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WASHINGTON, D.C.

315 SOUTH CALHOUN STREET
P.O. DRAWER 810 (ZIP 32302-0810)
TALLAHASSEE, FLORIDA 32301
(904) 224-7000
FAX (904) 224-8832

SPECIAL COUNSEL
SHAW, LICITRA,
PARENTE, ESERNIO
& SCHWARTZ, P.C.
GARDEN CITY, NY
NEW YORK, NY

August 9, 1994

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director
Public Service Commission
Division of Records & Reporting
101 E. Gaines St.
Tallahassee, FL 32301

940819

Re: In re: Amendment of Standard Offer Contracts of
FLORIDA POWER CORPORATION and AUBURNDALE POWER
PARTNERS, LIMITED PARTNERSHIP

Dear Ms. Bayo:

On August 5, 1994, Florida Power Corporation and
Auburndale Power Partners, Limited Partnership filed a Joint
Petition for Expedited Approval of Contract Modifications
("Joint Petition") in the proceeding referenced above.
Enclosed are the original and fifteen copies of a fully
executed signature page to be substituted for the signature
page originally filed with the Joint Petition. Also enclosed
for filing in the above referenced proceeding are sixteen
copies of the Consent and Agreement, as amended, which is
referenced in the Joint Petition.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG** _____
- LEG 1 _____
- LIN 6 _____
- OPC 1 _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

Thank you for your consideration in this matter.

Sincerely,

HOLLAND & KNIGHT

[Signature]
D. Bruce May

[Handwritten stamp: Mrs. Blanca S. Bayo]

Enclosure
DBM/sms
cc: J. Bradford Hines
Bob Ciotti
Allen Honey
Robert F. Riley

Consent + Agreement
TAL-48138
DOCUMENT NUMBER-DATE

08122 AUG-94

AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP

12500 Fair Lakes Circle - Suite 300
Fairfax, Virginia 22033

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AMENDMENT NO. 1

July 15, 1994

FLORIDA POWER CORPORATION
3201 34th Street South
St. Petersburg, FL 33711

LFC NO. 47 CORP.
Three Radnor Corporate Center - Suite 400
100 Matsonford Road
Radnor, PA 19087

RE: **The Consent referred to below**

Gentlemen:

Reference is made to the Consent and Agreement, dated as April 7, 1994 (the "Consent"), among Auburndale Power Partners, Limited Partnership, a Delaware limited partnership ("APP"), Florida Power Corporation, a Florida corporation ("FPC"), and LFC No. 47 Corp., a Delaware corporation ("LFC"). APP, FPC and LFC hereby amend the Consent as follows. Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed thereto in the Consent.

- (1) **Amendment to Section 3 of the Consent (Effect of Assignment)**. Section 3 of the Consent is hereby amended by deleting such Section in its entirety and substituting, in lieu thereof, the following:

"3. [Reserved.]"

- (2) **Amendment to Section 7 of the Consent (Role of LFC)**. Section 7 of the Consent is hereby amended by deleting such Section in its entirety and substituting, in lieu thereof, the following:

"7. [Reserved.]"

- (3) **Amendment to Section 8(c) of the Consent (Termination)**. Section 8(c) of the Consent is hereby amended by deleting the date "July 31, 1994" in clauses (ii) and (iii) thereof and substituting, in lieu thereof, the date "August 31, 1994".

- (4) **Miscellaneous**. This Amendment.

- (a) Entire Agreement. Contains the entire agreement and understanding between the parties hereto, their agents, and their employees as to the subject matter of this Amendment, and supersedes in its entirety any and all previous communications between the parties hereto as the subject matter hereof;
- (b) Counterparts. May be executed in multiple counterparts, each of which shall be deemed to be an original; and
- (c) Successors and Assigns. Shall be binding upon and inure to the benefit of the parties to the Consent and their respective successors and assigns.

If you agree with the foregoing, please sign the enclosed copy of this letter and return it to the undersigned.

