

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center, 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

AUGUST 22, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC & GAS (DUDLEY, ^{AD}BOHRMANN) TB ^{JTB} ^{ad} ^{Red}
DIVISION OF LEGAL SERVICES (CULPEPPER) ^{Wig} ^{RZT}

RE: DOCKET NO. 960604-EQ - JOINT PETITION FOR EXPEDITED
APPROVAL OF SETTLEMENT AGREEMENT BY FLORIDA POWER
CORPORATION AND RIDGE GENERATING STATION, L.P.

AGENDA: SEPTEMBER 3, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\EAG\WP\960604.RCM

CASE BACKGROUND

Florida Power Corporation (FPC) and Ridge Generating Station, L.P. (Ridge) executed a Negotiated contract for purchased power on March 8, 1991. This contract was approved by the Commission for cost recovery in Order No. 24634, issued on July 1, 1991, in Docket No. 910401-EQ. Modifications to the Negotiated contract were approved by the Commission in Order No. PSC-95-0540-FOF-EQ, issued on May 2, 1995, in Docket No. 940797-EQ.

Ridge's cogeneration facility is located near the city of Auburndale, Florida, and began commercial operation in May, 1994. Sometime after July 1, 1994, a dispute arose between Ridge and FPC concerning the proper administration and interpretation of the Negotiated contract. In particular, the dispute related to differing interpretations of the proper methodology to be employed in determining the energy price to be paid under Section 9.1.2, Energy Payments, of the Negotiated contract.

Certain jurisdictional aspects of the energy pricing dispute were addressed by the Commission in Docket No. 940771-EQ, in which the Commission determined that it lacked jurisdiction to adjudicate the dispute. In an effort to avoid the expense of resolving the energy pricing dispute through civil litigation, the parties have agreed to certain modifications to the Negotiated contract. On May

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BY: [Signature]

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10. 1996, Ridge and FPC filed a joint petition for expedited approval of a Settlement Agreement. The Settlement Agreement is the second modification to their Negotiated contract and is included with its attachments as part of this recommendation. In this Docket, the parties have requested Commission confirmation that the payments made pursuant to the contract, as modified by the Settlement Agreement, continue to qualify for cost recovery.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Negotiated contract, as modified by the Settlement Agreement between Florida Power Corporation (FPC) and Ridge Generating Station, L.P. (Ridge), continue to qualify for cost recovery?

RECOMMENDATION: Yes. The modified power sales agreement provides a net benefit to FPC's ratepayers and should continue to qualify for cost recovery.

STAFF ANALYSIS: FPC estimates that there is a cumulative net present value (NPV) benefit of approximately \$13,348,177 to its ratepayers derived from the settlement with Ridge. Staff believes that this amount may be overstated because these savings are based on the presumption that Ridge would have prevailed if it decided to pursue litigation against FPC. However, in light of The Fifth Circuit's partial summary judgement in a similar matter involving Lake COGEN LTD. (Lake) and FPC, staff believes that the uncertainties of litigation warrant that the Settlement Agreement be approved.

The modifications to the negotiated contract involve:

- (1) the methodology for computing energy payments under the Negotiated Contract;
- (2) designation of On-Peak hours;
- (3) curtailment during Off-Peak periods;
- (4) the escalation rate for the Coal Price under the Negotiated contract;
- (5) an adjustment for energy payments already paid under the Negotiated contract to reflect the energy payment calculation established before the dispute.

Each of these aspects of the Settlement Agreement is discussed below.

ENERGY PAYMENTS UNDER THE NEGOTIATED CONTRACT AND SETTLEMENT AGREEMENT

The methodology for computing energy payments under the existing Negotiated contract (Section 9.1.2) is as follows:

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(1) the energy payments shall be the product of the average monthly inventory charge-out price of fuel burned at the Avoided Unit Fuel Reference Plant, the Fuel Multiplier, and the Avoided Unit Heat Rate, plus the Avoided Unit Variable O&M, if applicable, for each hour that the Company would have had a unit with these characteristics operating; and

(2) during all other hours, the energy cost shall be equal to As-Available Energy Cost.

Prior to August 1994, Ridge received firm energy payments for every KWH delivered to FPC. Beginning in August 1994, and ending with this Settlement Agreement, FPC determined that the avoided unit would have been cycled off during certain hours of the day. Therefore, FPC began making energy payments based on both Firm (when the avoided unit was on) and As-Available energy (when the avoided unit was off), as described above.

The methodology for computing energy payments has been modified by the Settlement Agreement such that:

- (1) during any On-Peak hour, Ridge will receive Firm energy cost;
- (2) during Off-Peak hours, when As-Available Energy Cost is:
 - (a) Less than or equal to the Firm Energy Cost, Ridge will receive the greater of:
 - (i) the product of the discount factor (listed in Attachment II to the Settlement Agreement, for each calendar year) and the Firm Energy Cost; or
 - (ii) the As-Available Energy Cost
 - (b) Greater than the Firm Energy Cost, Ridge will receive the Firm Energy Cost.

