State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 22, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Ramirez-Abundez, Ellis, Wooten) TB
Office of the General Counsel (Imig) ACH

RE: Docket No. 20230129-EI – Petition for approval of revised purchased power agreement with Pasco County, by Tampa Electric Company.

AGENDA: 03/05/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On April 4, 2023, the Florida Public Service Commission (Commission) approved Tampa Electric Company's (TECO or Company) Purchase Power Agreement (PPA or Contract) for the Pasco County (Pasco) Waste-To-Energy Facility (WTE Facility), with restrictions on TECO's cost recovery for transmission costs and renewable energy credits (RECs).[1] The PPA was based on Pasco owning and operating a WTE Facility, located in Spring Hill, Florida. Pasco's WTE Facility is within Duke Energy Florida, LLC's (DEF's) service territory and would require access to DEF's transmission capacity to deliver electricity to TECO. The transmission costs disallowed for cost recovery were related to a contract provision that could have shifted some of transmission costs from Pasco to TECO above a set threshold. The REC costs were not approved

[1]See Order No. PSC-2023-0132-PAA-EI, issued April 18, 2023, in Docket No. 20220186-EI, *In re: Petition for approval of purchase power agreement between Tampa Electric Company and Pasco County.*

for cost recovery at that time, but TECO could still purchase them, provided it demonstrated the need for any purchases in a future proceeding. After the Commission's decision, the PPA was canceled by both parties, pursuant to the terms of the PPA, because cost recovery of all terms was not granted.

On November 17, 2023, TECO filed a petition for approval of a negotiated PPA for the purchase of firm capacity and energy with Pasco. A copy of the PPA is attached (Attachment A). Pasco proposes to sell 18 megawatts (MW) of firm capacity and energy for ten years, from January 1, 2025, through December 31, 2034. Unlike the prior PPA, this PPA does not contain a transmission cost sharing threshold, and includes RECs as part of the initial energy purchase.

The Commission has jurisdiction over this matter pursuant to Sections 366.051, 366.81, and 366.91, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve cost recovery of the negotiated purchase power agreement between Tampa Electric Company and Pasco County?

Recommendation: Yes. Based on staff's review, the negotiated PPA improves TECO's fuel diversity with the addition of renewable energy and is cost-effective based on current forecasts, saving a projected $7.3 million in Net Present Value (NPV), with savings beginning the first year of the PPA. The Contract has adequate security and performance guarantees to protect ratepayers in the event of a default or non-performance by Pasco. In addition, consistent with Order No. PSC-2023-0132-PAA-EI, the Company will not seek cost recovery for any transmission studies or upgrades. (Ramirez-Abundez)

Staff Analysis: Pasco proposes to sell 18 MW of firm capacity and energy from its WTE Facility to TECO for ten years from January 1, 2025, through December 31, 2034. The WTE Facility uses municipal solid waste as its primary fuel, a source of renewable energy pursuant to Section 366.91(2)(b), F.S. The price structure in the Contract has no capacity payment, but an "all-in" confidential dollars per megawatt-hour (MWh) energy rate payment that escalates annually.

Rule 25-17.0832(3), Florida Administrative Code (F.A.C.), states that in reviewing negotiated firm capacity and energy contracts for the purposes of cost recovery, the Commission shall consider factors relating to the contract that would impact the utility's customers, including: need for power by the purchasing utility and/or Florida utilities statewide, the cost-effectiveness of the contract, security provisions for early payment, and performance guarantees associated with the facility. These factors are evaluated below.

Need For Power

Based on TECO's 2023 Ten-Year Site Plan (TYSP), the next planned capacity addition that could be avoided is an 18.7 MW natural gas-fired reciprocating engine with an in-service date of January 2030. Therefore, the PPA's firm capacity of 18 MW would help avoid or defer the construction of future generation for the duration of the PPA until 2035. In addition to firm capacity, the PPA would improve the Company's fuel diversity by increasing the contribution of renewable resources. TECO is forecast to rely upon natural gas for up to 82.8 percent of its energy during the Contract period, according to its 2023 TYSP. Therefore, staff believes the proposed PPA will enhance TECO's system reliability and increase its fuel diversity.

Cost-Effectiveness

Rule 25-17.0832(3)(b), F.A.C., states in part that the Commission should consider whether the cumulative present worth of a payment to the Qualifying Facility (QF) is not greater than the cumulative present worth of purchasing utility's avoided cost of capacity and energy. This cost-effectiveness evaluation was based on the differential between TECO's internal system costs versus the proposed payments under the PPA in two scenarios, with and without the PPA. In response to the staff's data request, TECO provided its cost-effectiveness analysis that estimated

the net cumulative benefits of the PPA at $7.3 million on an NPV basis.[2] System savings are primarily associated with reduced fuel and fuel transportation costs, in addition to some deferred generation costs. Using the base fuel and emission price forecasts, the PPA is anticipated to be cost-effective on a cumulative basis for every year of the period, starting with the first year. The Company also performed high and low fuel sensitivities, in which the PPA was also cost-effective on a cumulative NPV basis over the term of the Contract. In addition, TECO will receive any Renewable Energy Credits (RECs) generated by the WTE Facility from its associated energy at no cost. In response to a staff data request, TECO states if it sells any of the RECs it will pass on any revenue to ratepayers.[3] These potential revenues are not included in the economic evaluation of the PPA.