Very truly yours,

**AUBURNDALE POWER PARTNERS,
LIMITED PARTNERSHIP**

By: El Dorado Energy Company,
its general partner

By: Jerome L. Glazer

Name: Jerome L. Glazer

Title: Vice President

ACCEPTED AND AGREED:

FLORIDA POWER CORPORATION

By: Joseph H. Richardson

Name: JOSEPH H. RICHARDSON

Title: Senior VICE PRESIDENT

LFC NO. 47 CORP.

By: Henry A. Lyczak

Name: HENRY A. LYCZAK

Title: VICE PRESIDENT

CONSENT AND AGREEMENT

CONSENT AND AGREEMENT (this "Consent"), dated as of April 7, 1994, among Auburndale Power Partners, Limited Partnership, a Delaware limited partnership ("APP" or "QP"), Florida Power Corporation, a Florida corporation ("FPC"), and LFC No. 47 Corp., a Delaware corporation ("LFC").

W I T N E S S E T H:

WHEREAS, FPC and LFC are parties to the Standard Offer Contracts (all capitalized terms used in these recitals shall have the meanings ascribed thereto in Section 1 hereof); and

WHEREAS, each Standard Offer Contract currently contemplates FPC being supplied with, and FPC having the obligation to purchase the electric energy and capacity from existing facilities owned by LFC located north of FPC's Central Florida Substation; and

WHEREAS, the supply from a facility located south of such Substation does not decrease FPC's capability to import power at such Substation; and

WHEREAS, APP is constructing the Auburndale Facility in Polk County, Florida, near the town of Auburndale, which is south of FPC's Central Florida Substation; and

WHEREAS, FPC desires limited control of the megawatt-hours sold under the Standard Offer Contracts; and

WHEREAS, LFC intends to assign to APP all of its right, title and interest in each Standard Offer Contract; and

WHEREAS, APP intends to sell to FPC electric energy and capacity produced by the Auburndale Facility pursuant to the Standard Offer Contracts; and

WHEREAS, it is a condition precedent to the assignment of the Standard Offer Contracts by LFC to APP that the parties hereto execute this Consent;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Capitalized terms used herein shall have the following meanings:

"APP" shall have the meaning set forth in the preamble hereto.

"Auburndale Facility" shall mean the approximately 150 megawatt electric generating facility, located in Section 10 and/or 15, Township 28S, Range 25E, in Polk County, Florida, near the town of Auburndale, which facility is referred to in the Negotiated Contract.

"Consent" shall have the meaning set forth in the preamble hereto.

"Coordinated Curtailment Period" shall have the meaning ascribed thereto in Section 4(f) hereof.

"Curtailment Period" means a Coordinated Curtailment Period or an Off-Peak Curtailment Period.

"Effective Date" shall have the meaning set forth in Section 8(a) hereof.

"FPC" shall have the meaning set forth in the preamble hereto.

"FPSC" shall mean the Florida Public Service Commission.

"Jefferson Facility" shall mean the 8.5 megawatt electric generating facility located 2.5 miles south of Monticello, Florida on US 19S, in Jefferson County, Florida.

"Jefferson Standard Offer Contract" shall mean the Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility, dated April 5, 1989, between FPC and LFC (as assignee of Sun Bank of Tampa, not individually, but solely as Indenture Trustee, successor by merger to Flagship Bank of Tampa, as Indenture Trustee, under the Indenture of Trust, dated as of December 1, 1982, between Jefferson County, Florida, as Issuer, and such Indenture Trustee), pertaining to the purchase by FPC of all of the electric power generated by the Jefferson Facility (as amended, supplemented or otherwise modified from time to time).

"LFC" shall have the meaning set forth in the preamble hereto.

"LFC Facilities" shall mean the Madison Facility and the Jefferson Facility.

"Madison Facility" shall mean the 8.5 megawatt electric generating facility located at County Road, 591 on Route 3 in Madison County, Florida.

"Madison Standard Offer Contract" shall mean the Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility, dated April 5, 1989, between FPC and LFC (as assignee of Sun Bank of Tampa, not individually, but solely as Indenture Trustee, successor by merger to Flagship Bank of Tampa, as Indenture Trustee, under the Indenture of Trust, dated as of June 1, 1983, between Madison County, Florida, as Issuer, and such Indenture Trustee), pertaining to the purchase by FPC of all of the electric power generated at the Madison Facility (as amended, supplemented or otherwise modified from time to time).