The energy payment provisions of the Settlement Agreement resolved one of the controversies between Ridge and FPC. FPC estimates that the modified energy pricing provisions will provide savings to its ratepayers when compared to Ridge's pre settlement position. Both FPC and Ridge will benefit from the energy payment settlement by avoiding the cost of litigation.

ON-PEAK HOURS

The Negotiated contract previously defined On-Peak Hours to be the lesser of (1) the hours 6:00 a.m. to 12:00 noon and 5:00 p.m. to 10:00 p.m. for the months of November through March and the hours 11:00 a.m. to 10:00 p.m. for the months of April through October or (2) the hours when FPC would have operated a unit with the characteristics defined in section 9.1.2(I), of the original Negotiated contract. The settlement agreement modified this definition as follows:

- (1) On-Peak hours are defined to be 11:00 a.m. to 10:00 p.m., unless temporarily modified by FPC;
- (2) during the periods November through March, FPC may substitute, on a day-by-day basis for a maximum of 30 days, the hours of 6:00 a.m. to 12:00 noon and 5:00 p.m. to 10:00 p.m. as the On-Peak hours.

OFF-PEAK CURTAILMENT

The parties previously agreed that for a seven-year period, commencing on May 1, 1994, FPC has the right to curtail capacity and energy deliveries from Ridge by up to 30% during the hours of 12:00 midnight and 5:00 a.m., though not to exceed 250 hours in aggregate during a calendar year. The Settlement Agreement modified this provision such that throughout the term of the contract, Ridge will:

- (1) curtail energy deliveries to FPC by 30% of the Committed Capacity, 39.6 MW, between the hours of 12:00 midnight and 6:00 a.m. without any compensation from FPC;
- (2) attempt to curtail energy deliveries to FPC by a minimum of 50% of Committed Capacity during the hours of 10:00 p.m. through 6:00 a.m. Ridge will be compensated for curtailment of energy deliveries which exceed the 50% minimum threshold on an hourly basis as illustrated in Attachment III to the Settlement Agreement and as set forth below.
 - (a) Excess Curtailment Compensation = Excess Curtailment, (KWH) * [(product of the applicable Discount Factor times the Firm Energy Cost) - (the As-Available Energy Cost)] * Delivery Voltage Adjustment

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However, Ridge will not receive compensation when such curtailment of energy deliveries does not equal or exceed 50% of committed capacity. Additionally, Ridge will not receive any compensation when the Excess Curtailment Compensation calculation results in zero or a negative value. This language is consistent with the intent of FPC's Curtailment Plan as approved by Commission Order PSC-95-1133-FOF-EQ. The curtailment savings accrue to the benefit of the ratepayers because FPC can replace Ridge's curtailed energy on its system at a lower total cost. It is staff's opinion that FPC has the right to curtail any Qualifying Facility if such purchases result in negative avoided costs. However, a voluntary curtailment agreement should avoid expensive litigation.

COAL PRICE

The Settlement Agreement firm energy price will be based on a coal price determined by the higher of:

- (1) the three-month rolling average monthly inventory charge out price of coal burned at the Avoided Unit Reference Plant expressed in \$/MMBTU as determined by dividing the "as burned fuel cost (\$)" by the sum of the fuel burned (MMBTU); or
- (2) \$1.695/MMBTU beginning January 1, 1995, escalating at a fixed rate of one-half percent per year beginning January 1, 1996, as shown in Attachment I to the Settlement Agreement.

These floors benefit Ridge because they provide a more stable revenue stream. FPC's ratepayers should also benefit from this provision as the three-month rolling average monthly inventory charge price of coal burned at Avoided Unit Reference Plant, in this case Crystal River Units 1 and 2, is not expected to be less than the escalated \$1.695/MMBTU price.

SETTLEMENT PAYMENT

FPC has agreed to pay Ridge a one-time Settlement Payment of \$1,197,000. This is the difference between what FPC actually paid and what FPC would have paid to Ridge for energy had all the energy been priced at firm energy from August 9, 1994 to January 31, 1996. Though not recognized in the parties petition, FPC also paid Ridge \$98,527.23 to reconcile the February 1996 payment. This amount is, as previously mentioned, the difference between full firm and actual payments. The entire retroactive payment is a major part of the Settlement Agreement to resolve the dispute between FPC and

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Ridge and is in accordance with Sections 7 and 8 of the Settlement Agreement. The calculation of the \$1,197,000 and the notification of the \$98,527.23 is provided as Attachment 2 to the recommendation.

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ISSUE 2: How should the costs resulting from the Settlement Agreement be recovered?

RECOMMENDATION: The capacity payments made under the Settlement Agreement should continue to qualify for cost recovery through the Capacity Cost Recovery Clause. The energy payments made under the Settlement Agreement should continue to qualify for cost recovery through the Fuel and Purchased Power Cost Recovery Clause. The Settlement Payment should qualify for cost recovery through the Fuel and Purchased Power Cost Recovery Clause. However, FPC should not recover these types of costs prior to receiving the required Commission approval.

