voltage: 138 kV

Compensation: N/A

Provisions for Special Facilities or Conditions: Company and Customer are using the differential metering configuration at Card Sound Road Station and Marathon Substation identified in the Revised Interconnection Agreement among Florida Power & Light Company, Florida Keys Electric Cooperative, Inc., and the Utility Board of the City of Key West, Florida, dated April 29, 1998.

The metering configuration at Card Sound Road Station consists of two sets of meters (MW and MVAR) located at Card Sound Road Station and designated, respectively as D1W/D1Q and R1W/R1Q, meters D1W/D1Q record the flow into Customer's system and meters R1W/R1Q record the flow out of Customer's system at Card Sound Road Station. The metering configuration at Marathon Substation consists of three sets of meters (MW and MVAR) located at Customer's Marathon Substation designated respectively as D2W/D2Q, R2W/R2Q and D3W, meters D2W/D2Q record the flow from Key West's system into Customer's system at Marathon Substation (to Company), meters R2W/R2Q record the flow from Customer's system (from Company) into Key West's system at Marathon Substation, and meter D3W records the flow from Customer's owned generating resources into the Customer's system. The power flows of: 1) D1W plus D2W plus D3W; minus 2) R1W plus R2W will be utilized to compute the actual real load (including losses) within the Customer's system. D1Q will record the actual reactive flow supplied by Company to Customer's system.

Company agrees to be responsible for and to pay the cost associated with any additions, modifications or rearrangements related to Company's metering installation required at



Company's Card Sound Metering Station. Company shall be responsible for any maintenance required at Company's Card Sound Metering Station.

Customer agrees to be responsible for and to pay the cost associated with any additions, modifications or rearrangements related to the metering installation at Customer's Marathon Substation. At Customer's expense, Company shall maintain, test, calibrate on an ongoing basis, the metering equipment at the Marathon Substation. Customer shall reimburse Company for all the costs incurred including all regular as well as extraordinary expenses for renewals and replacements of minor items in rendering such service.

Charges for such routine and minor maintenance will be recorded in an annual jobbing account with billing rendered, as appropriate.

Customer shall be responsible for maintenance of Customer's Marathon Substation except for Company's Tie Remote Terminal Unit (RTU) which shall be for the Company's exclusive use. Company shall be responsible for all costs associated with the installation, repair, replacement, relocation or removal of the Company's Tie RTU.

A change in the service specifications at Points of Delivery shall require a new Appendix A to be executed to replace the previous Appendix A.

Note: Each of the above Delivery Points is at the point recognized by the Transmission Provider.

**APPENDIX B**  
**GENERATION DEMAND CHARGE AND**  
**GENERATION ENERGY CHARGE FORMULA RATE**  
**(See attached Excel file)**

## APPENDIX B

### Generation Demand Charge and Generation Energy Charge Formula Rate

The "Generation Demand Charge Rate" and "Generation Energy Charge Rate" used to calculate the Generation Demand and Energy Charges shall be determined pursuant to the cost-of-service formulas set forth in this Appendix B and in accordance with the provisions of Article 4 of this Agreement.

The Generation Energy Charge Rate shall exclude costs recovered through the Fuel Charge and the Fuel Adjustment Charge, set forth in Section 4.5 of the Agreement.

The references to FERC FORM No. 1 pages, columns and line numbers set forth in this Appendix B were derived from FPL's YYYY FERC FORM No.1. Such references are expected to change during the term of this Agreement and the parties agree to support any FERC filings required to reflect any such changes.

FPL Cost of Service Formulas

A-1

Determination of Generation Demand Charge Rate

December 31

Line	Description	Reference	Demand Related
1	Return on investment	A-5, L19 Col (2)	#DIV/0!
2	Operation & maintenance expense	A-14, L19 Col (2)	#DIV/0!
3	Depreciation expense	A-15, L14 Col (2)	#DIV/0!
4	Taxes other than income taxes	A-16, L14 Col (3)	#DIV/0!
5	Income tax	A-17, L5 Col (2)	#DIV/0!
6	Subtotal	Sum L1 thru L5	#DIV/0!
7	Less: Share of gains on non-separated wholesale power sales excluding emergency sales	A-4, L5 Col (2)	-
8	Less: Other revenue credits	A-4a, L5 Col (3)	#DIV/0!
9	Annual production fixed cost	L6 - L7 - L8	#DIV/0!
10	Total of 12 monthly peak firm MWs @ generator	FPL CP Demand Schedule	- MW
11	Customer's adjusted monthly coincident peaks	Customer CP Demand Schedule	#DIV/0! MW
12	Customer's share of annual production fixed cost	L11 / L10	#DIV/0!
13	Customer's annual production fixed cost	L9 X L12	#DIV/0!
14	Customer's sum of monthly kW billing demand	Customer Billing Demand Schedule	#DIV/0! kW
15	Generation Demand Charge Rate	L13 / L14	#DIV/0! \$/kW-month

FPL Cost of Service Formulas

A-2

Determination of Generation Energy Charge Rate

December 31

Line	Description	Reference	Energy Related
1	Total fuel	A-14, L21 Col (4) - L1 Col (4)	-
2	Purchased power (555)	A-14, L1 Col (4)	-
3	Other production expense	A-14, Col (3), L6 + L15 + L17 + L18	-
4	Total production cost	Sum L1 thru L3	-
5	Administrative and general expense	A-10, L18 Col (5)	#DIV/0!
6	Return on investment	A-5, L19 Col (3)	#DIV/0!
7	Depreciation expense	A-15, L14 Col (3)	#DIV/0!
8	Income tax	A-17, L5 Col (3)	#DIV/0!
9	Annual production variable costs	Sum L4 thru L8	#DIV/0!
10	Less: Fuel Costs	Sum L1 + L2	-
11	Non-fuel costs	L9 - L10	#DIV/0!
12	Net MWh generated and purchased, less MWh sold	FERC 1, p. 401b Col (b) - Col (c)	- MWh
13	Generation Energy Charge Rate	L11 / L12 / 1,000	#DIV/0! \$/KWh

FPL Cost of Service Formulas

A-4

Share of gains on non-separated wholesale power sales excluding emergency sales  
December 31

Line	Description	Reference	Production		
			Total (1)	Demand (2)	Energy (3)
1	Actual Gain on Non-Separated Wholesale Power Sales excluding emergency sales	a/		-	
2	Incentive Threshold	a/		-	
3	Difference of Actual vs. Threshold	L1 - L2	-	-	-
4	FPL Share of Gains	b/	-	-	-
5	Deduction to Production O&M from the Gain on non-separated wholesale power sales excluding emergency sales	L1 - L4	-	-	-

a/ As provided by Article 4.7(c) of the Agreement.

b/ Equal to 20% of the gains above the Incentive Threshold as provided by Article 4.7(c) of the Agreement.

FPL Cost of Service Formulas

A-4a

Other Revenue Credits

December 31

Line	Description	Reference	System (1)	Allocator (2)	Production (3)
1	Ancillary Service Revenues - Generation Related	a/		100%	-
2	Other Generation Related Revenue Credits	b/		100%	-
3	Rent From Electric Property - General Plant	c/		#DIV/0!	#DIV/0!
4	Other General Revenue Credits	d/		#DIV/0!	#DIV/0!
5	Total	Sum L1 thru L4		-	#DIV/0!

a/ Ancillary Service Revenues - Generation Related includes the revenues booked in accounts 447 and 456 for generation-related ancillary services. These revenues include amounts charged to transmission customers as well as amounts charged to FPL for the use of the FPL system in making off-system power sales. The ancillary services charged transmission customers include reactive, regulation, spinning operating reserves and supplemental operating reserves. Revenues from energy imbalance service are revenue credited through the fuel charge. Reactive charges imputed for FPL's use of the FPL system are also included in Ancillary Services Revenues - Generation Related.

b/ Other Generation Related Revenue Credits includes generation-related revenues booked in accounts 447 and 456, excluding amounts for: 1) transactions included in the divisor of this formula rate and 2) revenues credited through other components of this formula.

c/ Rental From Electric Property includes revenues booked to account 454 for the rental of general plant, allocated to production based on gross plant.

d/ Other General Revenue Credits includes miscellaneous revenues booked to accounts 454 and 456 not associated with a specific function, allocated to production based on gross plant.

FPL Cost of Service Formulas  
A-5  
Return on production related investment  
December 31, Simple Average

Line	Description	Reference	Production		
			Total (1)	Demand (2)	Energy (3)
1	<u>Electric plant:</u>				
2	Gross plant in service	A-6, L9	#DIV/0!	#DIV/0!	#DIV/0!
3	Accumulated depreciation	A-6, L16	#DIV/0!	#DIV/0!	#DIV/0!
4	Accumulated Deferred Taxes	A-6, L23	#DIV/0!	#DIV/0!	#DIV/0!
5	Net plant in service	L2 + L3 + L4	#DIV/0!	#DIV/0!	#DIV/0!
6	Plant held for future use	FERC-1 p. 214	-	-	-
7	Construction work in progress	CWIP Schedule	-	-	-
8	Adjustment for FERC CWIP treatment	CWIP Adjustment Schedule	-	-	-
9	Subtotal - Electric Plant	Sum L5 thru L8	#DIV/0!	#DIV/0!	#DIV/0!
10	<u>Working capital:</u>				
11	Materials & supplies				
12	Fuel	A-9, L2	-	-	-
13	Non-fuel	A-9, L9	#DIV/0!	#DIV/0!	#DIV/0!
14	Total Materials and Supplies	L12 + L13	#DIV/0!	#DIV/0!	#DIV/0!
15	Prepayments	a/	#DIV/0!	#DIV/0!	#DIV/0!
16	Cash requirements	A-8, L2	#DIV/0!	#DIV/0!	#DIV/0!
17	Total investment	L9 + L14 thru L16	#DIV/0!	#DIV/0!	#DIV/0!
18	Composite cost of capital	A-11, L5 Col (4)	#DIV/0!	#DIV/0!	#DIV/0!
19	Return on investment	L17 x L18	#DIV/0!	#DIV/0!	#DIV/0!

a/ Classified and functionalized using Gross Plant, A-6 L10 Col (2)

Total company (simple average)	FERC-1 p. 110 L57	
Gross Plant Allocator	A6, L10 Col (2)	#DIV/0!
Prepayments		#DIV/0!