"Negotiated Contract" shall mean the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, dated March 18, 1991, between APP (as assignee of El Dorado Energy Company) and FPC, as amended, supplemented or otherwise modified from time to time.

"Off-Peak Curtailment Period" shall have the meaning ascribed thereto in Section 4(d) hereof.

"Ramp Period" shall mean each period during which the Facility is ramping up or ramping down the energy output to/from the output specified for any Curtailment Period, from/to the sum of the committed capacities under the Standard Offer Contracts. The ramp rate shall be mutually agreed by both parties and (except for those periods set forth at the end of this definition) based on Westinghouse Electric Corporation's standard or normal specifications for the Facility, but shall not be less than one (1) megawatt per minute nor more than three (3) megawatts per minute. Each Ramp Period shall be completed prior to the beginning and the end of the related Curtailment Period, such that the Facility is operating at the reduced capacity at the beginning of each Curtailment Period and at the full capacity at the end of each Curtailment Period. Notwithstanding the above, for any Off-Peak Curtailment Period when the QF and FPC mutually agree that FPC shall have no obligation to purchase and QF shall have no obligation to sell any electric energy under the Negotiated Contract or either Standard Offer Contract, the associated Ramp Period shall be one (1) hour before and two (2) hours after the associated Off-Peak Curtailment Period.

"Rate Schedule COG-2" shall mean FPC's Rate Schedule COG-2, as approved and on file with FPSC with the effective date of January 26, 1988, a copy of which is attached as Exhibit A.

"Standard Offer Contracts" shall mean the Madison Standard Offer Contract and the Jefferson Standard Offer Contract.

2. **Consent to Assignment.** Pursuant to Section 9.6 of each Standard Offer Contract, FPC hereby:
 - (a) Consents to the assignment of the Standard Offer Contracts by LFC to APP;
 - (b) Waives any rights that it might have to require that the services to be provided to FPC under either Standard Offer Contract be provided from the relevant LFC Facility; and
 - (c) Consents and agrees that such services shall be provided from the Auburndale Facility.
3. **Effect of Assignment.** FPC hereby releases LFC, its employees, officers, agents and directors from any and all liabilities, losses, damages, costs, expenses or obligations that arise under, are based upon or relate to the Standard Offer Contracts that accrue after the assignment thereof by LFC to APP. FPC hereby releases APP, its employees, officers, agents and directors from any and all liabilities, losses, damages, costs, expenses or obligations that arise under, are based upon or relate to the Standard Offer Contracts that have accrued prior to the assignment thereof by LFC to APP.
4. **Clarifications to the Standard Offer Contracts.** The Standard Offer Contracts (including, without limitation, Rate Schedule COG-2, which is incorporated therein by reference) are hereby clarified to reflect the assignment thereof by LFC to APP as follows:
 - (a) **Preamble.** In the preamble to each Standard Offer Contract, the name "Sun Bank of Tampa Bay *" shall be replaced by the name "Auburndale Power Partners, Limited Partnership".
 - (b) **Interconnection Agreement.** The second recital to each Standard Offer Contract, and all references throughout each Standard Offer Contract to an "Interconnection Agreement", shall be considered deleted. Such Interconnection Agreements are not being assigned to APP, and APP shall have no liabilities, costs or other obligations that arise under, are based upon or relate to

such Interconnection Agreements. The parties hereby terminate the Interconnection Agreements for the Jefferson Facility and the Madison Facility.

- (c) Section 1 (Facility). Section 1 of each Standard Offer Contract shall be replaced by the following:

1. Facility

QF contemplates installing and operating an electric power generator located in Section 10 and/or 15, Township 28S, Range 25E. The generator is designed to produce approximately 150 megawatts (MW), or 150,000 kilowatts (KW) of electric power, such equipment being hereinafter referred to as the "Facility".