STAFF ANALYSIS: As discussed in Issue 1, staff believes that the modified power sales agreement provides a net benefit to FPC's ratepayers. As such, the modified power sales agreement should continue to qualify for cost recovery through the Capacity Cost Recovery and the Fuel and Purchased Power Cost Recovery Clauses.

The method of determining the capacity payment was not modified by the Settlement Agreement. Thus, staff recommends that the capacity payments made under the existing purchased power contract continue to qualify for recovery through the Capacity Cost Recovery Clause. As previously discussed, the Settlement Agreement revised the method for calculating energy payments in order to avoid confusion pertaining to when FPC would be required to pay for firm or as-available energy. This joint agreement to define designated On-Peak and Off-Peak time periods will assist in avoiding costly litigation. Therefore, staff recommends that the energy payments made under the Settlement Agreement continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause.

The Settlement Payment is a retroactive payment based on the firm energy pricing provisions of the existing negotiated contract. Staff recommends that the Settlement Payment qualify for recovery through the Fuel Cost Recovery Clause since FPC's ratepayers receive its associated benefits. However, as indicated on Attachment 2 to the recommendation, FPC paid the combined \$1,197,000 and \$98,527.23 Settlement Payment to Ridge in March, 1996. These amounts were included in the energy payments made to Ridge which are reflected on FPC's A-Schedules. Staff would like to express the same concerns raised at the June 25, Agenda conference regarding FPC's recovery of settlement payments made to Orlando Cogeneration Limited, L.P. Staff still believes that it is inappropriate for a utility to recover these types of costs prior to notifying the Commission and obtaining the required approval.

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Staff originally conveyed these concerns to FPC at a staff meeting on May 7, 1996, upon realizing the recovery treatment of those settlement payments. Staff realizes that the utility would not have had time to address staff's concerns prior to its May 10, 1996 filing date of this petition. FPC has agreed, prospectively, not to recover these types of costs prior to receiving the required Commission approval.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected files a request for a Section 120.57 hearing within 21 days of the issuance of this order, this docket should be closed.

STAFF ANALYSIS: If no person whose substantial interests are affected, files a timely request for a Section 120.57, Florida Statutes, hearing within twenty-one days, no further action will be required and this docket should be closed.

SETTLEMENT AGREEMENT
Between
Ridge Generating Station, L.P.
And
Florida Power Corporation

This Agreement is made and entered into on this 19th day of April, 1996 by and between Ridge Generating Station, L.P., a limited partnership having its principal place of business at Auburndale, Florida (Ridge), and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida and having its principal place of business at St. Petersburg, Florida (FPC). Each of Ridge and FPC may hereinafter be referred to as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, Ridge and FPC are parties to the March 1991 Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility between Ridge Generating Station Limited Partnership and Florida Power Corporation (the Contract); and,

WHEREAS, Ridge and FPC are parties to the July 27, 1994 Letter Agreement (the Letter Agreement) which clarified and interpreted certain provisions of the Contract; and,

WHEREAS, the Parties are currently engaged in a dispute which involves, among other things, the interpretation of Article IX, particularly Section 9.1.2, concerning the calculation of electric energy payments due Ridge under the Contract; and,

WHEREAS, the dispute, which was precipitated by FPC's August 9, 1994 implementation of Section 9.1.2, remains unresolved, and unless this Agreement is approved by the FPSC, the dispute is likely to result in litigation; and,

WHEREAS, in consideration of the expense of resolving their dispute through litigation, and in light of the benefits to the Parties and FPC's customers resulting from this Agreement, the Parties have agreed to, among other things, remove all reference in the Contract to the avoided units operating status as contained in Section 9.1.2 of the Contract as determinative of firm versus as-available energy payments, and otherwise amend the Contract and Letter Agreement on the terms and conditions set forth below.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that the Contract and Letter Agreement are hereby amended, supplemented or otherwise modified as set forth hereinafter and that such amendments, supplements and modifications shall have retroactive effect as of August 9, 1994:

WITH RESPECT TO THE CONTRACT

- 1 Firm Energy Costs: Section 1.23 of the Contract is hereby deleted in its entirety and replaced with the following:

1.23 Firm Energy Cost means the energy rate calculated on an hour by hour basis as the sum of: (i) the product of (A) the Coal Price, (B) the Fuel Multiplier and (C) the Avoided Unit Heat Rate plus (ii) the Avoided Unit Variable O&M.