The PPA includes fixed energy rate payment, and therefore the rates are not allowed to float with changes to TECO's system fuel cost. This allocates the risk of fuel price fluctuation from the Pasco WTE Facility to TECO's ratepayers. For example, if fuel costs do not escalate as quickly as projected in the cost-effectiveness analyses, it may result in a loss to customers. Conversely, if fuel costs escalate faster, customers would see an increased benefit. Regardless, TECO would remain obligated to pay the contracted rate and may seek to recover the costs from the ratepayers through the Fuel Clause, subject to Commission review. In Order No. PSC-11-0439-PAA-EQ, the Commission expressed concerns regarding fixed price contracts and noted that utilities are responsible for including terms and conditions that minimize risk to the company's general body of ratepayers, and encouraged utilities to strive to avoid fixed price contracts.[4]

Security Capacity Payment

Rule 25-18.032(3)(c), F.A.C., requires the Commission to consider security factors relating to the contract for early capacity payments. Security guarantees included in the contract are provisions to ensure repayment of firm capacity and energy payment in the event that the QF fails to deliver firm capacity and energy to adhere to the terms and conditions of the contract. The Contract begins in the year 2025, and the avoided unit is scheduled to be in-service in 2030. If the QF defaults during this time, the Contract includes a termination security table for determining compensation to TECO. Staff reviewed the security terms and conditions contained in the negotiated Contract and found them adequate to protect ratepayers.

Performance Guarantees

Rule 25-17.0832(3)(d), F.A.C., requires the Commission consider whether the utility's ratepayers will be protected by the contract's terms. Performance guarantees, as included in this contract, detail how the QF is to operate and require financial penalties or other remedies should it fail to do so within the contract's terms and conditions. The protections include a lower energy rate if Pasco does not provide a monthly energy availability of at least 92 percent. Also, if the Pasco WTE Facility has availability of less than 70 percent for any 6 months in a calendar year during the Contract, this failure will be considered default, which means that TECO can recover

[2]Document No. 00219-2024, filed on January 18, 2024, in Docket No. 20230129-EI.
[3]Document No. 00219-2024, filed on January 18, 2024, in Docket No. 20230129-EI.
[4]See Order No. PSC-11-0439-PAA-EQ, issued October 11, 2011, in Docket No. 20110090-EQ, *In re: Petition for Approving Negotiated Power Purchase Agreement between Progress Energy Florida, Inc. and U.S. Ecogen Polk, LLC.*

the cost of obtaining replacement power from Pasco. Staff reviewed the performance guarantees contained in the negotiated Contract and found them adequate to protect ratepayers.

Other Considerations

The proposed PPA includes additional risks relating to transmission costs. In a typical purchase power contract, the QF is assumed to be responsible for transmission-related costs. For example, in TECO's current Standard Offer Contract, the QF is solely responsible for all costs to provide transmission to the interconnection point with the Company.[5] As the Pasco WTE Facility is located in DEF's service territory, the Seller requires the use of a part of DEF's transmission capacity to deliver energy to the delivery point with TECO. Normally, Pasco would request this service and pay DEF for the transmission service, due to being the QF pursuant to Rule 25-17.0889, F.A.C. However, in this case, Section 5 of the PPA makes TECO responsible for requesting and securing the required transmission service from DEF, and for paying transmission capacity fees based on DEF's Open Access Transmission Tariff (OATT). TECO's monthly payments to Pasco would then be reduced by the amount of the transmission capacity fees paid to DEF. This contractual mechanism appears to have a net zero effect on ratepayers.

In addition, Section 5 of the PPA also makes TECO responsible for potential transmission studies and possible upgrades, if needed, to secure DEF's transmission capacity for Pasco's WTE Facility. TECO has stated, consistent with Order No. PSC- 2023-0132-PAA-EI, that it will not seek cost recovery of any transmission costs related to transmission studies or potential upgrades.

Conclusion

Based on staff's review, the negotiated PPA improves TECO's fuel diversity with the addition of renewable energy and is cost-effective based on current forecasts, saving a projected $7.3 million in NPV, with savings beginning the first year of the PPA. The Contract has adequate security and performance guarantees to protect ratepayers in the event of a default or non-performance by Pasco. In addition, consistent with Order No. PSC-2023-0132-PAA-EI, the Company will not seek cost recovery for any transmission studies or upgrades.

[5]See Order No. PSC-2023-0179-PAA-EQ, issued June 21, 2023, in Docket No. 20230041-EQ, *In re: Petition for approval of revisions to standard offer contracts and rate schedule COG-2, by Tampa Electric Company.*

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interest are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Imig)

Staff Analysis: This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.

EXECUTION VERSION

**CONTRACT FOR THE PURCHASE OF
CONTRACTED CAPACITY AND ASSOCIATED ENERGY**

This Contract for the Purchase of Contracted Capacity and Associated Energy from a small Qualifying Facility ("**Contract**") is made and entered into this _____ day of _____ 2023, (the "**Effective Date**") by and between Pasco County, a political subdivision of the state of Florida and the owner and/or operator of a Facility, as defined below, by and through its Board of County Commissioners, hereinafter referred to as the "**Capacity and Energy Provider**" or "**CEP**" and Tampa Electric Company, a private utility corporation organized under the laws of the State of Florida (hereinafter referred to as the "**Company**"). The CEP and the Company are also identified hereinafter individually, as a "**Party**" and collectively, as the "**Parties**".

WITNESSETH:

WHEREAS, the CEP is the owner and/or operator of a Facility; and

WHEREAS, the CEP desires to sell Contracted Capacity and Associated Energy, as those terms are defined below; and

WHEREAS, the Company desires to purchase Contracted Capacity and Associated Energy from the Facility; and

WHEREAS, the CEP has signed an Interconnection Agreement with the Transmission Service Provider that serves the CEP's Facility, as defined below; and

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions:

(a) **Associated Energy:** "Associated Energy" shall mean the energy generated at the Facility, as defined below, by the generating source designated to supply Contracted Capacity and which is delivered to the Company at the Delivery Point, as defined below.

(b) **Availability Adjustment:** "Availability Adjustment" shall have the meaning set forth in Section 7(a).