FPL Cost of Service Formulas

A-6

Production related electric plant in service  
December 31, Simple Average

Line	Description	Reference	System	Production		
				Production	Demand	Energy
			(1)	(2)	(3)	(4)
1	Gross plant in service:					
2	Plant in service, excl G&I	FERC-1 p. 204 - 207	#DIV/0!	#DIV/0!	#DIV/0!	-
3	Acquisition Adjustment Scherer 4	a/	-	-	-	-
4	Less: ARO related plant	Currently n/a	-	-	-	-
5	Restated plant in service	L2 + L3 - L4	#DIV/0!	#DIV/0!	#DIV/0!	-
6	GSUs included in system total above (353)	GSU Statement	-	-	-	-
7	General, intangible & electric plant purchased	A-7, L19	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
8	Less: ARO related general and intangible plant	b/	-	#DIV/0!	#DIV/0!	#DIV/0!
9	Total	L5 + L6 + L7 - L8	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
10	Gross Plant allocator		#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
11	Accumulated Depreciation:					
12	Plant in service, excl G&I	Asset Dep Statement, Rows 2 + 4 thru 9	-	-	-	-
13	Acquisition Adjustment Scherer 4	Asset Dep Statement, Row J	-	-	-	-
14	GSUs included in system total above (353)	GSU Statement	-	-	-	-
15	General, intangible & electric plant purchased	Asset Dep Statement, Rows 1 + 10	-	#DIV/0!	#DIV/0!	#DIV/0!
16	Total	Sum L12 thru L15	-	#DIV/0!	#DIV/0!	#DIV/0!
17	Accumulated Deferred Taxes:					
18	Accumulated Deferred Taxes - Account 190 (debit)	FERC-1 p. 111 L&2	-	#DIV/0!	#DIV/0!	#DIV/0!
19	Accumulated Deferred Taxes - Account 282 (credit)	FERC-1 p. 113 L&3	-	#DIV/0!	#DIV/0!	#DIV/0!
20	Accumulated Deferred Taxes - Account 283 (credit)	FERC-1 p. 113 L&4	-	#DIV/0!	#DIV/0!	#DIV/0!
21	Other Reg Asset - Deferred Taxes FAS 109 (debit)	FERC-1 p. 232 L13	-	#DIV/0!	#DIV/0!	#DIV/0!
22	Other Reg Liability - Deferred Taxes FAS 109 (credit)	FERC-1 p. 278 L36	-	#DIV/0!	#DIV/0!	#DIV/0!
23	Total	Sum L18 thru L23	-	#DIV/0!	#DIV/0!	#DIV/0!
			<u>Ending Balance</u>	<u>Beginning Balance</u>	<u>Simple Average</u>	
a/	Acquisition Adjustment	FERC-1 p. 200 L12	-	-	-	-
			<u>Ending Balance</u>	<u>Beginning Balance</u>	<u>Simple Average</u>	
b/	Plant in Service-ARO Asset	Accel 101096	-	-	-	-

FPL Cost of Service Formulas

A-7

Production related general plant allocation

December 31, Simple Average

Line	Description	Reference	General plant accounts 101 and 106					
			(a)	(b)	(c)	(d)	(e)	(f)
			Total system	Payroll Allocator	Production		Demand	Energy
1	General plant							
2	389 Land and land rights	FERC-1 p. 206 L16	#DIV/0!					
3	390 Structures and improvements	FERC-1 p. 206 L17	#DIV/0!					
4	391 Office furniture and equipment	FERC-1 p. 206 L18	#DIV/0!					
5	392 Transportation equipment	FERC-1 p. 206 L19	#DIV/0!					
6	393 Stores equipment	FERC-1 p. 206 L20	#DIV/0!					
7	394 Tools, shop and garage equipment	FERC-1 p. 206 L21	#DIV/0!					
8	395 Laboratory equipment	FERC-1 p. 206 L22	#DIV/0!					
9	396 Power operated equipment	FERC-1 p. 206 L23	#DIV/0!					
10	397 Communication equipment	FERC-1 p. 206 L24	#DIV/0!					
11	398 Miscellaneous equipment	FERC-1 p. 206 L25	#DIV/0!					
12	102 Electric plant purchased	FERC-1 p. 206 L101	#DIV/0!					
13	Subtotal	Sum L2 thro L12	#DIV/0!	#DIV/0! a/	#DIV/0! x #DIV/0! b/	=	#DIV/0!	#DIV/0!
14	Percent of subtotal	% of L13 Col (a)			#DIV/0!	=	#DIV/0!	#DIV/0!
15	399 Other tangible property	FERC-1 p. 206 L27						
16	Total general plant	Sum L13 + L15	#DIV/0!		#DIV/0!	=	#DIV/0!	#DIV/0!
17	Percent of total	% of L16 Col (a)			#DIV/0!	=	#DIV/0!	#DIV/0!
18	Intangible plant	FERC-1 p. 204 L5	#DIV/0!		#DIV/0!	=	#DIV/0!	#DIV/0!
19	General and intangible plant	Sum L16 + L18	#DIV/0!		#DIV/0!	=	#DIV/0!	#DIV/0!

a/ FERC-1 p. 354: Production payroll / Total payroll excluding A&G payroll

b/ A-14a L51 Col (a)

FPL Cost of Service Formulas  
A-8  
Production related Cash Requirement  
December 31

Line	Description	Reference	Production		Non-Fuel Energy
			Production	Demand	
1	Other O&M expenses	A-14, L19 - L1	#DIV/0!	#DIV/0!	#DIV/0!
2	Total cash requirements	L1 X 1/8	#DIV/0!	#DIV/0!	#DIV/0!

FPL Cost of Service Formulas

A-9

Production related Materials & Supplies

December 31, Simple Average

Line	Description	Reference	System	Allocator	Production	Demand	Energy
1	Materials & supplies:						
2	Fuel (151)	FERC-1 p. 110 L45	-	100.00%	-	-	-
3	Non-fuel						
4	Account (158-allowances)	FERC-1 p. 110 L52	-	100.00%	-	-	-
5	Plant materials (154 & 163) a/	FERC-1 p. 110 L48 + L54	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
6	Merchandise (155) a/	FERC-1 p. 110 L49	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
7	Other M&S (156) a/	FERC-1 p. 110 L50	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
8	Nuclear held for sale (157) a/	FERC-1 p. 110 L51	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
9	Total non-fuel	Sum L4 thru L8	-		#DIV/0!	#DIV/0!	#DIV/0!
10	Total materials & supplies	Sum L2 + L9	-		#DIV/0!	#DIV/0!	#DIV/0!

a/ functionalized to Production Plant based on Gross Plant allocator, A-6, L10

FPL Cost of Service Formulas

A-10

Production related Administrative & general expense allocation  
December 31

Line	Description	Reference	System (1)	Allocator (2)	Production (3)	Demand (4)	Energy (5)
1	Administrative & General Expense						
2	920 Administrative and general salaries	FERC-1 p. 323 L181	-				
3	921 Office supplies and expenses	FERC-1 p. 323 L182	-				
4	922 Administrative expenses transferred— Credit	FERC-1 p. 323 L183	-				
5	923 Outside services employed	FERC-1 p. 323 L184	-				
6	925 Injuries and damages	FERC-1 p. 323 L186	-				
7	926 Employee pensions and benefits	FERC-1 p. 323 L187	-				
8	927 Franchise requirements	FERC-1 p. 323 L188	-				
9	929 Duplicate charges—Credit	FERC-1 p. 323 L190	-				
10	930 Miscellaneous general expenses	FERC-1 p. 323 L191 + L192	-				
11	931 Rents	FERC-1 p. 323 L193	-				
12	Subtotal a/	Sum L2 thro L11	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
13	924 Property insurance	FERC-1 p. 323 L185	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
14	Production related storm expense not recorded in 924	b/					
15	928 Regulatory commission expenses a/	FERC-1 p. 323 L189	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
16	Less: Regulatory comm exp FERC annual assessment a/	FERC Assessment Fee	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
17	935 Maintenance of general plant a/	FERC-1 p. 323 L196	-	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
18	Total	Sum L12 to L17			#DIV/0!	#DIV/0!	#DIV/0!

a/ Payroll allocator, A-7, L13 Col (b)

b/ The amount of total company production-related storm damage expenses (if any) that for retail rate-making purposes is charged against an operating reserve, as authorized by the FPSC.

FPL Cost of Service Formulas  
A-11  
Composite cost of capital  
December 31, Simple Average

Line	Description	Reference	Total company			
			Average capitalization		Cost	Wtd cost
			(1)	(2)	(3)	(4)
1	Long term debt	A-12, L3	-	#DIV/0!	#DIV/0!	#DIV/0!
2	Preferred stock	A-13, L3	-	#DIV/0!	0.000%	#DIV/0!
3	Common stock	a/	-	#DIV/0!	b/	#DIV/0!
4	Total equity	Sum L2 + L3	-	#DIV/0!		#DIV/0!
5	Total	Sum L1 + L3	-	#DIV/0!		#DIV/0!

a/

	Reference	Proprietary capital		
		Ending	Beginning	Average
Total Proprietary Capital	FERC-1 p. 112 L16	-	-	-

b/ Return on Common Equity as defined in article 4.7(b) of the PSA

FPL Cost of Service Formulas  
A-12  
Average Long Term Debt  
December 31, Simple Average

Line	Description	Reference	Debt balances		
			Ending	Beginning	Average
1	Total long-term debt	FERC-1 p. 112 L24	-	-	-
2	(Less) Securitization Bonds	a/	-	-	-
3	Adjusted Long-Term Debt	Sum L1 - L2	-	-	-
					<u>Year End Total</u>
4	Interest on long-term debt (427)	FERC-1 p. 117 L62			-
5	Amort. of Debt Disc. and Expense (428)	FERC-1 p. 117 L63			-
6	Amortization of Loss on Required Debt (428.1)	FERC-1 p. 117 L64			-
7	Amort. of Premium on Debt-Credit (429)	FERC-1 p. 117 L65			-
8	Amort. of Gain on Required Debt-Credit (429.1)	FERC-1 p. 117 L66			-
9	Interest on Debt to Assoc. Companies (430)	FERC-1 p. 117 L67			-
10	(Less) Interest on Securitization Bonds	b/			-
11	Total interest	Sum L4 thru L10			-
12	Cost of long-term debt	L11 / L3			<u>#DIV/0!</u>
Securitization Bonds Support					
	Securitization Bonds	FERC-1 p. 256.2 L11 thru 17			
	(Less) Unamortized Discount	A/C 226016 thru 226019			
a/	Net Securitization Bonds (Included in L 1 above)				
Interest on Securitization Bonds Support					
	Interest on Securitization Bonds	FERC-1 p. 257.2 L11 thru 17			
	Amort. of Debt Disc. and Expense on Securitized Bonds	A/C 428552 thru 428555 (included in L 5 above)			
b/	Total Interest on Securitization Bonds				