- (d) Section 3.1 (Purchase Options). (i) The first sentence of Section 3.1 of each Standard Offer Contract shall be replaced by the following:

Subject to the parties' rights and responsibilities under FPSC Rule 25 17.086, the Company agrees to purchase the electric energy, in accordance with the terms of this Contract, delivered to the Company by the QF, except during the period between 12:00 a.m. and 6:00 a.m. on any day during the following periods, at which times the Company shall be deemed unable to accept energy and capacity deliveries pursuant hereto:

October 1, 1994 through April 30, during the calendar years 1994 through 1999; and October 1, 1999 through December 31, 1999,

(any such period, an "Off-Peak Curtailment Period")

- (ii) The "Net Billing Arrangement" referred to in Section 3.1 of each Standard Offer Contract is in effect.

- (e) Section 4.2.1 (Anticipated Committed Capacity). Section 4.2.1 of each Standard Offer Contract shall be replaced by the following:

QF expects to sell approximately 8.500 MW or 8,500 KW of capacity, beginning on or about January 1, 1995 under option A of Rate Schedule COG-2.

- (f) Section 5(c) (Electricity Production Schedule). As required in Section 5(c) of each Standard Offer Contract, QF and FPC agree to coordinate scheduled Facility outages

to recognize the periods described in Sections (f)(i)-(ii) below. Accordingly, notwithstanding the provisions of Section 3.1 of each Standard Offer Contract, FPC shall have no obligation to purchase and QF shall have no obligation to sell electric power during the following periods (any such period, a "Coordinated Curtailment Period"):

- (i) For calendar years 1995, 1996, 1998 and 1999, one period of 78 consecutive hours in each of such calendar years; and
- (ii) For calendar year 1997, one period of 336 consecutive hours in such calendar year.

In scheduling each Coordinated Curtailment Period:

- (A) FPC shall provide the QF with at least 12 months' prior written notice of any Coordinated Curtailment Period;
- (B) The commencement date of any Coordinated Curtailment Period (other than the first Coordinated Curtailment Period) shall not be less than 330 days, nor greater than 395 days, from the commencement date of the previous year's Coordinated Curtailment Period;
- (C) The initial Coordinated Curtailment Period shall be scheduled between March 1, 1995 and April 30, 1995; and
- (D) Each Coordinated Curtailment Period shall occur concurrently with other "coordinated curtailment periods" of the Facility.

Notwithstanding the foregoing, any Coordinated Curtailment Period shall be rescheduled upon the reasonable request of either FPC or the QF unless such rescheduling would have a material adverse affect on the non-requesting party.

- (g) Sections 4.2.3 (Capacity Payments), 6 (QF's Obligation if QF Receives Early Capacity Payments) and 7 (Non-Performance Provisions). (i) As of the date hereof:

- (A) FPC has not made any capacity payments pursuant to Section 4.2.3 of either Standard Offer Contract;
- (B) No capacity payments are due under Section 4.2.3 of either Standard Offer Contract;

- (C) The balance in the Capacity Account described in Section 6 of each Standard Offer Contract is zero; and
 - (D) LFC has no obligation under Section 6 or 7 of either Standard Offer Contract.
- (ii) Upon the assignment of the Standard Offer Contracts by LFC to APP, APP will have no obligation under Section 6 or 7 of either Standard Offer Contract unless it subsequently receives early capacity payments under Section 4.2.3 of such Standard Offer Contract.
 - (iii) Curtailment Periods shall be excluded from the calculation of the twelve month rolling capacity factor.
- (h) Section 9.8 (Notification). The address information for the QF set forth in Section 9.8 of each Standard Offer Contract shall be replaced by the following:

Auburndale Power Partners, Limited Partnership
1501 Derby Avenue
Auburndale, Florida 33823
Attention: Executive Director
Telephone: (813) 967-0300
Facsimile: (813) 967-8847

As may be changed, in writing, from time to time.