(c) **Availability Guarantee:** "Availability Guarantee" shall have the meaning set forth in Section 7(a).

(d) **Available Schedule: "**Available Schedule" shall have the meaning set forth in Section 11.

(e) **Capacity and Energy Provider or CEP: "**Capacity and Energy Provider" or "CEP" shall have the meaning set forth in the preamble.

(f) **CEP Event of Default:** "CEP Event of Default" shall have the meaning set forth in Section 13(a).

(g) **CEP Termination Payment:** "CEP Termination Payment" has the meaning set forth in Section 13(c)(iii).

(h) **Company:** "Company" has the meaning set forth in the preamble.

(i) **Company Event of Default**: "Company Event of Default" shall have the meaning set forth in Section 13(b).

(j) **Company Termination Payment:** "Company Termination Payment" has the meaning set forth in Section 13(c)(ii).

(k) **Contract:** "Contract" shall have the meaning set forth in the preamble.

(l) **Contract Price:** "Contract Price" shall have the meaning set forth in Exhibit I.

(m) **Contract Year:** "Contract Year" shall mean any calendar year during the Term and with respect to the first and last "Contract Year" such partial calendar year.

(n) **Contracted Capacity:** "Contracted Capacity" shall mean eighteen (18) MW that the CEP commits to reserve, make available and supply to the Company from its Facility on a firm, first call, subordinate-to-no-other-entity-or-party, must-take basis, and for which the Company commits to pay the CEP.

(o) **Delivery Point:** "Delivery Point" shall mean the point on the Company's transmission system at the interface with the Transmission Service Provider's transmission system at which the CEP shall deliver Contracted Capacity and Associated Energy via the Transmission Service Provider pursuant to a Transmission Service Agreement that shall be secured by Company as provided herein.

(p) **Delivery Period**: "Delivery Period" shall have the meaning in Section 2.

(q) **Designated Avoided Unit:** "Designated Avoided Unit" shall mean the generating unit identified in the Appendix C, with effective date June 13, 2023, to the Company's Retail Tariff Schedule COG-2 as the Company's avoided unit, selected by CEP as the unit CEP wishes to help avoid, or defer, the cost of which is incorporated in both the pricing under this negotiated agreement and the termination payment amounts set forth in Exhibit II.

(r) **Eastern Prevailing Time:** "Eastern Prevailing Time" or "EPT" shall mean the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Time.

(s) **Effective Date:** "Effective Date" has the meaning set forth in the preamble.

(t) **Environmental Attributes:** "Environmental Attributes" means the beneficial environmental attributes related to the Contracted Capacity and Associated Energy that would provide value or benefit, but will not create liability or detriment, which would include the beneficial attributes from (i) any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, including RECs, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, demand reductions or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits, CO2 credits, emissions reduction credits and all those that otherwise arise or result from the generation of energy from the Facility, and all those arising or resulting from the existence of the Facility) (1) howsoever titled and whether known or unknown, (2) whether existing as of the execution date or at any time during the Term, and (3) whether such Environmental Attributes have been certified or verified under any renewable standard, including all those that could qualify or do qualify for application toward compliance with any local, state, federal green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, or other environmental program, incentive, mandate or objective, in each case whether voluntary or mandatory, and (ii) any environmental benefit Company otherwise would have realized from or related to the Contracted Capacity and Associated Energy if Company rather than CEP had constructed, owned or operated the Facility. Environmental Attributes do not include production, energy, or investment tax credits.

(u) **Facility:** "Facility" shall mean the Pasco Solid Waste Resource Recovery Facility located in Pasco County, Florida, with the current physical address of 14230 Hays Road, Spring Hill, Florida.

(v) **FERC:** "FERC" shall mean the Federal Energy Regulatory Commission or any similar or successor governmental body exercising the same or equivalent jurisdiction.

(w) **FIN 46R:** "FIN 46R" shall have the meaning set forth in Section 14(q).

(x) **Force Majeure**: Force Majeure shall have the meaning set forth in Section 14(d).

(y) **FPSC: "**FPSC" shall mean the Florida Public Service Commission or any similar or successor governmental body exercising the same or equivalent jurisdiction.

(z) **Interconnection Agreement:** "Interconnection Agreement" shall mean the agreement and associated documents by and among CEP and the

Transmission Service Provider (which as of the date of this Contract is Duke Energy Florida) governing the terms and conditions of the interconnection of the Facility by which capacity and energy will be delivered during the Term of this Contract from the Facility to the Transmission Service Provider at the Interconnection Point, which subsequently through Third-Party Transmission Services, allows for receipt of Contracted Capacity and Associated Energy by Company.

(aa) **Interconnection Point:** "Interconnection Point" shall mean the plant busbar connection to the high side of the Facility's step-up transformer(s) where capacity and energy shall be delivered to the Transmission Service Provider that serves the Facility, from which the CEP will transmit through Third-Party Transmission Services Contracted Capacity and Associated Energy to Company. The Interconnection Point shall be specified in detail in the Interconnection Agreement.

(bb) **Interest Rate:** "Interest Rate" shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

(cc) **MW:** "MW" shall mean megawatt.

(dd) **MWh:** "MWh" shall mean megawatt hours.

(ee) **Non-Dispatched Capacity:** "Non-Dispatched Capacity" shall mean the amount of Contracted Capacity that the Company cannot receive during any given hour, due to an emergency condition, including interruptions on the Company's transmission system; any events or circumstances necessitating the maintenance of the reliability and integrity of any part of the Company's system; events or circumstances necessitating the prevention of the endangerment of life or property; events or circumstances necessitating the prevention of significant disruption of electric service to the Company's customers; or requests by the state's reliability coordinator or bulk power system balancing agent in efforts to maintain electric grid stability.