FPL Cost of Service Formulas  
A-13  
Average preferred stock  
December 31, Simple Average

Line	Description	Reference	Preferred stock balances		
			Ending	Beginning	Average
1	Preferred stock issued (204)	FERC-1 p. 112 L3	-	-	-
2	Premium on preferred stock	Currently n/a	-	-	-
3	Total preferred stock	Sum L1 thru L2	-	-	-
4	Preferred stock dividends	FERC-1 p. 121 L80			-
5	Embedded costs	L4 / L3			-



FPL Cost of Service Formulas  
A-14  
Production O&M Expenses  
December 31

Line	Description	Reference	Total company (1)	Demand (2)	Energy	
					Non-fuel (3)	Fuel (4)
1	555 Purchased power d/	FERC-1 p. 127	-	-	-	-
2	556 System control and load dispatching	FERC-1 p. 321 L27	-	-	-	-
3	557 Other expenses	w/	-	-	-	-
4	565 Transmission of electricity by others	v/	-	-	-	-
5	Other production expenses	A-14(i)	-	-	-	-
6	Total production excluding fuel used in generation	Sum L1 thru L5	-	-	-	-
7	A&G expenses	A-19, L18	-	#DIV/0!	#DIV/0!	-
8	GSU related O&M	GSU Schedule	-	-	-	-
9	Total O&M, excluding fuel	S174 L8 thru L8	-	#DIV/0!	#DIV/0!	-
10	501 Fuel	FERC-1 p. 210 L3	-	-	-	-
11	518 Fuel	FERC-1 p. 310 L23	-	-	-	-
12	Less: Fuel handling	Company s/s	-	-	-	-
13	Less: Sale of fly ash	Company s/s	-	-	-	-
14	547 Fuel	FERC-1 p. 311 L43	-	-	-	-
15	Subtotal fuel	SUM L10 thru L14	-	-	-	-
16	Subtotal Production O&M and fuel costs	L8 + L15	-	#DIV/0!	#DIV/0!	-
17	Other costs and expenses	w/	-	-	-	-
18	Gains/Losses on disposition of allowances (411.8 and 411.9)	v/	-	-	-	-
19	Total Production O&M and fuel costs	L16 + L17 + L18	-	#DIV/0!	#DIV/0!	-
20	Fuel Adjustments and Revenue Credits	v/	-	-	-	-
21	Total Fuel Cost	Sum L19 + L20	-	-	-	-

w/ Includes any other costs and expenses incurred for compliance with the RPS Requirements provided in Article 3.5 of the Agreement.  
a1/ to be provided by Accounting

		Total company	Demand	Non-fuel	Fuel
Details of Account 557					
OTHER POWER SUPPLY EXPENSES	557000				
b/ Total Other Power Supply Expenses (Account 557)					

		Total company	Demand	Non-fuel	Fuel
Details of Account 565					
TRANSMISSION OF ELECTRICITY BY OTHERS	565000				
TRANS OF ELECTRICITY BY OTHERS-CCRC	565120				
TRANS ELEC BY OTH-LT CONTRACT-CCR	565121				
TRANS OF ELECTRICITY BY OTHERS-FCRC	565130				
TRANS ELEC BY OTH-FUEL REC-LT CNT-FUEL	565131				
TRANSMISSION OF ELECTRICITY-OTHERS-FCRC A7	565140				
c/ Total Transmission of Electricity by Others (Account 565)					

		Total company	Demand	Non-fuel	Fuel
Details of Account 555					
PURCH PWR-RECOVERABLE INTRCHG-LOC 54	555110				
RECOVERABLE INTERCHANGE POWER-PSL	555120				
PURCH PWR-UNIT PWR PURCH-SOUTHERN CO-EGY	555140				
PURCHASE POWER - PPA - ENERGY	555141				
PURCH PWR-SJRPP ENERGY EXPENSE	555142				
PUR PWR-PPA-LT CONTR-MIN PYMT-FUEL	555143				
PURCH PWR-RECOVERABLE EXP-QUALIFY FACIL	555160				
PURCH PWR-NON-RECOVERABLE EXP-LOC 54	555210				
CAP CHARGES-NOT CCR-PPSC-90 RATE REDUCN	555250				
UPS CAPACITY CHARGES-CCR	555410				
QF CAPACITY CHARGES-CCR	555420				
OTH DEF CR-SJRPP CAPACITY ACCEL RECOVERY	555429				
SJRPP CAPACITY CHARGES-CCR	555430				
CAP CHARGES-CCR-PPSC-90 RATE REDUCTION	555431				
SJRPP DEFERRED INTEREST PAYMENTS-CCR	555432				
PUR PWR-CAPAC PUR-LT CONTR-MIN PYMT-CCR	555441				
d/ Total Purchased power (Account 555)					

		Total company	Demand	Non-fuel	Fuel
Details of Fuel Adjustment and Revenue Credits					
SALBS FOR RESALE-RECOV INTRCHG PWR SALES	447110				
Fuel Costs of Sales to FKEC and CKW	N/A				
ENERGY IMBALANCE SERVICE	456225				
ENERGY IMBALANCE PENALTY REVENUE	456230				
ENERGY IMBALANCE PENALTY REVENUE REFUND	456231				
Other Minor Items - Rounding	N/A				
e/ Total Fuel Adjustments and Revenue Credits					

FPL Cost of Service Formulas  
A-14(a)  
Classification of fixed and variable production expenses  
December 31

Line	Description	Reference	(a) Demand	(b) Energy	(c) Fuel	(d) Total
1	500 Operation supervision and engineering	FERC-1 p. 128 L4				
2	501 Fuel	FERC-1 p. 128 L4			w	
3	502 Steam expenses	FERC-1 p. 128 L4				
4	503 Steam from other sources	FERC-1 p. 128 L7				
5	504 Steam transferred—Credit	FERC-1 p. 128 L4				
6	505 Electric expenses	FERC-1 p. 128 L9				
7	506 Miscellaneous steam power expenses	FERC-1 p. 128 L10				
8	507 Rents	FERC-1 p. 128 L11				
9	509 Allowances	FERC-1 p. 128 L12				
10	510 Maintenance supervision and engineering	FERC-1 p. 128 L14				
11	511 Maintenance of structures	FERC-1 p. 128 L14				
12	512 Maintenance of boiler plant	FERC-1 p. 128 L17				
13	513 Maintenance of electric plant	FERC-1 p. 128 L18				
14	514 Maintenance of miscellaneous steam plant	FERC-1 p. 128 L19				
15	517 Operation supervision and engineering	FERC-1 p. 128 L24				
16	518 Fuel	FERC-1 p. 128 L24			w	
17	519 Coolants and water	FERC-1 p. 128 L24				
18	520 Steam expenses	FERC-1 p. 128 L27				
19	521 Steam from other sources	FERC-1 p. 128 L28				
20	522 Steam transferred—Credit	FERC-1 p. 128 L27				
21	523 Electric expenses	FERC-1 p. 128 L29				
22	524 Miscellaneous nuclear power expenses	FERC-1 p. 128 L31				
23	525 Rents	FERC-1 p. 128 L31				
24	528 Maintenance supervision and engineering	FERC-1 p. 128 L34				
25	529 Maintenance of structures	FERC-1 p. 128 L34				
26	530 Maintenance of reactor plant equipment	FERC-1 p. 128 L37				
27	531 Maintenance of electric plant	FERC-1 p. 128 L37				
28	532 Maintenance of miscellaneous nuclear plant	FERC-1 p. 128 L39				
29	533 Operation supervision and engineering	FERC-1 p. 128 L41				
30	536 Water for power	FERC-1 p. 128 L41				
31	537 Hydraulic expenses	FERC-1 p. 128 L41				
32	538 Electric expenses	FERC-1 p. 128 L47				
33	539 Miscellaneous hydraulic power generation expenses	FERC-1 p. 128 L48				
34	540 Rents	FERC-1 p. 128 L49				
35	541 Maintenance supervision and engineering	FERC-1 p. 128 L51				
36	542 Maintenance of structures	FERC-1 p. 128 L54				
37	543 Maintenance of reservoirs, dams and waterways	FERC-1 p. 128 L54				
38	544 Maintenance of electric plant	FERC-1 p. 128 L54				
39	545 Maintenance of miscellaneous hydraulic plant	FERC-1 p. 128 L57				
40	546 Operation supervision and engineering	FERC-1 p. 128 L62				
41	547 Fuel	FERC-1 p. 128 L63			d	
42	548 Generation expenses	FERC-1 p. 128 L64				
43	549 Miscellaneous other power generation expenses	FERC-1 p. 128 L62				
44	550 Rents	FERC-1 p. 128 L66				
45	551 Maintenance supervision and engineering	FERC-1 p. 128 L69				
46	552 Maintenance of structures	FERC-1 p. 128 L70				
47	553 Maintenance of generating and electric plant	FERC-1 p. 128 L71				
48	554 Maintenance of miscellaneous other power generation plant	FERC-1 p. 128 L73				
49	TOTAL	See L1 to L49				
50	Non Fuel Demand/Energy Allocator	L49 Col (c) (b)			w	
51	Allocator used in A-7, L13 Col (d)	- % of total Col (d)	#DIV/0!	#DIV/0!		#DIV/0!
Details of Account 501						
	FUEL-RECOVERABLE FUEL OIL	501110				
	FUEL OIL RECOVERABLE ADJUSTMENTS	501111				
	INCREMENTAL HEDGING COSTS	501115				
	FUEL-RECOVERABLE FUEL GAS	501120				
	OIL, RECOV TEMPERATUR & CALIBRATION ADJ	501130				
	RECOVERABLE FUEL COAL (GENERATION)	501140				
	SIRPP/SCHERER COAL CARS DEPR EXPENSE	501141				
	RECOVERABLE FUEL COAL ADDITIVES	501144				
	RECOVERABLE FUEL DISTILLATE (GENERATION)	501160				
	FUEL-NON-RECOVERABLE FUEL OIL	501210				
	OIL, NON-RECOV TERMINAL & TRSPT EXP	501230				
	NON-RECOVERABLE FUEL COAL (ADJ)	501250				
	ASH HANDLING EXPENSE	501260				
	FUEL-NON-RECOVERABLE-NON M&S EXPENSES	501270				
	FUEL-NON-RECOVERABLE-NON M&S EXP, GAS	501271				
	<b>w Total A/C 501</b>					
Details of Account 518						
	NUC FUEL EXP-RECOV BURNUP CHG-LEASED FUEL	518110				
	NUC FUEL EXP-RECOV FINANCING CST-LEASED	518120				
	NUC FUEL EXP-RECOV OTH ADMIN FEES-LEASED	518130				
	NUC FUEL EXP-DSPL CST-CURR-ST LUCIE #1	518151				
	NUC FUEL EXP-DSPL CST-CURR-ST LUCIE #2	518152				
	NUC FUEL EXP-DSPL CST-CURR-TURKEY PT #3	518153				
	NUC FUEL EXP-DSPL CST-CURR-TURKEY PT #4	518154				
	NUCLEAR PLANTS RECOVERABLE ADJUSTMENTS	518180				
	NUCLEAR FUEL EXPENSES-LAST CORE	518201				
	<b>w Total A/C 518</b>					
Details of Account 547						
	FUEL-RECOVERABLE FUEL OIL	547110				
	FUEL OIL RECOVERABLE ADJUSTMENTS	547111				
	FUEL-RECOVERABLE FUEL GAS	547120				
	OIL, RECOV TEMPERATUR & CALIBRATION ADJ	547130				
	FUEL-NON-RECOVERABLE OIL	547210				
	FUEL-NON-RECOV-NON M&S EXP-OIL	547270				
	FUEL-NON-RECOV-NON M&S EXP-GAS	547271				
	<b>d Total A/C 547</b>					