- 2 On-Peak Hours and Off-Peak Hours: Section 1.35 of the Contract is hereby deleted in its entirety and replaced with the following:

1.35 On-Peak Hours means the eleven hours of the day from 11:00 a.m. to 10:00 p.m. for all days unless temporarily modified by FPC in accordance with the following:

*JMK
2/10/97*

During the periods November through March, FPC shall have the limited option to substitute, on a day-by-day basis, the hours of 6:00 am to 12:00 noon and 5:00 pm to 10:00 pm as the On-Peak Hours in lieu of the hours of ~~the hours of~~ 11:00 am to 10:00 pm. FPC's exercise of this option shall be limited such that the substitution of On-Peak Hours may occur on no more than 30 days, in aggregate, during each November through March period. For each day on which FPC desires to exercise this option, FPC must provide adequate prior notice to Ridge of its intent to substitute On-Peak Hours by delivering such notice not later than 12:00 noon of the day immediately preceding each day on which FPC desires to substitute On-Peak Hours.

All other hours shall be defined as Off-Peak Hours.

- 3 Coal Price: Coal Price shall mean for any month the higher of:

(i) The three month rolling average monthly inventory charge out price of coal burned at the Avoided Unit Reference Plant expressed in \$/MMBTU, as reported by FPC in FPSC Schedule A-4, or any successor FPSC schedule where the "average monthly inventory chargeout price" for any month shall be defined as the sum of the "as burned fuel cost (\$)" for the Avoided Unit Reference Plant (as reported in column (L) of FPSC Schedule A-4 for such month), divided by the sum of the "fuel burned (MMBTU)" for the Avoided Unit Reference Plant (as reported in line (K) of FPSC Schedule A-4 for such month); and,

(ii) \$1.695/MMBTU beginning January 1, 1995, escalating at a fixed rate of one-half percent (½%) per year beginning on January 1, 1996. A calculation of the yearly escalation and the resulting prices are contained in Attachment I hereto.

- 4 Energy Payments: Section 9.1.2 of the Contract is hereby deleted in its entirety and replaced with the following:

9.1.2 Except as otherwise provided in Section 9.1.1 hereof, for all electric energy delivered in each billing month beginning with the Effective Date (as defined in the April, 1996 Settlement Agreement between the Parties), the QF will receive electric energy payments calculated on an hourly basis as follows:

- (i) On-Peak Hours: During any On-Peak Hour, the Firm Energy Cost
- (ii) Off-Peak Hours: During any Off-Peak Hour, when the As-Available Energy Cost is:
 - (A) less than or equal to the Firm Energy Cost, the greater of:
 - (1) the product of the Discount Factor, as such term is defined in Attachment II hereto, for each calendar year, multiplied by the Firm Energy Cost; and,
 - (2) the As-Available Energy Cost.
 - (B) greater than the Firm Energy Cost, the Firm Energy Cost.

WITH RESPECT TO THE LETTER AGREEMENT

- 5 Numbered paragraph 8 of the Letter Agreement is hereby deleted in its entirety and replaced by the following:

8. Regarding Section 9.1.3 and Appendix C, Schedule 6, page 1 of 1 and other relevant provisions of the Contract, FPC agrees that a negative Performance Adjustment shall not be imposed upon Ridge during any Off-Peak Hours, provided however, that Performance Adjustments of a positive nature shall continue to apply during all On-Peak Hours and Off-Peak Hours.

- 6 Numbered paragraph 12. of the Letter Agreement is hereby deleted in its entirety and replaced by the following:

12. Regarding Section 6.1 and other relevant provisions of the Contract the Parties hereto agree as follows:

12.1 Throughout the term of the Contract, Ridge will curtail energy deliveries to FPC by 30% of the Committed Capacity between the hours of 12:00 midnight and 6:00 a.m. (the "Initial Curtailment"), without compensation from FPC. The Initial Curtailment for

each hour shall be the product of: $[30\% \times \text{the Committed Capacity in KW}]$, where, for purposes of this paragraph 12., the symbol "x" denotes the mathematical function of multiplication.

12.2 Furthermore, throughout the term of the Contract, Ridge will curtail energy deliveries to FPC by a minimum of 50% (but will endeavor to curtail by up to 100% to the extent practicable) during the hours of 10:00 p.m. ^{11:58} and 6:00 a.m. in exchange for compensation from FPC (the "Incremental Curtailment"). The Incremental Curtailment for each hour, which shall be a minimum of 50%, shall be calculated as follows: $[\text{the Committed Capacity in KW} - \text{KW's delivered to FPC by Ridge in each hour}]$. FPC will compensate Ridge for the difference between the Incremental Curtailment and the Initial Curtailment (the "Excess Curtailment") when the Incremental Curtailment equals or exceeds 50% of the Committed Capacity, except as otherwise provided in paragraph 12.5, below.

12.3 Compensation due Ridge from FPC, pursuant to paragraph 12.2 on an hour by hour per KWH basis, shall be calculated in each hour as follows: $[\text{Excess Curtailment in KWH} \times (\text{the difference between (a) the product of the applicable Discount Factor multiplied by the Firm Energy Cost and (b) the As-Available Energy Cost}) \times \text{Delivery Voltage Adjustment}]$. If this calculation results in zero or a negative number, no compensation for curtailment will be due to or from either party for that hour. Excess Curtailment in KWH shall be calculated in each hour as follows: $[\text{Incremental Curtailment} - \text{Initial Curtailment}]$ For illustrative purposes, a calculation of the compensation to Ridge, including derivation of the Initial, Incremental and Excess Curtailment is depicted in Attachment III hereto.