(ff) **Non-Dispatched Energy:** "Non-Dispatched Energy" shall mean the energy associated with Non-Dispatched Capacity and which the Company declines to accept during any given hour, due to the reasons stated in the definition of Non-Dispatched Capacity.

(gg) **Non-Planned Maintenance Months:** "Non-Planned Maintenance Months" shall have the meaning set forth in Section 10(c).

(hh) **Party or Parties:** "Party" or "Parties" shall have the meaning set forth in the preamble.

(ii) **Performance Security:** "Performance Security" shall have the meaning set forth in Section 8.

(jj) **Planned Maintenance: "**Planned Maintenance" shall mean any scheduled or planned maintenance of the Facility, and the production of Associated Energy from the Facility, that would lead to an outage of the Facility and shall be scheduled in accordance with Section 10.

(kk) **Product:** "Product" shall mean the Contracted Capacity, Associated Energy, any other ancillary services required for delivery, and Environmental Attributes associated with the Contracted Capacity and Associated Energy purchased hereunder.

(ll) **Qualifying Facility:** "Qualifying Facility" shall mean a cogeneration facility, or small power production facility, that satisfies the definition of, and qualifies as, a Qualifying Facility in accordance with the provisions of Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations (C.F.R.), promulgated by the FERC, as the same may be amended from time to time, and must be "new capacity" pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA), construction of which began on or after November 9, 1978.

(mm) **Renewable Energy Credits or RECs: "**Renewable Energy Credits" or "RECs" means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy that could qualify or does qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective at any time during the Term.

(nn) **Renewable Generating Facility:** "Renewable Generating Facility" shall mean a generating facility that satisfies the definition of, and qualifies as, a renewable generating facility in accordance with the provisions of Section 366.91, Florida Statutes, and Rule 25-17.210 (1), F.A.C.

(oo) **Replacement Cost:** "Replacement Cost" means (a) with respect to Company, the costs incurred by Company, acting in a commercially reasonable manner, to purchase at the Delivery Point a replacement for the Product over the remainder of the Delivery Period, plus the costs incurred by Company in purchasing such substitute Product and any additional transmission charges reasonably incurred at the Delivery Point or any other Company transmission system interface; provided, that if no replacement is obtained, then the termination payment amount set forth on Exhibit II for such Contract Year will be utilized for this calculation; and also including the full cost of the Third-Party Transmission Services Company has reserved for the remainder of the Delivery Period; and (b) with respect to CEP, the costs incurred by CEP, acting in a commercially reasonable manner, to sell at the

Delivery Point the Product over the remainder of the Delivery Period, plus the costs incurred by CEP in entering into an arrangement with a substitute purchaser and any additional transmission charges reasonably incurred at the Interconnection Point or any other Transmission Service Provider transmission system interface; provided, if no replacement is obtained, then the Transmission Service Provider "as-available" energy price will be utilized for this calculation. In either event, the Party making the determination will provide reasonable evidence to the other Party of the Replacement Cost determined hereunder. In the event the Transmission Service Provider "as-available" energy price is utilized, the calculation shall be the net present value for all future years.

(pp) **Sales Price:** "Sales Price" means the price at which CEP, acting in a commercially reasonable manner, resells from the Facility Contracted Capacity and Associated Energy not received by Company; provided, if no replacement is obtained, then the Transmission Service Provider "as-available" energy price will be utilized for this calculation. In any event, CEP shall provide reasonable evidence of the Sales Price as so determined hereunder.

(qq) **SEC:** "SEC" shall have the meaning set forth in Section 14(q).

(rr) **Term:** "Term" shall have the meaning set forth in Section 2.

(ss) **Third-Party Transmission Services:** "Third-Party Transmission Services" shall mean the firm transmission service(s) and ancillary services required to deliver Contracted Capacity and Associated Energy from the Facility (Interconnection Point) to the Company's transmission system (Delivery Point).

(tt) **Transmission Service Agreement:** "Transmission Service Agreement" shall mean the contract by which Company shall obtain Third-Party Transmission Services from Transmission Service Provider to transmit Associated Energy from the Facility to the Company's transmission system at the Delivery Point.

(uu) **Transmission Service Provider**: "Transmission Service Provider" means the owner of the transmission system related to the Facility (and interconnection provider under the Interconnection Agreement) and counterparty to the Transmission Service Agreement, which as of the date of this Contract is Duke Energy Florida, but would include any successor thereto by name change, operation or law or otherwise permitted.

(vv) **TSP Disconnect Event:** "TSP Disconnect Event" shall mean any event in which the Transmission Service Provider requires CEP to disconnect the Facility from its transmission system.

2. **Term:** This Contract shall commence immediately upon its execution by the Parties and shall terminate at 12:00 A.M. on January 1, 2035 ("**Term**"). The delivery of Contracted Capacity and Associated Energy shall be from 12:00 A.M. January 1, 2025, through 11:59 P.M. December 31, 2034 ("**Delivery Period**"). The beginning of the Term and effectiveness of this Contract is subject to Company receiving unconditional approval from the FPSC, FERC and any other governmental entity necessary to approve this Contract and that pursuant to any such approvals Company shall not be disallowed from, and shall have full allowance for, recovering all costs associated with this Contract and the payments by Company hereunder.

3. **Company's Capacity and Energy Purchase Commitment**: The Company agrees to purchase all Contracted Capacity and Associated Energy, excluding Non-Dispatched Energy, generated at the Facility and provided to the Company at the Delivery Point by the CEP pursuant to this Contract, excluding the amount of capacity and energy consumed by the Facility's station service equipment (such as generator auxiliaries, emissions control and monitoring equipment, fuel handling equipment, etc.) and all transmission system losses incurred by the CEP to effect delivery of Contracted Capacity and Associated Energy to the Delivery Point, except as otherwise provided herein. The Parties agree that the sale of Contracted Capacity and Associated Energy includes the sale and transfer of all Environmental Attributes associated therewith at no cost. If Company fails to receive Associated Energy at the Delivery Point (other than an event excused hereunder, including Force Majeure), then Company shall pay to CEP on the date payment would otherwise be due in respect of the month in which such failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. For clarity, the amount of Contracted Capacity and Associated Energy will be metered at the Delivery Point.