- (i) Interconnection, Voltage and Standby Service. The voltage shall be 230 kilovolts and this power shall be delivered by APP to FPC via the existing July 13, 1992 Transmission Service Agreement and Interconnection Agreement between APP and Tampa Electric Company, as accepted and approved by FPC on August 11, 1992. Recognizing the proximity of the Auburndale Facility to the Tampa Electric Company 230 KV Recker Substation, the nature of that substation as part of Tampa Electric's transmission system, the nature of the QF's interconnect with that substation, the remote likelihood of needing to start up the Auburndale Facility during periods when interruptions in electrical service occur, the coincidental need by FPC and Tampa Electric Company on the electric grid for generation when either party is considering curtailing interruptible customers, and the other benefits accruing to FPC, APP shall utilize the Tampa Electric Company Rate Schedule SBI-3 (as may be modified from time to time but maintained in substantially the same form as is currently on file with

the FPSC) for standby electrical service to the Auburndale Facility.

- (j) Commercial In-Service. As used throughout the Standard Offer Contracts, the terms "commercial in-service", "commercial in-service date" and similar terms shall refer to the status of the Auburndale Facility, and the status of the relevant LFC Facility shall be disregarded for these purposes.
 - (k) Capacity Payment Schedule. Exhibit B hereto is a true and correct schedule of capacity payments payable to APP under each Standard Offer Contract if the commercial in-service date of the Auburndale Facility occurs on or prior to January 1, 1995, and supersedes the exemplary payment schedule set forth in Appendix A to such Standard Offer Contract. The amounts set forth in such Exhibit B have been calculated in accordance with Appendices A and B of Rate Schedule COG-2.
 - (l) Interconnection Charges. The interconnection charges set forth in Parts B and C of Rate Schedule COG-2 are not applicable to the sale of capacity and energy from the Auburndale Facility pursuant to the Standard Offer Contracts.
 - (m) Energy and Capacity Payments. Energy calculations under the Standard Offer Contracts shall include energy produced during each Ramp Period. Notwithstanding anything to the contrary set forth in this Consent or in the Standard Offer Contracts, FPC shall be deemed not to be able to receive electric energy from APP during all hours of Curtailment Periods and Ramp Periods, and consequently these hours shall be excluded for the purposes of calculating the Facility's twelve month rolling average capacity factor.
5. Representations and Warranties of FPC. FPC hereby represents and warrants to APP as of the date hereof as follows:
- (a) Due Execution; Enforceability. Each of this Consent and each Standard Offer Contract has been duly executed and delivered by FPC. Each of this Consent and each Standard Offer Contract (as clarified by this Consent) is in full force and effect and constitutes the legal, valid and binding obligation of FPC, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally or by equitable principles (whether considered in an action at law or equity).

- (b) No Default or Force Majeure Event. To FPC's best knowledge, there exists no default under either Standard Offer Contract, and no event has occurred or circumstance exists that, with the passage of time or the giving of notice (or both), would result in a default under either Standard Offer Contract. No party to either Standard Offer Contract has given notice of a force majeure event under either Standard Offer Contract, and to FPC's best knowledge, no event has occurred or circumstance exists that, with the passage of time or the giving of notice (or both), would result in a force majeure event under either Standard Offer Contract.

At the closing of the assignment of the Standard Offer Contracts contemplated by Section 2 hereof, FPC shall provide a letter or certificate bringing down the foregoing representations and warranties, to the extent the foregoing representations and warranties are still accurate. FPC acknowledges that the execution and delivery of letter or certificate stating that the foregoing representations and warranties remain true is a condition precedent to APP's obligation to take such assignment of the Standard Offer Contracts.

6. Representations of APP. APP hereby represents and warrants to FPC as of the date hereof as follows:
- (a) Due Execution; Enforceability. This Consent has been duly executed and delivered by APP. Each of this Consent and, upon the effectiveness of the assignment thereof to APP, each Standard Offer Contract (as clarified by this Consent) is in full force and effect and constitutes the legal, valid and binding obligation of APP, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally or by equitable principles (whether considered in an action at law or equity).
7. Role of LFC. Upon the effectiveness of the assignment of the Standard Offer Contracts by LFC to APP, LFC shall have no further obligations under this Consent except as provided in Sections 4(b) and 8(d) hereof.
8. FPSC Matters; Effectiveness. (a) Term. Upon the execution of this Consent, APP, FPC and LFC shall be bound by the terms of this Section 8 until this Consent is terminated pursuant to the terms of this Section 8. No party hereto shall have any right to terminate this Consent except as expressly set forth in this Section 8.