12.4 Except to the extent that Ridge has otherwise committed energy deliveries during Off-Peak Hours to a third party or parties pursuant to paragraph 12.7, FPC shall have the right to request Ridge to cease curtailment of deliveries during Off-Peak Hours upon 16 hours prior notice, provided however, that Ridge will be paid the Firm Energy Cost for all energy delivered to FPC during such hours.

12.5 The parties agree that for each curtailment event Ridge will require a period of time in which to decrease (ramp down) and then to increase (ramp up) its electric energy deliveries (the Ramp Period) in order to comply with the terms of this Agreement. The Ramp Period shall be the first hour and the last hour of the applicable Off-Peak Hours curtailment period, such that the Ramp Period does not occur during or overlap any On-

Peak Hours but rather is contained within the applicable curtailment period. The minimum 50% curtailment requirement of paragraph 12.2 shall not be applicable to Ridge during any Ramp Period. Ridge shall be paid for all electric energy delivered to FPC during each Ramp Period in accordance with the provisions of Section 9.1.2(ii) of the Contract as set forth in this Agreement.

12.6 On any day in which Ridge fails to deliver to FPC a total of 100 MWH's or more, in aggregate, during that day's On-Peak Hours, it shall be assumed for purposes of this Paragraph 12 that Ridge did not provide curtailment during any of the immediately preceding Off-Peak Hours and shall not be entitled to compensation from FPC for curtailment during such immediately preceding Off-Peak hours.

12.7. At all times throughout the term of the Contract, Ridge shall have the right to sell to a third party or parties, energy and capacity not delivered to FPC as a result of curtailments of deliveries pursuant to the provisions of this Paragraph 12.

WITH RESPECT TO THE CONTRACT AND LETTER AGREEMENT

- 7 The Parties agree that this Agreement shall be retroactive in its effect, for purposes of the energy payments, during the period August 9, 1994 (the Effective Date) through the date this Agreement is duly executed by both parties (the Settlement Date), in accordance with the terms hereof, and in the amount and manner as specified in Paragraph 8 below.
- 8 FPC agrees to tender to Ridge on or before April 30, 1996 a lump sum payment (the Initial Payment) equal to the sum of (a) One million one hundred ninety seven thousand dollars (\$1,197,000.00), which represents energy payments that would have been payable by FPC to Ridge pursuant to the terms of the Contract (had this Agreement been in effect since August 9, 1994) for the period from August 9, 1994 through January 31, 1996; and, (b) those additional amounts accruing to Ridge in accordance with this Agreement, including interest, during the period February 1, 1996 through the Settlement Date. Should FPC fail to tender the Initial Payment on or before said date, FPC shall pay interest thereon calculated at a rate (the "Interest Rate") equal to the 30-day highest grade commercial paper rate as published in The Wall Street Journal on the first business day of each month, which interest shall be compounded monthly and shall begin to accrue on the Settlement Date.
- 9 The Parties intend that those provisions of the Contract and the Letter Agreement not affected by this Agreement shall remain in full force and effect. In addition, in the event of any conflict between the provisions of the Contract or Letter Agreement and the provisions of this Agreement, the Parties intend that this Agreement shall prevail.

- 10 The Parties agree that this Agreement shall be effective for the period beginning August 9, 1994 and ending simultaneous with the lawful termination or expiration of the Contract, unless earlier terminated upon the written mutual agreement of the Parties hereto.
- 11 On or before May 6, 1996, the Parties shall submit to the FPSC a joint settlement petition requesting that the FPSC address and approve this Agreement for the limited purposes of confirming that the Contract as previously clarified by the Letter Agreement and as modified by this Agreement, continues to qualify for cost recovery (the "Joint Petition"). The Joint Petition shall attach this Agreement and request that the FPSC act upon the Joint Petition and Agreement on an expedited basis pursuant to the FPSC's proposed agency action procedures. The Parties shall communicate and closely coordinate with each other prior to taking or initiating any action, the subject matter of which is in any way related to the Joint Petition. In any action involving this Agreement (including but not limited to actions brought before the FPSC), the Parties shall defend all of the terms and conditions hereof. FPC shall use its best efforts to timely deliver to the FPSC all studies and analyses needed to support the Joint Petition, as may be requested by FPSC Staff.
- (a) If the FPSC issues an order that grants the Joint Petition and confirms that the Contract, as modified, continues to qualify for cost recovery, and such order becomes Final and Non-Appealable (the "Acceptable Order"), the Parties shall continue to implement the terms of this Agreement and the termination rights set forth in paragraph 11(c) hereof will no longer be applicable. For purposes of this Agreement, the term "Final and Non-Appealable" with respect to an FPSC order, shall mean that all opportunities for requesting a hearing, requesting reconsideration, requesting clarification and filing for judicial review (including all appeals therefrom) have expired or are barred by law.
- (b) If the FPSC issues an order that does not confirm that the Contract, as modified, continues to qualify for cost recovery (the "Unacceptable Order"), each Party shall, subject to paragraph 11(c) hereof, cooperate with the other and take such actions as may be necessary to cause the FPSC to issue a Final and Non-Appealable Acceptable Order that grants the Joint Petition, including but not limited to, seeking clarification of or protesting the Unacceptable Order.
- (c) This Agreement may be terminated at the option of either Party upon five days written notice to the other Party, on any date (the "Termination Date") within thirty days after:
- (i) An Unacceptable Order becomes Final and Non-Appealable; or,
- (ii) May 6, 1997, provided that an Acceptable Order has not been issued on or before that date; provided further, however, if on or before May 6, 1997 the FPSC has issued a final agency action order approving the Joint Petition without change for cost recovery purposes and the opportunity for requesting appellate review has