FPL Cost of Service Formulas  
A-15  
Production related depreciation expense  
December 31

Line	Description	Reference	Payroll Allocator	Production Related (1)	Demand (2)	Energy (3)
1	Steam production	FERC-1 p. 336 L2 Col (f)		-	-	
2	Nuclear production	FERC-1 p. 336 L3 Col (f)		-	-	
3	Add: ARO decommissioning and dismantling credit	A/C 403171, 403333				
4	Hydro production:					
5	Conventional	FERC-1 p. 336 L4 Col (f)				
6	Pumped storage	FERC-1 p. 336 L5 Col (f)				
7	Other production	FERC-1 p. 336 L6 Col (f)				
8	Subtotal	Sum L1 thru L7				
9	Scherer Acquisition Adjustment	A/C 406000				
10	Production related G&f plant	FERC-1 p. 336 L1 & L10	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
11	Less: ARO related plant	FERC-1 p. 336 L1 Col (e)	#DIV/0!	#DIV/0!	#DIV/0!	
12	GSU-related depreciation expense	GSU Schedule				
13	Amortization for FERC CWIP treatment	CWIP Adjustment Schedule				
14	Total production	Sum L8 thru L13		#DIV/0!	#DIV/0!	#DIV/0!

FPL Cost of Service Formulas

A-16

Production related taxes other than income taxes

December 31

Line	Description	Reference	System (1)	Allocator (2)	Production (3)
1	Unemployment	FERC-1 p. 263 L10, 11, 19, 20 Col (i)	-		
2	FICA	FERC-1 p. 263 L6, 7 Col (i)	-		
3	Total taxes related to wages & salaries	SUM L1 + L2	-	#DIV/0!	#DIV/0!
4	Real and personal property taxes	FERC-1 p. 263.1 L13, 14 Col (i)	-		
5	Use tax	FERC-1 p. 263 L34, 36 Col (i)	-		
6	Total taxes related to property	SUM L4 + L5	-	#DIV/0!	#DIV/0!
7	Total taxes other than income taxes	SUM L3 + L6	-		
8	Franchise tax	FERC-1 p. 263.1 L3, 6, 7 Col (i)	-		
9	Gross receipts	FERC-1 p. 263 L23, 24 Col (i)	-		
10	FPSC Fee	FERC-1 p. 263 L31, 32 Col (i)	-		
11	Intangible Tax	FERC-1 p. 263 L38 Col (i)	-		
12	Occupational License	FERC-1 p. 263.1 L9 Col (i)	-	#DIV/0!	#DIV/0!
13	Other Taxes	a/	-		
14	Total Taxes Other than Income Taxes	Sum L7 thru L13	-	Sum L3, L6, L12, L13	#DIV/0!

(1) System - FERC-1 p. 263-263.1 Col (i)

(2) Allocators:

L3 and L12 - Payroll Allocator, A-7, L13

L6 - Gross Plant Allocator, A-6, L10

a/ Includes any other Taxes, as defined in Article 1 of the Agreement. Production allocator based on how the tax is attributable or related to the production and/or provision of capacity, Energy and Generation-Related Services by Company to Company's retail and wholesale customers and Full Requirements Electric Service to Customer.

FPL Cost of Service Formulas  
A-17  
Production Related Income Tax  
December 31

Line	Description	Reference	Total (1)	Demand (2)	Energy (3)
1	Total Investment	A-5, L17	#DIV/0!	#DIV/0!	#DIV/0!
2	Weighted return on equity	A-11, L4 Col (4)	#DIV/0!	#DIV/0!	#DIV/0!
3	Equity earnings	L1 X L2	#DIV/0!	#DIV/0!	#DIV/0!
4	Combined income tax factor	A-18, L13	#DIV/0!	#DIV/0!	#DIV/0!
5	Income tax	L3 X L4	#DIV/0!	#DIV/0!	#DIV/0!

FPL Cost of Service Formulas  
A-18  
Computation of effective income tax rate  
December 31

Line	Description	Reference	FPL Amount
1	Net Utility Operating Income	FERC-1 p. 117 L27 Col (c)	-
2	Less: Net interest charges	FERC-1 p. 117 L70 Col (e)	-
3	Adjusted net income	L1 - L2	-
4	Income taxes:		
5	Federal	FERC-1 p. 114 L15 Col (c)	-
6	Other	FERC-1 p. 114 L16 Col (e)	-
7	Provision for deferred income taxes	FERC-1 p. 114 L17 Col (e)	-
8	Provision for deferred income taxes-Cr	FERC-1 p. 114 L18 Col (e)	-
9	ITC adjustment - net	FERC-1 p. 114 L19 Col (c)	-
10	Total income taxes	L5 thru L9	-
11	Pretax earnings base	L3 + L10	-
12	Effective income tax rate	L10 / L11	#DIV/0!
13	Combined income tax factor	L12 / (1 - L12)	#DIV/0!

FPL December 31  
 Monthly Peaks and Output  
 Page 401b

(1)	(2)	(3)	(4)	(5)	(6) activated load management (Includes Wholesale) MW a/	(7) adjusted peak demand MW (5) + (6)
29	January					
30	February					
31	March					
32	April					
33	May					
34	June					
35	July					
36	August					
37	September					
38	October					
39	November					
40	December					
41	TOTAL					

Winter	Summer
--------	--------

Less: FPL Load Management Capability:

Residential Load Management b/

C/I Load Management b/

Total FPL Load Management Capability b/

Number of months

FPL Load Management Capability

-	-
5	7
-	-

Less: 7 X Wholesale Contract(s) Summer Adjusted Load Management Capability : c/

Less: 5 X Wholesale Contract(s) Winter Load Management Capability: c/

Total of 12 monthly peak firm MWs @ generator

a/ per pertinent article of the PSA's

b/ per Ten Year Site Plan

c/ Amounts not in Ten-Year Site Plan

FPL December 31  
 Construction Work in Progress Statement

LINE NO.	Period	Gross Steam Production	Nuclear Production	Other Production	Total Production	Non-Production CWIP	Total CWIP FF 1, p.110 L3
1	Beginning Balance			=	0		
2							
3	Ending Balance			=	0		
4							
5	AVERAGE	<u>0</u>	<u>0</u>	<u>0</u> =	<u>0</u>	<u>0</u>	<u>0</u>
6	100% Pollution Control Facilities and Fuel Conversion facilities						
7	50% All other Production CWIP						
8	Total CWIP for Statement A-5				<u>0</u>		



FPL December 31  
 CWIP Adjustment Schedule

Year	(1) Expenditures	(2) AFUDC FPSC	(3) CWIP BALANCE - FPSC	(4) AFUDC FKEC	(5) CWIP BALANCE - FKEC	(6) AFUDC DIFF	(7) Note 1 Plant in Service Diff Balance	(8) Cumulative Sum (6) FKEC CWIP Adj Balance Before Amort	(9) (7) * Depreciation Rate Amort of FKEC Plant Adjustment	(10) Cumulative Sum (9) Accumulated Amort of FKEC Plant Adjustment	(11) (8) - (10) FKEC CWIP Adjustment Balance After Amort
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Note 1 - Plant In Service difference balance due to FPSC and FKEC AFUDC method difference.

FPL December 31  
GSU Statement

<u>Year</u>	<u>Plant In Service</u>	<u>Reserve</u>	<u>Annual Depr Expense</u>	<u>GSU O&amp;M</u>
Average	<u>0</u>	<u>0</u>		\$ -

Florida Power & Light Company  
**ACTUAL LOSSES**  
 Loss Study - Development of Loss Expansion Factors  
 For the Year Ended December 31

Line No	Description	(1)	(2)	(3)	(4)
		ENERGY (1)		DEMAND (2)	
		Flow MWH	Loss Expansion Factor	Flow MW	Loss Expansion Factor
1	Net Energy / Demand to Transmission		(A)		(G)
2					
3	Step-up Losses		(B)		(H)
4					
5	Flow to Transmission		(C)		(I)
6					
7	Transmission Losses		(D)		(J)
8					
9	Flow on Transmission		(E)		(K)
10					
11	Transmission Energy / Demand Losses			(F)	(L)

**Notes:**

(1) Energy Loss Expansion Factor is calculated based on information provided by Power Supply.

- (A) Power Supply (NEL plus net power wheeled for others)
- (B) Power Supply
- (C) = (A) + (B)
- (D) Power Supply
- (E) = (C) + (D)
- (F) = 1 / (E / A)

(2) Demand Loss Expansion Factor is calculated based on the Westinghouse Formula.