4. **Non-Dispatched Capacity and Non-Dispatched Energy Restriction:** To the extent that there is Non-Dispatched Capacity and Non-Dispatched Energy during a given hour, such Non-Dispatched Capacity and Non-Dispatched Energy may be sold as "as-available" energy by CEP to third parties.

5. **Responsibilities for Interconnection Service, Third-Party Transmission Service and Company Transmission Service:** It is the responsibility of the CEP to request and secure the required interconnection service from the Transmission Service Provider that serves the CEP's Facility, and CEP shall be responsible to arrange and pay to interconnect the Facility to the Transmission Service Provider and any other interconnection costs related to the Facility, including any telemetering equipment needed to account for the dynamic scheduling of Associated Energy from the Facility (which shall be the sole cost and expense of CEP). Since the Facility is not located within the Company's transmission system, Company shall request and secure the required Third-Party Transmission Service(s) required to deliver Contracted Capacity and Associated Energy to the Company's transmission system; provided that the Transmission Service Agreement costs associated with such Third-Party Transmission Service shall be passed through to CEP and reduce the payments otherwise due by Company

hereunder. With respect to the Transmission Service Agreement, it is the responsibility of Company to: (i) satisfy the Transmission Service Provider's Open Access Transmission Tariff requirements and/or all non-FERC jurisdictional transmission service agreements required to deliver Contracted Capacity and Associated Energy to the Company, as applicable; and (ii) request and purchase all required firm Third-Party Transmission Services in a timely manner to satisfy the provisions of this Contract. The transmission reservation will be for a capacity at the Interconnection Point to account for line losses and allows for receipt of Contracted Capacity to Company at the Delivery Point.

More specifically with respect to the Transmission Service Agreement, if Transmission Service Provider requires a transmission study prior to confirming the transmission reservation under the Transmission Service Agreement, Company (at its own expense and without passing through to CEP) will pay for such study. If such study identifies unexpected costs, such as transmission and/or distribution system upgrades (or other affected system costs) required to facilitate the delivery of energy under this Contract, Company shall, in its sole discretion, have the option to (a) pay such costs for its own account (without passing through to CEP); or (b) terminate this Contract; provided, that CEP shall have the right to pay for such additional costs in order to not have the Contract terminate, with the acceptable means by which the CEP will pay for such costs to be determined by the Parties. If the Contract is so terminated, neither Party will have any further obligations hereunder.

6. Payment and Billing:

(a) The calendar month shall be the standard period for all payments under this Contract (other than any CEP Termination Payment or Company Termination Payment, as applicable). As soon as practicable after the end of each month, Company will render to the CEP a purchase statement for the payment obligations, if any, incurred hereunder during the preceding month. The Company agrees to pay the CEP for Product delivered to the Company at the Delivery Point at the rates set forth on Exhibit I, which payments shall be fixed for the applicable Contract Years and not subject to escalation (as set forth in the purchase statement provided by Company to CEP pursuant to this Section 6).

(b) All purchase statements under this Contract shall be due and payable in accordance with each Party's purchase statement instructions (e.g., wiring instructions) on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the purchase statement or, if such day is not a business day, then on the next business day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) A Party may, in good faith, dispute the correctness of any purchase statement or any adjustment to a purchase statement, rendered under this Contract or adjust any purchase statement for any arithmetic or computational error within twelve (12) months of the date the purchase statement, or adjustment to a purchase statement, was rendered. In the event a purchase statement or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the purchase statement shall be required to be made when due, with notice of the objection given to the other Party. Any purchase statement dispute or purchase statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) business days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to a purchase statement is waived unless the other Party is notified in accordance with this Section 6(c) within twelve (12) months after the purchase statement is rendered or any specific adjustment to the purchase statement is made.

(d) The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of the Product during the monthly billing period under this Contract, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

(e) If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest, and payments or credits, that Party shall pay such sum in full when due.

(f) With respect to CEP, the Parties agree to recognize that this Section 6 is subject to Florida's Prompt Payment Act (Florida Statutes Sections 218.70-218.80) and allows CEP, for all purposes of this Section 6, forty-five (45) days after receipt of any purchase statement, as applicable, to make payment, including interest.

7. Availability:

(a) **Availability Guarantee and Availability Adjustment:** During the Delivery Period, CEP guarantees that the Facility shall be 97.0% available during the months of January, February, June, July, August, September, October and

December and 92.0% available during the months of March, April, May and November ("**Availability Guarantee**"). During the Delivery Period, the ("**Availability Adjustment**") shall be calculated for each month and rounded to the nearest 0.1% as follows:

AA = (AG – AED/EED) * 2 * AEP

WHERE:

AA = Availability Adjustment
AG = Availability Guarantee applicable to such month
AED = Actual Energy Delivered from the Facility to the Delivery Point
EED = the maximum Expected Energy Delivered, calculated as Contracted Capacity multiplied by the total hours in the applicable month (less any Non-Dispatched Energy in such month and less any MWh not produced due to Planned Maintenance or Force Majeure)
AEP = Associated Energy Payment, which is the unadjusted Contract Price

The Availability Adjustment multiplied by the applicable Associated Energy will be included as a reduction in the purchase statement from Company to CEP as set forth in Section 6. If the above calculation leads to a negative number, then the Availability Adjustment shall be zero. Illustrative examples of these calculations are set forth on Exhibit I.