not expired or been barred by law, the Parties shall defend such order on appeal and shall not have the option to terminate this Agreement unless and until the condition set forth in clause 11(c)(i) has occurred.

- (d) Upon termination of this Agreement pursuant to paragraph 11(c) hereof: (i) Ridge shall return the Initial Payment to FPC, together with interest at the Interest Rate for the period from the date Ridge received the Initial Payment until the date FPC receives payment thereof in full from Ridge; (ii) Ridge shall pay to FPC the difference, if any, between (A) the aggregate payments made by FPC under the Contract and Letter Agreement as modified by this Agreement, exclusive of the Initial Payment, and (B) the aggregate payments that would have been made by the FPC under the Contract and Letter Agreement if this Agreement had not existed, in each case since the Settlement Date; (iii) the settlement contemplated hereby shall be deemed null and void; (iv) each Party shall have the rights and obligations under the Contract and Letter Agreement as if this Agreement had never been executed; and (v) all disputes, claims, and controversies relating to the Contract and Letter Agreement that existed prior to the Settlement Date shall be reinstated and deemed unresolved as if this Agreement had never been executed. The provisions of this paragraph 11(d) shall survive any termination of this Agreement.
- 12 Each Party hereby represents and warrants to the other Party that this Agreement, the Contract and the Letter Agreement have been duly executed and delivered and are in full force and effect and constitutes the legal, valid and binding obligation of such Party, 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).
- 13 The Parties acknowledge that this Agreement is being entered into for the purposes of settlement only and to avoid the expense and length of legal proceedings, taking into account the uncertainty and risk inherent in any litigation. Neither this Agreement nor any action taken to reach, effectuate or further this Agreement may be construed as, or may be used as an admission by or against any party of any fault, wrongdoing or liability whatsoever, nor as an admission concerning any specific issue raised in the potential litigation. Furthermore, each Party agrees not to sue the other on any claim or claims that could be asserted by one against the other in the future in any lawsuit or proceeding in any court or administrative tribunal of competent jurisdiction, whether state or federal, arising under statutory or common law, which claims would be based on any of the issues addressed in this Agreement, except for those claims of the type described in paragraph 15 hereof and those claims based upon willful misconduct of a Party, arising prior to the Settlement Date.
- 14 Ridge will have the right, upon reasonable notice, to audit FPC's books, accounts, charts and records to the extent necessary to verify the accuracy of the statements and payments rendered under the Contract as modified by the Letter Agreement and this Agreement. Any

such audit will be conducted during normal business hours at the offices where such books, accounts and records are maintained. Audits will be conducted by Ridge's designated personnel or by an accounting firm recognized as experienced in electric utility accounting practices and shall be at Ridge's expense. FPC will be entitled, upon request, to review the audit report and any supporting materials.

- 15 In the event that either Party at any time discovers an error or errors in any statement or payment made by FPC, the Party discovering such error shall notify the other in writing and provide supporting documentation. Such error(s) shall be adjusted within 20 business days following notice to the other Party. In the event of a dispute as to whether any statement or payment is in error, the Parties shall in good faith attempt to negotiate a mutually acceptable resolution to such dispute.
- 16 This Agreement 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.
- 17 This Agreement including the Attachments hereto, together with the Contract and Letter Agreement, contains the entire agreement and understanding between the Parties hereto, their agents, and their employees as to the subject matter of this Agreement and supersedes in its entirety any and all previous communications between the Parties as to the subject matter hereof.
- 18 Unless otherwise defined herein, and to the extent the context allows, terms not modified or defined by this Agreement shall have the meaning assigned to such term in the Contract or Letter Agreement, as they may be amended from time-to-time.
- 19 This Agreement may be modified or terminated only by an instrument in writing executed by the Parties.
- 20 This Agreement, including any amendment or modifications thereto, may be executed in multiple counterparts, each of which shall be deemed to be an original.
- 21 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 22 Article, section or paragraph headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text. All Attachments hereto are and shall be considered an integral part of this Agreement as if the words, language, numbers, calculations and other information contained in the Attachments were contained in the text of this Agreement.
- 23 All references to time of day or hours in the day shall be deemed to refer to Eastern time.