- (G) Represents system demand including power wheeled for others.
- (H) Based on Westinghouse Formula → Demand Loss = Flow to Transmission (line 1) \* Energy Loss Factor / (.3+ (.7\*Load Factor))
- (I) = (G) + (H)
- (J) Based on Westinghouse Formula → Demand Loss = Flow to Transmission (line 5) \* Energy Loss Factor / (.3+ (.7\*Load Factor))
- (K) = (I) + (J)
- (L) = 1 / (K / G)

FPL December 31  
Calculation of Customer's CP Demand

Line	Description	(1) Sum of Monthly CP Demand (Sum Cols 2 - 13)	(2) January CP Demand	(3) February CP Demand	(4) March CP Demand	(5) April CP Demand	(6) May CP Demand	(7) June CP Demand	(8) July CP Demand	(9) August CP Demand	(10) September CP Demand	(11) October CP Demand	(12) November CP Demand	(13) December CP Demand
1	Annual Load % (per Demand and Energy Load schedule)													
2	Annual Load Factor (1-Line 1)													
3	Sum of 60 Minute MW CP Demand Measured At the Delivery Point(s)													
4	Plus: Adjustment for any activated Load Management Less: FKEC 7 Summer Months MW Adjusted Load Management Capability. FKEC 7 Summer Months MW Adjusted Load Management Capability = The lower of: a) 5% times Customer's actual peak load coincident with the peak hour of Company's Summer Months with the effect of any Customer Load Management activated removed or b) FKEC actual load management for the summer months													
5														
6	Less: FKEC 6 Winter Months MW Adjusted Load Management Capability. FKEC 6 Winter Months MW Adjusted Load Management Capability = The lower of: a) 5% times Customer's actual peak load coincident with the peak hour of Company's Winter Months with the effect of any Customer Load Management activated removed or b) FKEC actual load management for the winter months													
7	FKEC Adjusted CP Demand (line 3 + line 4 - line 5 - line 6)													
8	Qualifying Facility MW Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured CP Demand													
9	Maximum Allowed MW Credit For Qualifying Facility Purchases													
10	Sum: If line 8 is greater than line 9 then take line 8 minus line 9													
11	Distributed Generation and Renewable Energy MW Purchases Behind the Delivery Point(s) During 60 minute interval for Measured CP Demand													
12	Highest 60 Minute MW Demand Measured At the Delivery Point(s) in the immediate preceding calendar year													
13	Maximum Allowed MW Credit For Distributed Generation and Renewable Energy Purchases equal to 5% of line 12													
14	Sum: If line 11 is greater than line 13 then take line 11 minus line 13													
15	Sum line 7, line 10, line 14													
16	Customer's adjusted monthly coincident peaks (line 15 / line 2)	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

FPL December 31  
 Calculation of Customer's Billing Demand

Line	Description	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
		Sum of Monthly Billing Demand (Sum Col 2 - 13)	January Billing Demand	February Billing Demand	March Billing Demand	April Billing Demand	May Billing Demand	June Billing Demand	July Billing Demand	August Billing Demand	September Billing Demand	October Billing Demand	November Billing Demand	December Billing Demand
1	Annual Loss % (per Demand and Energy Loss schedule)													
2	Annual Loss Factor (1-Line 1)													
3	Highest 60 Minute kW Demand Measured At the Delivery Point(s)													
4	Qualifying Facility Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured Demand													
5	Maximum Allowed kW Credit For Qualifying Facility Purchases													
6	Sum: If line 4 is greater than line 5 then take line 4 minus line 5													
7	Distributed Generation and Renewable Energy Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured Demand													
8	Highest 60 Minute kW Demand Measured At the Delivery Point(s) in the immediate preceeding calendar year													
9	Maximum Allowed kW Credit For Renewable Energy Purchases equal to 5% of line 8													
10	Sum: If line 7 is greater than line 9 then take line 7 minus line 9													
11	Sum line 3, line 6, line 10													
12	Sum of Customer's monthly kW billing demand (line 13 / line 2)													
		#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

## APPENDIX C

### Fuel Charge Factor Formula and Fuel Adjustment Charge Factor Formula

1. The Fuel Charge Factors.
  - (a) The amounts included in the estimated and actual total expense of system fuel and purchased economic power shall be consistent with 18 CFR 35.14 and shall include without limitation fees for disposal of spent nuclear fuel and/or high-level radioactive waste as specified in the Contract for Disposal of Spent Nuclear Fuel And/or High-Level Radioactive Waste between the United States of America represented by the US Department of Energy and Florida Power and Light Company dated June 1983.
  - (b) The total expense of estimated and actual system fuel and purchased economic power included in the Fuel Charge Factors and the Fuel Adjustment Charge Factors shall be the cost of:
    - (i) fuel consumed in Company's own plants, and Company's share of fuel consumed in jointly owned or leased plants;
    - (ii) the actual identifiable fuel costs associated with energy purchased for reasons other than identified in section 1(b)(iii) of this Appendix;
    - (iii) the total cost of the purchase of economic power as defined in section 1(d) of this Appendix, if the reserve capacity of Company is adequate independent of all other purchases where nonfuel charges are included;
    - (iv) generation energy charges for any purchase if the total amount of generation energy charges is less than Company's total avoided variable costs;
    - (v) less the cost of fuel recovered through all intersystem sales;
    - (vi) plus any Taxes on the energy cost of fuel or, electric energy generated, where such Taxes are not included elsewhere.
  - (c) The cost of fuel included in the estimated and actual system fuel and purchased economic power expenses shall include no items other than those listed in the account 151 of the FERC Uniform System of Accounts For Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in account 518, except that if account 518 also contains any expenses for fossil fuel that has already been included in the cost of fossil fuel, it shall be deducted from this account.

- (d) For the purpose of section 1(b)(iii) and (iv), the following definitions apply:
- (i) Economic power is economic power or energy purchased over a period of 12 months or less where the total cost of the purchase is less than Company's avoided variable cost;
  - (ii) Total cost of the purchase is all charges incurred in buying economic power and having such power delivered to Company system. The total cost includes, but is not limited to, capacity reservation charges, generation energy charges, adders, and any transmission or wheeling charges associated with the purchase.
  - (iii) Total avoided variable costs is all identified and documented variable costs that would have been incurred by Company had a particular purchase not been made. Such costs include, but are not limited to, those associated with fuel, startup, shutdown or any purchases that would have been made in lieu of the purchase made.
- (e) For the purpose of section 1(b)(iii), the system reserved capacity criteria used by Company's system operators is demand and energy purchased for a period of less than a year and shall be deemed as being for reliability purposes if Company expects that the purchase is required in order to maintain operating reserves in accordance with Good Utility Practice.
- (f) Total system net generation and purchased economic power costs included in the Fuel Charge Factors and the Fuel Adjustment Charge Factors shall be the sum of:
- (i) generation,
  - (ii) purchases,
  - (iii) exchange received, less
  - (iv) energy associated with pumped storage operations, less
  - (v) intersystem sales referred to in section 1 (b) (v) of this Appendix C, less
  - (vi) total system losses (losses shall be deemed to be zero because Customer takes Full Requirements Electric Service at the Receipt Points).
- (g) Calculation of estimated On-peak Fuel Charge Factor:

((Estimated total fuel costs and net power transactions defined in 1(b) and (c)<sup>1</sup> \* On-peak cost ratio<sup>2</sup>) / (estimated total net generation defined in 1(f)<sup>1</sup> \* On-peak load ratio<sup>2</sup>))

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<sup>1</sup> Total fuel costs and net power transactions and total MWh generation estimates approved by the FPSC for the current period. Includes applicable FERC adjustments.

(h) Calculation of estimated Off-peak Fuel Charge Factor:

((Estimated total fuel costs and net power transactions defined in 1(b) and (c)<sup>1</sup> \* Off-peak cost ratio<sup>2</sup>) / (estimated total net generation defined in 1(f)<sup>1</sup> \* Off-peak load ratio<sup>2</sup>))

(i) The attached Schedule 1 illustrates the calculation of the On-peak and Off-peak Fuel Charge Factors.

(j) "On-peak" and "Off-peak" shall have the meanings attributed to such terms in Company's retail tariff GSLDT-3.

2. The Fuel Adjustment Charge Factors.

(a) Calculation of On-peak Fuel Adjustment Charge Factor:

Actual On-peak Fuel Charge Factor minus estimated On-peak Fuel Charge Factor

(b) Calculation of Off-peak Fuel Adjustment Charge Factor:

Actual Off-peak Fuel Charge Factor minus estimated Off-peak Fuel Charge Factor

The actual On-peak and Off-peak Fuel Charge Factors shall be calculated by applying actual costs and expenses to the formulas used to calculate the estimated On-peak and Off-peak Fuel Charge Factors in part 1 of this Appendix C.

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<sup>2</sup> On-peak and off-peak cost and load ratios calculated using cost and load data from the Production Costing Model POWRSYM.