(b) At any time during the Term of this Contract that CEP is unable to deliver energy from the Facility, and such event is not due to Planned Maintenance or Force Majeure, CEP, in its discretion, may deliver replacement energy to Company from a third-party source as a replacement for the Product contemplated under this Contract; provided, however in such instance, the replacement energy must be generated by a Renewable Generating Facility. In this event, CEP shall be responsible for: (i) arranging delivery from such third-party source to the Delivery Point; and (ii) all associated transmission charges, line losses, service charges, and other applicable fees and costs necessary for the delivery of all or any of the replacement energy from the third-party source. Delivered third-party energy must include the identical Environmental Attributes as energy provided from the Facility, and Company must receive ownership of the identical Environmental Attributes the same as if Company had received the Associated Energy from the Facility.

8. **Performance Security Guarantees:** The Parties require certain security guarantees from each other to ensure performance under this Contract in order to protect their respective interests in the event the other Party fails to comply with the terms in this Contract, which shall be in form and substance as described herein. In any Contract Year, if (i) with respect to Company, Company does not maintain a minimum Moody's senior unsecured investment credit rating of Baa3 and a

minimum Standard & Poor's senior unsecured investment credit rating of BBB-, or (ii) with respect to CEP, CEP does not maintain a minimum Moody's senior unsecured investment credit rating of Baa3 and a minimum Standard & Poor's senior unsecured investment credit rating of BBB-, that Party shall provide security, whether in the form of cash, letter of credit, security bond, or other form of collateral acceptable to the other Party, which shall equal the transmission charges under the Transmission Service Agreement for the lesser of the following twelve (12) month period or remainder of the Term (the "**Performance Security**").

9. **Reserved.**

10. **Production and Maintenance Schedule**: During the Term, the CEP agrees to the following:

(a) The CEP shall provide the Company in writing prior to June 1st of each calendar year an estimate of the amount of electricity to be generated by the Facility and delivered to the Company for each month of the following calendar year, including a tentative schedule of the time, duration and magnitude of any Planned Maintenance of the Facility or reductions to the amount of Contracted Capacity that the CEP can make available at the Delivery Point. CEP shall use commercially reasonable efforts to schedule Planned Maintenance during the months of March, April, May, October and November. CEP shall notify the Company ninety (90) days prior to any Planned Maintenance of the Facility to confirm such schedule, and CEP agrees to use commercially reasonable efforts to comply with such schedule. CEP shall promptly notify the Company of any changes to the Planned Maintenance schedule, subject to the restrictions provided in subsection (b) below.

(b) During the Delivery Period, the Facility may have up to one (1) major turbine overhaul outage for its currently operating turbine (such outage anticipated to be in 2028); it being understood between the Parties that such outage is on an anticipated seven (7) year schedule. CEP will use all commercially reasonable efforts to comply with this schedule; however, the Parties acknowledge such schedule is subject to change. Such outage will be included in the Planned Maintenance scheduling set forth in subsection (a) above. The calculation of EED for availability in Section 7 will be reduced by the actual amount of Planned Maintenance (i) up to sixty-five (65) days in all years without a major turbine overhaul outage; and (ii) up to seventy-five (75) days of Planned Maintenance during the year in which a major turbine overhaul outage is conducted, which shall be applied in the month in which the Planned Maintenance occurs; provided, that if the Planned Maintenance exceeds the days provided above, such additional days shall not reduce EED as provided herein.

(c) By July 1st of each calendar year, the Company shall notify the CEP in writing whether the requested scheduled maintenance period(s) for the Facility per

Section 10(a) are acceptable; provided, if any Planned Maintenance is scheduled in months other than March, April, May, October and November ("**Non-Planned Maintenance Months**"), Company shall have sole discretion to object to such schedule. If the Company cannot accept any of the period(s) requested during Non-Planned Maintenance Months, the Company shall advise the CEP of the time period closest to the requested period(s) when the outage(s) can be scheduled; provided, the Parties agree to meet to seek to finalize a mutually acceptable Planned Maintenance schedule. Once the schedule has been established and approved, either Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.

(d) During the Term, the CEP will contract with or employ a qualified Facility operator. The CEP shall ensure that operating personnel are on duty at all times, twenty-four (24) clock hours per calendar day and seven (7) calendar days per week.

(e) The CEP shall promptly update the yearly generation schedule and maintenance schedule of the Facility as soon as any change to such schedules are determined to be necessary.

(f) The CEP shall comply with reasonable requirements of the Company regarding day- to-day or hour-by-hour communications between the Parties relative to the performance of this Contract.

11. **Availability Procedure**: Commencing on the calendar day prior to the beginning of the Delivery Period, and continuing each calendar day thereafter during the Delivery Period, by 7:00 A.M. EPT, Company shall assume an hourly schedule from the CEP equal to the Contracted Capacity per hour; provided the CEP shall electronically transmit to the Company an hourly schedule for the next calendar day of the Contracted Capacity and Associated Energy to be delivered during the days CEP forecasts the energy delivery per hour to be any value less than the Contracted Capacity. The hourly schedule shall be for the entire calendar day, including what hours CEP cannot provide such Contracted Capacity and Associated Energy during the next day ("**Available Schedule**"). The CEP's Available Schedule for Fridays will include Saturday, Sunday, and Monday schedules. The CEP's Available Schedule during holiday periods will be similarly adjusted to include the holiday period.

12. **Environmental Attributes:** The Parties agree that Company's purchase of Contracted Capacity and Associated Energy covered by this Contract includes all Environmental Attributes associated therewith at no cost.