(b) Effective Date. All of the remaining terms and conditions of this Consent shall become effective on the date (the "Effective Date") upon which all of the following conditions shall have been satisfied:

(i) Petition. The QF and FPC shall have filed with the FPSC a Joint Petition For a Declaratory Statement (the "Petition"), substantially in the form attached hereto as Exhibit C.

(ii) Acceptable Declaratory Statement. The FPSC shall have issued a Declaratory Statement confirming that this Consent and the assignment of both Standard Offer Contracts by LFC to APP will not in any manner materially modify the FPSC's decisions in Order Nos. 21947 and 21948 approving cost recovery under the Standard Offer Contracts (an "Acceptable Declaratory Statement") and either:

(A) Such Acceptable Declaratory Statement shall not be the subject of an appeal or has been otherwise challenged within thirty (30) days after the date such Acceptable Declaratory Statement has been issued (the "Appeal Period"); or

(B) Such Acceptable Declaratory Statement becomes the subject of an appeal or has been otherwise challenged (collectively, an "Appeal") within the Appeal Period, and such Acceptable Declaratory Statement thereafter becomes final and non-appealable.

(iii) Closing Certificates. Each of APP and LFC shall have delivered to FPC a certificate stating that all conditions to the closing of the assignment of the Standard Offer Contracts by LFC to APP shall have occurred.

Each of APP, FPC and LFC shall use all reasonable efforts to cause the foregoing conditions to be satisfied as soon as possible. Without limiting the generality of the foregoing, APP and FPC agree to file the Petition within five (5) days after the date hereof.

(c) Termination. Unless the Effective Date has occurred, APP, FPC or LFC may terminate in its entirety (without penalty) this Consent upon at least five (5) days prior written notice to the other parties hereto upon the occurrence of any of the following events:

(i) Petition. The Petition shall not have been filed with the FPSC on or before April 15, 1994.

(ii) Acceptable Declaratory Statement. An Acceptable Declaratory Statement shall not have been issued by the FPSC on or before July 31, 1994.

(iii) Appeal. An Acceptable Declaratory Statement becomes the subject of an Appeal within the Appeal Period, and such Appeal has not been dismissed within thirty (30) days after APP receives notice of such Appeal or by July 31, 1994, whichever shall later occur.

Such termination rights shall expire upon the occurrence of the Effective Date.

(d) Cooperation. None of FPC, LFC or the QF shall challenge any provision of this Consent or either Standard Offer Contract (as clarified by this Consent). In any action brought before the FPSC involving this Consent, or either Standard Offer Contract, FPC, the QF and LFC shall defend all of the terms and conditions thereof.

9. Miscellaneous. This Consent:

- (a) Governing Law. Shall be governed by and construed in accordance with the substantive laws of the State of Florida without giving effect to any choice of law rules that may require the application of laws of another jurisdiction;
- (b) Entire Agreement. Contains the entire agreement and understanding between the parties hereto, their agents, and their employees as to the subject matter of this Consent, and supersedes in its entirety any and all previous communications between the parties hereto as the subject matter hereof;
- (c) Amendments. Shall be modified only by an instrument in writing executed by FPC and APP;
- (d) Counterparts. May be executed in multiple counterparts, each of which shall be deemed to be an original; and
- (e) Successors and Assigns. Shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Consent as of the date first written above.

AUBURNDALE POWER PARTNERS,
LIMITED PARTNERSHIP

By: El Dorado Energy Company,
its General Partner

By: *James A. Meyer*
Name: _____
Title: *Vice President*
Date: *4/2/94*

FLORIDA POWER CORPORATION

By: *Philip C. King*
Name: _____
Title: *SENIOR VICE PRESIDENT*
Date: *4/18/94*

LFC NO. 47 CORP.

By: *William J. King*
Name: _____
Title: *Vice President*
Date: *4/2/94*

Exhibits

- Exhibit A - Rate Schedule COG-2
- Exhibit B - Capacity Payment Schedule
- Exhibit C - Joint Petition for a Declaratory Statement