IN WITNESS WHEREOF, FPC and Ridge have caused this Agreement to be executed by their duly authorized representatives on the day and year, first above written.

Witness as to Ridge:

Michael F. Jones

RIDGE GENERATING STATION,
LIMITED PARTNERSHIP
By: Wheelabrator Polk Inc., its General Partner

By: John M. Kehoe, Jr.
Name: John M. Kehoe, Jr.
Title: President
Date: April 16, 1996

Witness as to FPC

Robert D. Foley

FLORIDA POWER CORPORATION

By: M. B. Foley Jr.
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Date: 4/19/96



ATTACHMENTS

Attachment I to Settlement Agreement between Ridge and FPC
Calculation of Coal Floor

1995	1.695
1996	1.703
1997	1.712
1998	1.721
1999	1.729
2000	1.738
2001	1.746
2002	1.755
2003	1.764
2004	1.773
2005	1.782
2006	1.791
2007	1.800
2008	1.809
2009	1.818
2010	1.827
2011	1.836
2012	1.845
2013	1.854
2014	1.863
2015	1.873
2016	1.882
2017	1.892
2018	1.901
2019	1.911
2020	1.920
2021	1.930
2022	1.939
2023	1.949

Attachment II to Settlement Agreement between Ridge and FPC
Off-Peak Hour Energy Payment Discount Factor

1994	1.00
1995	1.00
1996	1.00
1997	1.00
1998	1.00
1999	1.00
2000	1.00
2001	0.92
2002	0.89
2003	0.87
2004	0.87
2005	0.85
2006	0.85
2007	0.85
2008	0.85
2009	0.85
2010	0.85
2011	0.85
2012	0.85
2013	0.85
2014	0.82
2015	0.80
2016	0.80
2017	0.80
2018	0.80
2019	0.80
2020	0.80
2021	0.80
2022	0.80
2023	0.80

Attachment III to Settlement Agreement between Ridge and FPC
Illustrative Calculation of Curtailment Compensation

Example 1: For each hour between 12:00 Midnight and 6:00 A.M.

Hour:	100
Time:	12:00 Midnight – 1:00 AM
Energy delivered from Ridge to FPC:	5,000 KW
Firm Energy Rate as calculated in section 1.23 of the Contract as amended by this agreement:	\$22.39
Discount Factor	1.00
As- Available Energy Cost as calculated in section 1.3 of the Contract:	\$15.00

Initial Curtailment = $[30\% \times 39,600 \text{ KW}] = 11,880 \text{ KW}$

Incremental Curtailment =
 $[39,600 \text{ KW} - \text{KW Delivered to FPC by Ridge}] = [39,600 - 5,000] = 34,600 \text{ KW}$

Excess Curtailment for hour 100 =
 $[39,600 \text{ KW} - \text{KW Delivered to FPC by Ridge} - \text{Initial Curtailment}]$
 $[39,600 - 5,000 - 11,880] = 22,720 \text{ KW}$

Compensation Due Ridge for hour 100 =
 $\{[\text{Excess Curtailment in KW} \times ((\text{Discount Factor} \times \text{Firm Energy Cost}) - \text{As- Available Energy Cost})] \times \text{Delivery Voltage Adjustment}\}$
 $\{[22,720 \text{ KW} \times ((1.00 \times \$0.02239) - \$0.015)] \times 1.0297\} = \172.89

Example 2: For each hour between 10:00 P.M. and 12:00 Midnight:

Hour: 2400
Time: 11:00 PM – 12:00 Midnight

Energy delivered from Ridge to FPC:	5,000 KW
Firm Energy Rate as calculated in section 1.23 of the Contract as amended by this agreement:	\$22.39
Discount Factor	1.00
As-Available Energy Cost as calculated in section 1.3 of the Contract:	\$15.00

Initial Curtailment = $[0\% \times 39,600 \text{ KW}] = 0$

Incremental Curtailment =
 $[39,600 \text{ KW less KW Delivered to FPC by Ridge}] = [39,600 - 5,000] = 34,600$

Excess Curtailment for hour 2400 =
 $[39,600 \text{ KW} - \text{KW Delivered to FPC by Ridge} - \text{Initial Curtailment}]$
 $[39,600 - 5,000 - 0] = 34,600$

Compensation Due Ridge for hour 2400 =
 $[\text{Excess Curtailment in KW} \times ((\text{Discount Factor} \times \text{Firm Energy Cost}) - \text{As-Available Energy Cost}) \times \text{Delivery Voltage Adjustment}]$
 $[(34,600 \times ((1.00 \times \$0.2239) - \$0.15)) \times 1.0297] = \263.29