13. **Default**:

(a) The CEP shall be in default ("**CEP Event of Default**") under this Contract if it:

(i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); or

(ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or

(iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; or

(iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof; or

(v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or

(vi) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;

(vii) fails to perform in accordance with Section 8;

(viii) fails to achieve an availability of seventy percent (70%) for any six (6) months in a given Contract Year.

(ix) fails to comply with Section 14(f) in connection with an attempted assignment of this Contract.

(x) fails to pay Company any undisputed amount payable by CEP to Company pursuant to this Contract by the due date (including with respect to failure to meet the Availability Guarantee) and CEP fails to cure such failure to pay within forty-five (45) days after receipt of written demand from Company.

(xi) made any representation, warranty, or covenant hereunder that proves to be incorrect in any material respect when made, unless the CEP promptly commences and diligently pursues action to cause such representation, warranty, or covenant to become true in all material respects and does so within thirty (30) days after written notice thereof has been given to CEP by Company (unless such cure is not capable of being effected within such thirty (30) day period, in which case CEP will have an additional thirty (30) day period in which to perform such cure) and such cure removes any material adverse effect on Company of such representation, warranty, or covenant having been incorrect.

(xii) fails to perform or comply with any other material term or condition of this Contract, other than those listed above, which failure continues for thirty (30) days after written notice from Company.

(b) The Company shall be in default ("**Company Event of Default**") under this Contract if it:

(i) fails to pay CEP any undisputed amount payable by Company to CEP pursuant to this Contract by the due date, and Company fails to cure such failure to pay within forty-five (45) days after receipt of written demand from CEP.

(ii) fails to perform or comply with any other material term or condition of this Contract, other than as provided in Section 13(b)(i) above which failure continues for thirty (30) days after written notice from CEP.

(c) **Default Remedy**:

(1) If Company has the right to terminate this Contract due to a CEP Event of Default, the following shall apply:

(i) If CEP defaults pursuant to Section 13(a)(viii) of this Contract, after receipt of such notice of termination from Company, CEP shall have the right to an additional cure period of three (3) consecutive months (including the month in which the notice is given) following such notice to cause the Facility to meet at least seventy percent (70%) availability over such three (3) month period; provided, if CEP fails to achieve such result, CEP shall have an additional ninety (90) days to secure a replacement of the Product to be delivered pursuant to the terms of this Contract at the Delivery Point for the remainder of the Delivery Period. The terms and conditions of such replacement Product shall be the

same as provided herein and subject to the approval of Company.

(ii) If CEP does not choose or fails to cure pursuant to subsection (i) above, Company will be entitled to immediately terminate this Contract and recover from CEP all amounts then owed by CEP to Company under this Contract and recover from CEP the Company's Replacement Cost less the value of this Contract to Company over the remainder of the Delivery Period (determined in a commercially reasonable manner) ("**Company Termination Payment**"). Any purchase statement that includes such Company Termination Payment shall include a written statement explaining in reasonable detail the calculation of such amount.

(iii) If CEP terminates this Contract due to a Company Event of Default, CEP will be entitled to recover from Company all amounts then owed by Company to CEP under this Contract and recover from Company the positive difference, if any, between the value of this Contract to CEP over the remainder of the Delivery Period (determined in a commercially reasonable manner) and the CEP Replacement Cost (the "**CEP Termination Payment**"). Any purchase statement that includes such CEP Termination Payment shall include a written statement explaining in reasonable detail the calculation of such amount.

14. General Provisions:

(a) **Permits:** The CEP hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority the CEP is required to obtain as a prerequisite to engaging in the activities provided for in this Contract. The Company hereby agrees to seek to obtain any and all governmental permits, certifications or other authority the Company is required to obtain as a prerequisite to engaging in the activities described in this Contract.

(b) **Indemnification:** The Company and the CEP shall each be responsible for its own facilities in ensuring adequate safeguards for other Company customers, the Company and CEP personnel and equipment, and for the protection of its own generating system. To the extent permitted by law, the Company and the CEP shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:

(i) any act or omission by a Party or that Party's contractors, agents, servants and employees in connection with the installation or operation of that Party's generation system or the operation thereof in connection with the other Party's system; and

(ii) any defect in, failure of, or fault related to a Party's generation system; and

(iii) the negligence of a Party or negligence of that Party's contractors, agents, servants and employees.

(c) **Insurance**: On or before the Effective Date, the CEP shall deliver to the Company proof of all insurance CEP maintains on the Facility per its operating agreements, which insurance shall be adequate for the operation and maintenance of the Facility. If reasonably requested after the Effective Date, CEP shall deliver such proof of insurance as soon as reasonably practicable. CEP shall pay all premiums and other charges due on said policies and keep its policies in full force and effect during the Term.

(d) **Force Majeure:** If either Party shall be unable, by reason of Force Majeure, to carry out its obligations under this Contract, either wholly or in part, the Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch. The term ("**Force Majeure**") shall be taken to mean all acts of God, strikes, lockouts or other industrial disturbances at the manufacturing site of the major equipment components or the construction site, wars, blockades, insurrections, riots, arrests and restraints of rules and people, pandemics, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or similar occurrences, and shall specifically include a TSP Disconnect Event and any interruption or curtailment of firm transmission service by Transmission Service Provider to the Delivery Point; provided, however that no occurrence may be claimed to be a Force Majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim and specifically does not include interruption in fuel supply (but does include interruption of fuel transportation); provided, however, Force Majeure shall include an interruption in fuel supply that is due to a transportation failure by a third party that would otherwise constitute a Force Majeure (and such failure could not be prevented or mitigated by the commercially reasonable actions of CEP or said third party). The CEP agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with the Transmission Service Provider system if the same are rendered inoperable due to actions of the CEP, its agents, or Force Majeure events affecting the Facility or the interconnection with Transmission Service Provider. If CEP is the claiming party, Force Majeure does not include any action taken by CEP in its governmental capacity.