**APPENDIX C**  
**Schedule 1**  
**Calculation of On-Peak and Off-Peak Fuel Charge Factors**

<u>Line</u>	<u>Description</u>	<u>Amount</u>
	<u>Total Fuel Costs and Net Power Transactions</u>	-
1	Cost of Fuel Consumed - Section 1(b)(i)	-
2	Fuel Costs for Energy Purchased - Section 1(b)(ii)	-
3	Total Cost of Purchased Economic Power - Section 1(b)(iii)	-
4	Generation energy charges - Section 1(b)(iv)	-
5	Cost of Fuel Recovered Through all Intersystem Sales - Section 1(b)(v)	-
6	Taxes on Energy Cost of Fuel or Electric Energy Generated - Section 1(b)(vi)	-
7	Total Fuel Costs and Net Power Transactions - Section 1(g) (Sum Lines 1- 4, less line 5 , plus line 6)	_____
	<u>Total Net Generation</u>	
8	Generation - Section 1(f)(i)	
9	Purchases - Section 1(f)(ii)	
10	Exchanged Received 1(f)(iii)	
11	Energy Associated With Pumped Storage Operations - Section 1(f)(iv)	
12	Intersystem Sales Included in Line 5 - Section 1(f)(v)	
13	Total Net Generation - Section 1(f) (Sum lines 8 - 10, less lines 11 - 12)	_____
14	On-peak Cost Ratio - Section 1(g) (POWRSYM)	
15	Total On-peak Fuel Costs and Net Power Transactions - Section 1(g) (Line 7 x Line 14)	_____
16	On-peak Load Ratio - Section 1(g) (POWRSYM)	
17	On-peak Net Generation - Section 1(g) (Line 13 x Line 16)	_____
18	<b>ON-PEAK FUEL FACTOR - Section 1(g)(Line 15 / Line 17)</b>	=====
19	Off-peak Cost Ratio - Section 1(h) (POWRSYM)	
20	Total Off-peak Fuel Costs and Net Power Transactions - Section 1(h) (Line 7 x Line 19)	_____
21	Off-peak Load Ratio - Section 1(h) (POWRSYM)	
22	Off-peak Net Generation - Section 1(h) (Line 13 x Line 21)	_____
23	<b>OFF-PEAK FUEL FACTOR - Section 1(h) (Line 20 / Line 22)</b>	=====

## APPENDIX D

### FINANCIAL COVENANT COMPLIANCE WORKSHEET

FINANCIAL COVENANT COMPLIANCE WORKSHEET - 12 MONTH PERIOD  
 PERIOD ENDED

Deb Service Coverage Debt Service Coverage = Margins + Interest Expense + Depreciation and Amortization / Principal and Interest on Long Term Debt	Bank
Margins: Interest Expense: Premium on Discounted RUS Debt Early Payment Penalty Depreciation and Amortization:	_____
1) Total	_____
Long Term Debt Principal Payments Bank A: Long Term Debt Principal Payments Bank B: Interest Expense:	_____
2) Total	_____
Debt Service Coverage Ratio: (1/2)	Not less than 1.35 to 1.0
	_____
Equity Ratio Total Margins & Equities / Total Assets 1) Total Margins and Equities 2) Total Assets Equity Percent: (1/2)	Equal or > than 30%
	_____

Note:  
 \* = Net Margins  
       + Cash received from Bank A  
       + Cash received from Company X

<ul style="list-style-type: none"> <li>+ Cash received from Y</li> <li>+ Cash received from Bank B</li> <li>- Capital credits</li> <li>- Company X capital credits</li> <li>+ Return of CTC-Bank A</li> <li>+ capital credits</li> <li>+ Cash received from Z</li> </ul>	
Margins:	

DSC

(A) **Debt Service Coverage Ratio.** For purposes hereof, the term “Debt Service Coverage Ratio” shall mean the ratio of: (1) net income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus non-cash patronage, and non-cash income from subsidiaries and/or joint ventures; to (2) all principal payments due within the period on all “Long-Term Debt” (as defined below) plus total interest expense (all as calculated on a consolidated basis for the applicable period in accordance with GAAP consistently applied or the appropriate standards of the regulatory agency having jurisdiction over Customer). For purposes hereof, “Long-Term Debt” shall mean, for Customer, on a consolidated basis, the sum of (a) all indebtedness for borrowed money, (b) obligations which are evidenced by notes, bonds, debentures or similar instruments, and (c) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with GAAP or which are treated as operating leases under regulations applicable to them but which otherwise would be required to be capitalized under GAAP, in each case having a maturity of more than one year from the date of its creation or having a maturity date within one year from such date, but that is renewable or extendible, at Customer’s option, to a date more than one year from such date or that arises under a revolving credit or similar agreement that obligates the lenders to extend credit during a period of more than one year from such date, including all current maturities in respect of such indebtedness whether or not required to be paid within one year from the date of its creation.

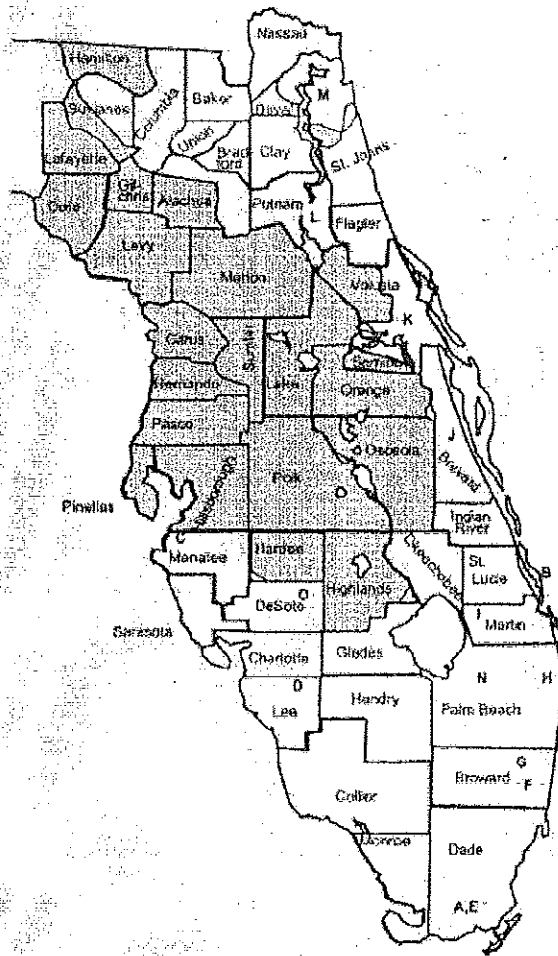
(B) **Equity Ratio.** “Equity Ratio” shall mean the ratio of consolidated total margins and equities to consolidated total assets (both as determined in accordance with GAAP consistently applied or the appropriate standards of the regulatory agency having jurisdiction over Customer).

APPENDIX E

FPL GENERATING RESOURCES BY LOCATION

FPL Generating Resources by Location

Location/ Map Key	Plant Name	Number of Units	Summer MW
A	Turkey Point	5	3,322
B	St. Lucie	2	1,553
C	Manatee	3	2,735
D	Fort Myers	2	1,755
E	Cutter	2	205
F	Lauderdale	2	684
G	Port Everglades	4	1,205
H	Riviera	2	565
I	Manila	3	3,895
J	Cape Canaveral	2	792
K	Sanford	3	2,050
L	Putnam	2	468
M	SJRPP **	2	254
N	West County Energy Center	2	2,438
O	DeSoto ***	1	25
	Scherer ****	1	640
	Gas Turbines	48	1,506
Total System Generating Capacity =		88	24,530
System Firm Generating Capacity =		87	24,505



Non-FPL Territory

\* Represents FPL's ownership share: St. Lucie nuclear: 100% unit 1, 85% unit 2; St. Johns River: 20% of two units.

\*\* SJRPP = St. John's River Power Park

\*\*\* The 25 MW of PV at DeSoto is considered as non-firm generating capacity.

\*\*\*\* The Scherer unit is located in Georgia and is not shown on this map.

## APPENDIX F

### LOAD MANAGEMENT

#### 1.0 Load Management Verification Testing Methodology.

- 1.1 If Company believes Customer's monthly Load Management capability is not representative of Customer's actual Load Management capability, a verification test ("Test") may be requested as set forth in Section 3.6(g) of this Agreement to determine Customer's Adjusted Load Management Capability.
- 1.2 A Test shall entail the establishment of the Customer's Reference Average Hourly Load Without Load Management, as set forth in Section 1.2.2, below, and the establishment of the Customer's Reference Average Hourly Load With Load Management for the Test hour during the Test day, as set forth in Section 1.2.3, below.
  - 1.2.1 Tests shall be performed for the Summer Months from June through August on a day when rain or significant cloud cover is not expected. If rain occurs in the Customer's service territory on a Test day between 13:00 and 18:00, Customer or Company shall have the option of postponing the Test until the next Business Day. Tests shall be performed in the Winter Months from December through February on a day when the forecasted lows are predicted to be below [ ] degrees in Tavernier, Florida. If by February 15<sup>th</sup> of each year, no Test has been conducted during the Winter Months, Company may select a day between February 15<sup>th</sup> and 28<sup>th</sup> to conduct a Test. All tests shall be performed on a Business Day.
  - 1.2.2 Customer's Reference Average Hourly Load Without Load Management shall be determined as follows: a comparison day load shape for days Load Management is not used will be established by calculating the hourly average load for each hour of the day over a four day period consisting of the two days before the Test and the two days after the Test. The average hourly load for the hour of the comparison day that is the same hour as the designated Test hour shall be the Customer's Reference Average Hourly Load Without Load Management.
  - 1.2.3 Customer's Reference Average Hourly Load With Load Management shall be determined as follows: the Test day load shape will be determined by measurement of the hourly average loads for each hour of the day during the Test day. On the Test day, the Customer shall initiate full Load Management capabilities such that all capabilities are utilized for the Test hour. The average hourly load during the Test hour shall be the Customer's Reference Average Hourly Load With Load Management. The Test Load Management capability shall be determined by subtracting Customer's Reference Average Hourly Load With Load Management from Customer's Reference Average Hourly Load Without Load Management.
  - 1.2.4 Scheduling of the testing shall be arranged in accordance with the provisions of Section 3.6 (g) of this Agreement or as otherwise mutually

agreed. Measurements shall be made using the Delivery Point meters. Upon request by Customer, Company shall provide assistance to Customer in arranging with the Transmission Provider the right to obtain dial up, "read only" access (not real time data) to the output of the Delivery Point meters; provided, however, should the Transmission Provider not grant such access rights, then Company shall have no obligation to provide such assistance to Customer.

1.2.5 Test frequency shall not exceed one test during the Summer Months and one test during the Winter Months consistent with Section 1.2.1 for each Party, unless the Parties mutually agree otherwise.

1.2.6 Results of a Test shall establish a new Load Management Capability for the entire season of Summer Months or Winter Months, as applicable, of the applicable Calendar Year.

## **2.0 Customer Adjusted Load Management Capability.**

2.1 Customer Adjusted Load Management Capability shall equal the amount specified in Section 3.6(a) of the Agreement.

2.2 A Test may be used by Company to determine Customer Adjusted Load Management Capability, provided the following Test conditions are satisfied:

2.2.1 Customer is notified by Company to implement 100% of its Load Management capability.

2.2.2 Customer's hourly load shape for the day of the Test, excluding the Test hour, is substantially the same as the load shape for the two days prior to the Test and the two days after the Test.

2.2.3 Customer is not prevented from initiating Load Management because of Force Majeure events.

2.3 As provided in Section 3.6(a) of this Agreement, Company may also determine Customer Adjusted Load Management Capability by requesting that Customer dispatch 100% of Customer's Load Management capability.