Overall Totals for Ridge Generating Station

		Negotiated Energy Payments				Contract Energy Payments			
		Energy Payment incl. Del. Volt. Adj.	Performance Adjustment incl. Del. Volt. Adj.	Curtailment Compensation incl. Del. Volt. Adj.	Total Energy Payment	Energy Payment incl. Del. Volt. Adj.	Performance Adjustment incl. Del. Volt. Adj.	Total Energy Payment	
Total MWH									
Aug-94	14,872	\$366,943.99	\$9,360.12	\$3,547.83	\$379,851.95	\$327,260.01	\$9,360.12	\$336,620.13	
Sep-94	18,204	\$447,278.29	\$4,983.72	\$5,397.78	\$457,659.79	\$371,984.81	\$4,983.72	\$376,968.54	
Oct-94	14,221	\$346,480.87	(\$11,516.80)	\$4,750.03	\$339,714.10	\$292,236.12	(\$11,516.80)	\$280,719.32	
Nov-94	17,449	\$421,528.23	\$1,269.22	\$16,694.94	\$439,492.40	\$346,476.71	\$1,269.22	\$347,745.94	
Dec-94	14,158	\$329,319.68	\$1,789.60	\$16,225.95	\$347,335.23	\$281,311.25	\$1,789.60	\$283,100.85	
Jan-95	15,826	\$335,305.62	(\$3,185.40)	\$14,328.58	\$346,448.81	\$297,932.71	(\$3,185.40)	\$294,747.32	
Feb-95	20,209	\$464,648.06	\$5,253.45	\$3,473.57	\$473,375.08	\$426,146.38	\$5,253.45	\$431,399.83	
Mar-95	24,095	\$550,515.93	\$3,749.58	\$6,373.25	\$560,638.76	\$504,774.86	\$3,749.58	\$508,524.44	
Apr-95	14,141	\$336,217.48	\$5,315.47	\$8,946.00	\$350,478.94	\$296,519.70	\$5,315.47	\$301,835.17	
May-95	20,168	\$467,049.60	\$21,379.88	\$14,037.80	\$502,467.27	\$448,520.45	\$21,379.88	\$469,900.34	
Jun-95	15,603	\$366,796.12	(\$16,157.07)	\$20,102.78	\$370,741.83	\$343,931.75	(\$16,157.07)	\$327,774.68	
Jul-95	17,440	\$411,417.05	\$18,042.66	\$22,370.43	\$451,830.14	\$386,980.47	\$18,042.66	\$405,023.13	
Aug-95	16,348	\$392,389.71	(\$3,631.92)	\$23,440.37	\$412,198.17	\$359,344.01	(\$3,631.92)	\$355,712.09	
Sep-95	15,024	\$360,920.06	(\$3,141.08)	\$23,507.90	\$381,286.88	\$324,483.78	(\$3,141.08)	\$321,342.70	
Oct-95	15,387	\$374,710.46	\$2,932.41	\$23,544.63	\$401,187.50	\$317,864.82	\$2,932.41	\$320,797.23	
Nov-95	15,962	\$394,465.71	\$455.01	\$35,385.76	\$430,306.49	\$312,462.43	\$455.01	\$312,917.44	
Dec-95	16,015	\$379,779.57	\$3,023.87	\$27,778.09	\$410,581.52	\$337,635.05	\$3,023.87	\$340,658.92	
Jan-96	17,996	\$428,424.73	\$2,971.19	\$21,646.76	\$453,042.68	\$377,395.85	\$2,971.19	\$380,367.04	
Totals	303,118	\$7,174,191.15	\$42,893.92	\$291,552.45	\$7,508,637.52	\$6,353,261.18	\$42,893.92	\$6,396,155.10	

Difference between Negotiated and Contract Energy Payments **\$1,112,482.42**
 Plus Interest **\$84,517.58**
Total Settlement Payment \$1,197,000.00

Ridge Generating Station

Paragraph 8 of the Settlement Agreement between Ridge Generating Station (Ridge) and Florida Power Corporation (FPC) provides for two payments to be made to Ridge. The first payment of \$1,197,000 represents the difference between the payments made by FPC to Ridge and what the payment would have been under the Settlement Agreement for the period from August 9, 1994 and January 31, 1996. The second payment is for the same difference for the period from February 1, 1996 to February 29, 1996. This second payment is in the amount of \$98,527.23.

Both of these amounts were included in the payment to Ridge for March, 1996 deliveries and were subject to Florida Public Service Commission approval pursuant to the terms of the Settlement Agreement. These amounts were reflected in FPC's A-schedules for the month of April, 1996. Subsequent to Staff's comments on this issue in June, 1996, in the Docket approving the FPC-Orlando Cogen Settlement Agreement, FPC agreed to make a special notation of any future payments that differed significantly from the contractual terms of an FPSC-approved cogeneration contract.