(e) **Representations, Warranties, and Covenants of the CEP**:

The CEP represents and warrants that as of the date this Contract is executed:

(i) **Organization, Standing and Qualification:** The CEP is a political subdivision of the State of Florida duly organized and validly existing in good standing under the laws of and has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The CEP is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the Company.

(ii) **Due Authorization, No Approvals, No Defaults, etc.:** Each of the execution, delivery and performance by the CEP of this Contract has been duly authorized by all necessary action on the part of the CEP, does not require any approval, except as has been heretofore obtained, of the Board of County Commissioners, of the CEP or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the CEP, except for such as have been duly obtained, and does not contravene or constitute a default under any law, or any agreement, judgment, injunction, order, decree or other instrument binding upon the CEP, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

(iii) **Compliance with Laws:** The CEP has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The CEP is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the CEP or the Company. By entering into this Contract, the CEP represents and warrants that Facility is a Qualifying Facility and a Renewable Generating Facility and confirms such representation and warranty with the signature of the CEP's authorized representative on this Contract.

CEP warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court, (c) relief by way of injunction, order for

specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

In addition, CEP warrants continuing throughout the Term as follows: (i) entry into and performance of this Contract by CEP are for a proper public purpose within the meaning of any applicable law, (ii) the Term does not extend beyond any applicable limitation imposed by any applicable law, and (iii) CEP's obligations to make payments hereunder are unsubordinated obligations and such payments are otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all CEP's obligations hereunder.

(iv) **Governmental Approvals:** Except as expressly contemplated herein, neither the execution and delivery by the CEP of this Contract, nor the consummation by the CEP of any of the transactions contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of governmental authority, except in respect of permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the CEP has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

(v) **No Proceedings:** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the CEP, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the CEP's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The CEP has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. CEP is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

(f) **Assignment:** The Company and the CEP shall have the right to assign its benefits under this Contract, but the CEP shall not have the right to assign its obligations and duties without the Company's prior written consent and such consent shall not be unreasonably withheld.

(g) **Disclaimer:** In executing this Contract, the Company does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the CEP or any assignee of this Contract.

(h) **Notification:** For purposes of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Contract, the Parties designate the following to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions changing such designate.

For the CEP:

Pasco County Solid Waste Director
14230 Hayes Road
Spring Hill, FL 34610

with a copy to:

Pasco County Attorney
8731 Citizens Drive, Suite 340
New Port Richey, FL 34654

For the Company:

Tampa Electric Company
Attention: Director, Origination & Trading
P.O. Box 111
Tampa, Florida 33601

with a copy to:

Tampa Electric Company
Attention: Associate General Counsel
P.O. Box 111
Tampa, Florida 33601

(i) **Governing Law and Jurisdiction:** This Contract shall be governed by and construed and enforced in accordance with the laws, rules, and regulations of the State of Florida and the Company's Tariff as may be modified, changed, or amended from time to time. Any action brought under this Contract or with respect to any claim arising from the subject matter thereof shall be brought and heard in a state court of competent jurisdiction at the West Pasco Judicial Center in New Port Richey, Pasco County, Florida. If the claim(s) that form the basis for any such action must be adjudicated in

federal court, then venue for that action shall be in the United States District Court for the Middle District of Florida, Tampa Division.

(j) **Waiver of Jury Trial:** Each Party waives, to the fullest extent permitted by applicable law, any and all rights it may have to a trial by jury in respect of any suit, action or proceeding relating to this Contract or any credit support document. Each Party (i) certifies that no representative, agent or attorney of the other Party or any credit support provider has represented, expressly or otherwise, that such other Party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other Party have been induced to enter into this Contract and provide for any credit support document, as applicable, by, among other things, the mutual waivers and certifications in this Section.

(k) **Severability:** If any part of this Contract, for any reason, be declared invalid, or unenforceable by a court or public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion and provided, further, that if any such event occurs, the Parties shall use their best efforts to reform this Contract in order to give effect to the original intention of the Parties.

(l) **Complete Contract and Amendments:** All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties to this Contract.

(m) **Survival of Contract:** This Contract, as it may be amended from time to time, shall be binding and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.

(n) **Record Retention:** The CEP agrees to retain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all CEP entities to retain for the same period all such records.

(o) **No Waiver:** No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

(p) **Set-off:** The Company may at any time, but shall be under no obligation to, set off any and all sums due from the CEP against sums due to the CEP hereunder.

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

(r) To the extent allowed by law, neither Party shall disclose the price terms of this Contract to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable and legal, use reasonable efforts to prevent or limit the disclosure. Any Party who receives a request for production of documents related to the price terms of this Contract shall provide notice to the other Party at least ten (10) days prior to producing the information unless production of the documents is required in less than ten (10) days, in which case the Party from whom production is sought shall provide notice to the other Party as soon as is reasonably possible following the Party's receipt of a request for production of documents. The purpose of this notice requirement is to afford each Party an adequate opportunity to undertake steps necessary to protect the confidentiality of the information as provided under Florida Statutes. The Party opposing disclosure shall bear all costs in any proceedings seeking to protect the confidentiality of the

information. Such opposing Party shall also indemnify the other Party for any fines or third-party costs awarded by the court to be paid by the other Party as a result of the opposing Party's opposition to disclosure.

[*signature page to follow*]

EXECUTION VERSION

IN WITNESS WHEREOF, a duly authorized officer of CEP and the Company have executed this Contract the day and year first above written.

Attest:

_____

Nikki Alvarez-Sowles, Esq.
Pasco County Clerk and Comptroller

Pasco County, Florida

By: _____

Jack Mariano, Chairman
Pasco County Commission

TAMPA ELECTRIC COMPANY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[*signature page to Contract*]