2.3.1 Upon Company's request, Customer shall provide all operating data available to demonstrate Load Management was dispatched as requested.

2.3.2 In the event Company determines that 100% of Customer's Load Management capability was not dispatched as requested and, upon request from Company, Customer fails to demonstrate that it used reasonable efforts to dispatch 100% of its Load Management, Company may establish Customer's Adjusted Load Management Capability for the applicable Summer or Winter Months for the current Calendar Year and the following two Calendar Years at the amount of Customer's Load Management actually dispatched.

2.3.3 Absent a Force Majeure event, should Customer have a complete failure to respond to Company's request for dispatch of Load Management and/or for operating data, Company may establish Customer's Adjusted Load Management Capability at zero for the applicable Summer or Winter Months for the current Calendar Year and the following two Calendar Years.

## **3.0 Notification to Implement Load Management**

- 3.1 Company shall notify Customer to implement Load Management consistent with Company's dispatch of its Load Management in the Dade County, Florida area of Company's service territory.
- 3.2 Company may request interruption of the following devices:
  - 3.2.1 Water Heaters
  - 3.2.2 Pool Pumps
  - 3.2.3 Air Conditioners/ Heaters
  - 3.2.4 Interruptible (All other devices)
- 3.3 Upon request, Company agrees to provide Customer with an alarm and printer for receipt of Load Management requests from Company.
- 3.4 Proper notice shall consist of a request by Company and a response by Customer acknowledging the request.
- 3.5 Notice shall consist of an e-mail to Customer at \_\_\_\_\_ . Once received, Customer shall initiate a reply to XXX@FPL.COM (e-mail address to be provided by Company).
  - 3.5.1 Should Company not receive a response in the time Company deems appropriate, Company shall then contact Customer by telephone at the telephone numbers listed below:
  - 3.5.2 Upon request, Company shall provide to Customer e-mail and telephone records detailing the day, time, and communication methods utilized to request dispatch of Customer's Load Management.
  - 3.5.3 Customer shall notify Company of any changes in e-mail addresses and telephone numbers in writing.
  - 3.5.4 Customer and Company may change communication methods from time to time upon mutual written consent.
  - 3.5.5 All notices of changes shall be made in accordance with Section 9.1 of this Agreement.
- 4.0 Company shall comply with any reporting requirements of FRCC or any other jurisdictional entity with respect to any information required for the use of Customer's Load Management equipment.

**APPENDIX G – Not Used**



APPENDIX H

FORM OF LETTER OF CREDIT

[ISSUING BANK NAME]  
IRREVOCABLE NONTRANSFERABLE STANDBY  
LETTER OF CREDIT NO. { }

DATE: \_\_\_\_\_

BENEFICIARY:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

APPLICANT:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

INITIAL AMOUNT: USD \$ \_\_\_\_\_  
DATE OF EXPIRY: On the Expiration Date (as hereinafter defined)  
PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Nontransferable Standby Letter of Credit No. { } (this "Letter of Credit") for the account of Florida Keys Electric Cooperative Association, Inc. (the "Applicant"), in the aggregate stated amount of not to exceed \_\_\_\_\_ AND \_\_\_\_\_/100 US DOLLARS (US\$ \_\_\_\_\_) (as the same may be reduced from time to time as a result of draws made pursuant to the provisions of this Letter of Credit, the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York, New York, time, on the Expiration Date (as hereinafter defined) at our counters at [\_\_\_\_\_].

This Letter of Credit shall be of no further force or effect upon the close of business on \_\_\_\_\_, \_\_\_\_\_ (or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day); provided, however, that this Letter of Credit will be automatically extended without amendment for successive one (1) year periods from the present or any future expiration date hereof, unless we provide you with written notice of our election not to renew this Letter of Credit at least forty-five (45) days prior to any such expiration date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Miami, Florida.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to you by presentation in strict compliance on or prior to 5:00 p.m., New York, New York, time, on or prior to the Expiration Date at our counters of:

- (1) the original of this Letter of Credit and all amendments; and

(2) your sight draft drawn on us; and

(3) either:

(i) Beneficiary's Certificate issued in the form of Annex I attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or

(ii) Beneficiary's Certificate issued in the form of Annex II attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Nontransferable Standby Letter of Credit No. { \_\_\_\_\_ }, dated \_\_\_\_\_."

Multiple draws are permitted under this Letter of Credit; provided that the Available Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the annexes referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such annexes.

We engage with you that your drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honored if presented to us on or before the Expiration Date.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 as in effect on the date of issuance thereof (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern. As to matters not covered by the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

[ISSUING BANK NAME]

By: \_\_\_\_\_

Authorized Signature

Address: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

ANNEX I TO [Issuing Bank Name]  
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. {            }

[Issuing Bank Name]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, the duly elected and acting \_\_\_\_\_ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank") and Florida Keys Electric Cooperative Association, Inc. (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {            }, dated \_\_\_\_\_, \_\_\_\_\_ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Long-Term Agreement for Full Requirements Electric Service dated as of \_\_\_\_\_, by and between Beneficiary and Applicant (as amended from time to time, the "Long-Term Agreement").
2. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$\_\_\_\_\_ pursuant to the terms and conditions of the Long-Term Agreement, including without limitation as a result of any one of the following circumstances or events: (a) Applicant has failed to renew or replace the Letter of Credit at least thirty (30) calendar days prior to the stated expiration of the Letter of Credit, (b) within the applicable period of grace provided in Article 6 of the Long-Term Agreement, Applicant has failed to provide Beneficiary with a Letter of Credit or additional security as required pursuant to the provisions of the Long-Term Agreement, (c) an Event of Default by Applicant has occurred and is continuing, or (d) Company otherwise has the right to draw upon any Performance Assurance of Customer pursuant to the terms of the Long-Term Agreement.
3. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS \_\_\_\_\_ AND \_\_\_\_/100ths (U.S.\$\_\_\_\_\_), which amount does not exceed the lesser of (i) the amount set forth in paragraph 2, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 3 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date.

5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting \_\_\_\_\_ as of this day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary:

[\_\_\_\_\_]

By:

Name:

Title:

ANNEX II TO [Issuing Bank Name]  
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. {            }

[Issuing Bank Name]  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_]

Date: \_\_\_\_\_, \_\_\_\_\_

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, the duly elected and acting \_\_\_\_\_ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and Florida Keys Electric Cooperative Association, Inc. (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {            }, dated \_\_\_\_\_, \_\_\_\_\_ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Long-Term Agreement for Full Requirements Electric Service dated as of, by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit referred to in this paragraph.  
or
3. The Beneficiary has provided at least thirty (30) calendar days' prior written notice to the Applicant of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) calendar day period referred to in this paragraph.
4. Based upon either 2 or 3, above, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS \_\_\_\_\_ & /100ths (U.S. \$ \_\_\_\_\_), which amount does not exceed the lesser of (i) the amount Beneficiary is entitled to draw under the terms of the Agreement and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4, above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Agreement, and (b) the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.

6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting \_\_\_\_\_ as of this day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary: [\_\_\_\_\_]

By:  
Name:  
Title:

## APPENDIX I

### FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Consent and Agreement") dated as of \_\_\_\_\_, is executed by and among FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida ("FPL"), FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC., a rural electric cooperative ("FKEC"), and [LENDER NAME, a \_\_\_\_\_] (the "Lender").

1. FPL and FKEC have entered into the agreement specified in Schedule I hereto (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement");

2. The Assigned Agreement expressly contemplates that FKEC may, subject to the provisions of the Assigned Agreement, collaterally assign, transfer, mortgage or pledge its interest in the Assigned Agreement to one or more of the Lenders (as defined in the Assigned Agreement) or an indenture trustee under any indenture securing the obligations of FKEC (the "Other Secured Party") if FKEC is then a borrower of such Lender or Other Secured Party for any obligations secured by any indenture, mortgage or similar lien on its system assets;

3. FKEC has obtained financing from the Lender pursuant to [Describe Financing Agreement], dated as of \_\_\_\_\_ (the "Financing Agreement"), and FPL has consented to the collateral assignment of the Assigned Agreement to the extent provided in Section 12.2(i) of the Assigned Agreement, which terms are supplemented and modified by the terms of this Consent and Agreement; and

4. Pursuant to the [Describe Security Agreement], dated as of \_\_\_\_\_ (the "Security Agreement"), between FKEC and the Lender, FKEC has assigned its interest under the Assigned Agreement to the Lender as security for the payment and performance by FKEC under the Financing Agreement and for other obligations owing to the Lender.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Consent to Assignment. Subject to the terms and conditions of this Consent and Agreement, FPL hereby acknowledges and consents solely to the pledge and collateral assignment of all right, title and interest of FKEC in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by FKEC to the Lender.

2. Right to Cure.

(a) Subject to Section 2(c), below, from and after the date hereof and unless and until FPL shall have received written notice from the Lender that the lien of the Security Agreement has been released in full, the Lender shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by FKEC under an Assigned Agreement, to pay all sums due under such Assigned Agreement by FKEC and, to the extent it may lawfully do so, to perform any other act, duty or obligation required of FKEC thereunder as described in Section

2(c) below; provided, that no such payment or performance shall alone be construed as an assumption by the Lender of any covenants, agreements or obligations of FKEC under or in respect of the Assigned Agreement.

(b) FPL agrees that it will not terminate the Assigned Agreement without first giving the Lender notice and opportunity to cure as provided in Section 2(c), below.

(c) If a Termination Event shall occur, and FPL shall then be entitled to and shall desire to terminate the Assigned Agreement, FPL shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Lender of such Termination Event. If the Lender elects to exercise its right to cure as herein provided, it shall have a period of two (2) business days after receipt by it of notice from FPL referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by FKEC (a "Non-monetary Event"), the Lender shall have ten (10) business days after receipt by it of notice from FPL referred to in the preceding sentence in which to cure the Termination Event specified in such notice of such Termination Event. If Lender fails to cure within the aforementioned cure period, Lender's right to cure shall be extinguished and FPL may exercise all its available rights and remedies.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Lender of any covenants, agreements or obligations of FKEC under or in respect of the Assigned Agreement.

(e) Notwithstanding any provision herein to the contrary, nothing herein shall be deemed to affect, impair or diminish any other rights or remedies FPL may have against FKEC in respect of such Termination Event, including, without limitation, the right to suspend performance under the Assigned Agreement.

3. Substitute Owner. Upon an event of default by FKEC under the Security Agreement, the Lender may not, without the prior written consent of FPL (a) have itself or its designee substituted for FKEC under the Assigned Agreement, or (b) sell, assign, transfer or otherwise dispose of the Assigned Agreement, and any such substitution, sale, assignment, transfer or other disposition in violation of this Section 3 shall be void and of no force and effect. In addition, if FPL provides such prior written consent, with respect to (a) and (b), Lender and any third party assignee or transferee must first satisfy the requirements set forth in Section 16.1(a) through (e) of the Assigned Agreement. If FPL provides such prior written consent and such conditions are satisfied, the Lender may (but shall not be obligated to) assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of FKEC thereafter arising under the Assigned Agreement, subject, however, to the provisions of Section 12.3 and 16.1 of the Assigned Agreement. If the interest of FKEC in the Assigned Agreement shall be assumed, sold, assigned, transferred or otherwise disposed as provided above and FPL shall have given its prior written consent thereto, the assuming party shall agree in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and



any and all obligations to FPL arising or accruing thereunder from and after the date of such assumption, and FPL shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as FKEC under the Assigned Agreement.

4. Notices. Notice to any Party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier;

The Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

FKEC:

Florida Keys Electric Cooperative Association,  
Inc.  
91605 Overseas Highway  
Tavernier, FL 33070  
Attn: Chief Executive Officer  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

With a copy to:

Attention: General Counsel for Florida Keys  
Electric Cooperative Association, Inc.  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

FPL:

Florida Power & Light Company  
700 Universe Boulevard  
Mail Stop EMT/JB  
Juno Beach, FL 33408-0428  
Attention: Vice President  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

With a copy to:

Florida Power & Light Company  
700 Universe Boulevard  
Mail Stop EMT/JB  
Juno Beach, FL 33408-0428  
Attention: General Counsel Office  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

5. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the permitted successors and assigns of FPL, and shall inure to the benefit of the Lender, FKEC and their respective permitted successors, transferees and assigns.

6. Counterparts. This Consent maybe executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

7. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida (regardless of Florida's or any other jurisdiction's choice of law rules).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent and Agreement as of the date first written above.

FLORIDA POWER & LIGHT COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[LENDER NAME],  
as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and Agreed:

FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Assigned Agreement**

Long-Term Agreement for Full Requirements Electric Service, dated as of \_\_\_\_\_, between Florida Power & Light Company and Florida Keys Electric Cooperative Association, Inc.

**APPENDIX J**

**NOT USED**

**APPENDIX K**  
**BILLING AND CP EXAMPLES**  
**(See attached Excel File)**

**APPENDIX K  
BILLING AND CP EXAMPLES**

**Calculation of Customer's Billing Demand Examples**

<u>Line</u>	<u>Description</u>	<u>Example 1 (Summer Month)</u>	<u>Example 2 (Summer Month)</u>	<u>Example 3 (Winter Month)</u>
1	Annual Loss % (per Demand and Energy Loss schedule)	3.200%	3.200%	3.200%
2	Annual Loss Factor (1-Line 1)	0.96800	0.96800	0.96800
3	Highest 60 Minute kW Demand Measured At the Delivery Point(s)	145,000	145,000	132,000
4	Qualifying Facility Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured Demand	-	15,000	4,000
5	Maximum Allowed kW Credit For Qualifying Facility Purchases	5,000	5,000	5,000
6	If line 4 is greater than line 5 then take line 4 minus line 5	-	10,000.0	-
7	Distributed Generation and Renewable Energy Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured Demand	-	5,000	7,800
8	Highest 60 Minute kW Demand Measured At the Delivery Point(s) in the immediate preceeding calendar year	138,000	138,000	138,000
9	Maximum Allowed kW Credit For Renewable Energy Purchases equal to 5% of line 8	6,900	6,900	6,900
10	If line 7 is greater than line 9 then take line 7 minus line 9	-	-	900.0
11	Sum line 3, line 6, line 10	145,000	155,000	132,900
12	Customer's monthly kW billing demand (line 11 / line 2)	149,793	160,124	137,293

**APPENDIX K**  
**BILLING AND CP Examples**  
**Calculation of Customer's CP Demand Examples**

Line	Description	Example 1 (Summer Month)	Example 2 (Summer Month)	Example 3 (Winter Month)
1	Annual Loss % (per Demand and Energy Loss schedule)	3.200%	3.200%	3.200%
2	Annual Loss Factor (1-Line 1)	0.96800	0.96800	0.96800
3	60 Minute MW CP Demand Measured At the Delivery Point(s)	140.0	140.0	130.0
4	Plus: Adjustment for any activated Load Management	0.0	2.0	0.0
	<u>Less: FKEC 7 Summer Months MW Adjusted Load Management Capability:</u>			
	FKEC Summer Adjusted MW Load Management Capability = The lower of:			
5	a) 5% times Customer's actual peak load coincident with the peak hour of Company's Summer Months with the effect of any Customer Load Management activated removed or			
	b) FKEC actual load management for the summer months	3.0	3.0	0.0
	<u>Less: FKEC 5 Winter Months MW Adjusted Load Management Capability:</u>			
	FKEC Winter Adjusted Load Management Capability = The lower of:			
6	a) 5% times Customer's actual peak load coincident with the peak hour of Company's Winter Months with the effect of any Customer Load Management activated removed or			
	b) FKEC actual load management for the winter months	0.0	0.0	1.0
7	FKEC Adjusted CP Demand (Line 3 + Line 4 - Line 5 - Line 6)	137.0	139.0	129.0
8	Qualifying Facility MW Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured CP Demand	0.0	15.0	4.0
9	Maximum Allowed MW Credit For Qualifying Facility Purchases	5.0	5.0	5.0
10	If line 8 is greater than line 9 then take line 8 minus line 9	0.0	10.0	0.0
11	Distributed Generation and Renewable Energy MW Purchases Behind the Delivery Point(s) During 60 minute Interval for Measured CP Demand	0.0	5.0	7.8
12	Highest 60 Minute MW Demand Measured At the Delivery Point(s) in the immediate preceeding calendar year	135.0	135.0	135.0
13	Maximum Allowed MW Credit For Distributed Generation and Renewable Energy Purchases (5% times line 12)	6.8	6.8	6.8
14	If line 11 is greater than line 13 then take line 11 minus line 13	0.0	0.0	1.0
15	Sum L 7, L 10, L 14	137.0	149.0	130.0
16	Customer's adjusted monthly coincident peaks (L 15 / L 2)	141.5	153.9	134.3

FIRST AMENDMENT TO THE LONG-TERM AGREEMENT FOR FULL REQUIREMENTS ELECTRIC SERVICE DATED AS OF FEBRUARY 7th, 2011 BY AND BETWEEN FLORIDA POWER & LIGHT COMPANY AND FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.

This First Amendment ("First Amendment") to the Long-Term Agreement For Full Requirements Electric Service dated as of February 7, 2011 (the "Agreement") by and between Florida Power & Light Company ("FPL") and Florida Keys Electric Cooperative Association, Inc. ("FKEC") is made and entered into this 18<sup>th</sup> day of September 2014.

WITNESSETH:

WHEREAS, FPL and FKEC have entered into the Agreement dated February 7, 2011 and are amending the Agreement as set forth herein in accordance with the requirements of Section 4.7, Cost-of-Service Formulas, subpart (b) Return on Common Equity ("ROE");

WHEREAS, effective September 12, 2014 FPL received a final, un-appealable and binding retail base rate proceeding by the "Order Approving Revised Stipulation And Settlement" issued January 14, 2013 (the "Order") from the Florida Public Service Commission ("FPSC") in docket number 120015-EI granting an ROE of 10.50%.

WHEREAS, this docket number 120015-EI is the first retail base rate proceeding for FPL subsequent to the FPSC proceeding identified as docket numbers 080677-EL and 090130-EL.

WHEREAS, FPL notified FKEC that the midpoint ROE allowed by the FPSC pursuant to the Order in docket number 120015-EI is lower than the 11.75% ROE under the Agreement by 25 basis points or greater; and

WHEREAS, FKEC has requested the FPL file with FERC under Section 205 of the Federal Power Act ("FPA") to change the ROE under the Agreement to be consistent with the ROE approved by the FPSC, as contemplated by Section 4.7 of the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be derived, FPL and FKEC hereto agree as follows:

1. The Agreement is modified and amended by deleting Section 4.7 subpart (b) of the Agreement in its entirety and replacing such subpart with the following:

4.7(b) The Return on Common Equity ("ROE") is deemed to be 10.50% upon execution of this First Amendment and shall remain as such until adjustments, if any, are made by the FPSC to the Company's ROE after the date of execution of this First Amendment in a retail base rate proceeding subsequent to that FPSC proceeding identified as docket number 120015 and such



adjustments become final, un-appealable and binding on Company. In the event the midpoint ROE allowed by the FPSC pursuant to a retail base rate proceeding initiated subsequent to the execution of this First Amendment is lower than the then-current value of ROE established by the First Amendment under this Agreement, by 25 basis points or greater, Company shall notify Customer and, if requested by Customer, shall file with FERC under Section 205 of the FPA to change the ROE established by the First Amendment under this Agreement to be consistent with the ROE approved by the FPSC. In the event the midpoint ROE allowed by the FPSC for Company's retail base rates is higher than the then current value of ROE established by the First Amendment under this Agreement, by 25 basis points or greater, Company shall notify Customer and may file with FERC under Section 205 of the FPA to change the ROE established by the First Amendment under this Agreement consistent with the ROE approved by the FPSC.

- 2. The effectiveness of this First Amendment is conditional upon the FERC's approval of this First Amendment. Subject to the foregoing condition, FPL shall request that this First Amendment be made effective as of January 1, 2013.

IN WITNESS WHEREOF, FPL and FKEC have caused this First Amendment to be executed by their duly authorized officers as of the date and year first above stated.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By: [Signature]

By: [Signature]

Name: Timothy W. Georish

Name: Sam Forrest

Title: Director of Origination

Title: Vice President

Date: September 23, 2014



ATTEST:

FLORIDA KEYS ELECTIVE COOPERATIVE ASSOCIATION, INC.

By: [Signature]

By: [Signature]

Name: John A. Stuart, Jr.

Name: Scott Newberry

Title: Chief operating officer

Title: CEO

Date: 9/18/14