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July 24, 2000

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

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RECORDS AND REPORTING

000922-GU

Re: Joint Petition by Florida Public Utilities Company and Lake Worth Generation, LLC for Approval of a Gas Transportation Agreement, Request for Authority to Accrue AFUDC, and Request for Expedited Treatment

Dear Ms. Bayo:

On behalf of Florida Public Utilities Company and Lake Worth Generation, LLC, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Joint Petition for Approval of a Gas Transportation Agreement, Request for Authority to Accrue AFUDC, and Request for Expedited Treatment
- ▶ The Gas Transportation Agreement, attached as Exhibit 1.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Respectfully submitted,

*Joe A. McGlothlin*  
Joseph A. McGlothlin

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*Blackard*  
JAM/kmr FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE  
000922 JUL 24 00  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
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In re: Joint Petition by Florida Public Utilities )  
Company and Lake Worth Generation, LLC )  
for approval of a Gas Transportation Agreement )

000922-GU

**JOINT PETITION FOR APPROVAL OF A  
GAS TRANSPORTATION AGREEMENT  
REQUEST FOR AUTHORITY TO ACCRUE AFUDC  
AND  
REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Section 366.06, Florida Statutes, and Rules 25-9.034, 25-7.0141, and 25-22.036, Florida Administrative Code, Florida Public Utilities Company ("FPUC" or "the Company") and Lake Worth Generation, LLC ("LWG" or "the Customer") petition the Commission for approval of a Gas Transportation Agreement, for authority to accrue an allowance for funds used during construction (AFUDC), and for expedited treatment. In support of the Petition, the Petitioners state as follows:

1. The Company's principal business address is 401 South Dixie Highway, West Palm Beach, Florida 33401.
2. LWG's business address is 245 Winter Street, Suite 300, Waltham, Massachusetts 02451.
3. The names and addresses of the persons authorized to receive notices and communications with respect to this Petition are:

For FPUC:

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*Atkinson*  
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DOCUMENT NUMBER-DATE  
08928 JUL 24 8  
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Wayne L. Schiefelbein  
Wiggins and Villacorta  
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(850) 385-6007

For LWG:

Joseph A. McGlothlin  
McWhirter, Reeves, McGlothlin, Davidson, Decker  
Kaufman, Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
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4. FPUC owns and operates natural gas distribution facilities in Florida. It is a natural gas distribution company subject to the regulatory jurisdiction of this Commission, as prescribed in Chapter 366, Florida Statutes. FPUC's substantial interests will be affected by the Commission's disposition of this Petition, in that such disposition will determine whether the Company will be permitted to provide transportation service on terms acceptable to it and to LWG.

5. LWG is a project development company formed by its parent, Thermo Ecotek Corporation, for the purpose of developing a gas-fired power generation project in Lake Worth, Florida. LWG's substantial interests will be affected by the Commission's disposition of this Petition, in that the Commission's decision will determine whether LWG can obtain gas transportation service under terms and conditions and in a time frame that will enable LWG to proceed with its development activities.

6.(a) FPUC and LWG have entered into a Gas Transportation Agreement (Exhibit 1), providing for transportation service to LWG, or its assignee. LWG will be operating a 200 MW

at the site of the existing Lake Worth municipal utility currently being served by FPUC. LWG's development plans contemplate the possibility of expanding the project to approximately 500 MW in the future. While LWG may act as agent for other "Project Parties" (the City of Lake Worth and/or entities that both supply gas to and purchase electrical energy from the Power Generation Facility), under the terms of the Agreement LWG will be responsible for making all payments for transportation services provided by FPUC under the Agreement, and for providing security for FPUC's recovery of its investment in dedicated facilities (net depreciated plant) plus \$37,900 increased by a compounded 3% annually, in the form of an irrevocable letter of credit.

(b) Under the Agreement, FPUC would receive the Customer's natural gas at a gate station to be interconnected with the Florida Gas Transmission ("FGT") system near the intersection of Lake Worth Road and the Florida Turnpike in Palm Beach County, Florida; transport such gas on a dedicated distribution system lateral to be constructed by FPUC for the purpose of serving LWG; and redeliver such gas to the site of LWG's Power Generation Facility. The customer will make all necessary arrangements with FGT and other parties for the purchase and transportation of its gas, including transportation service on FGT, prior to delivery to the FPUC dedicated lateral. In order to provide service under this Agreement, FPUC will contract with FGT to tap FGT's main lines and to build FGT's portion of the gate station, and FPUC will construct its own portion of the new gate station and approximately 6 miles of main between said gate station and the site of the Power Generation Facility at an approximate cost of \$5.5 million. The project facilities will be constructed by FPUC for the sole purpose of providing transportation service to the site of the Power Generation Facility pursuant to the Agreement.

7.(a) FPUC negotiated for purposes of this transaction a return of 11.17% on its net investment in the project facilities (i.e. net depreciated plant), as shown on Exhibit A, page 3.

(b) A decision by the Commission not to approve the use of the 11.17% return on FPUC's net investment in the project facilities (i.e. net depreciated plant) in the cost of service calculation as negotiated by FPUC is identified within the Agreement as a material change that would entitle FPUC to void the transaction.

(c) FPUC submits that approval of this Agreement would cause no detriment to the general body of FPUC's ratepayers. FPUC provides the following assurances in that regard:

- (i) In the event that LWG defaults under the Agreement during construction, or after the project facilities are on line, the general body of ratepayers would be protected, in that recovery of FPUC's sunk investment and related expenses is provided for under an irrevocable letter of credit; and
- (ii) FPUC will maintain records associated with the project facilities to allow the Commission to verify their accuracy.

8. Some of the other more significant features of the Agreement are highlighted below:

(a) Construction costs controlled by competitive bidding - To ensure that the costs of constructing the project facilities are prudent and reasonable FPUC solicited and received three bids from competing contractors. The lowest qualified bidder was selected; its bid remained the lowest even after a necessary modification to the original design.

(b) Incremental cost of service - The project facilities will represent approximately 16%

of FPUC's natural gas rate base. To ensure that its other customers do not subsidize the transportation service provided to LWG, FPUC performed a study of the costs it would incur to construct, operate, and maintain the project facilities. All of the quantified costs associated with providing service under the Agreement will be assigned to and paid by LWG.

(c) Rate structure (Article 7) - The Agreement requires LWG to pay fixed and declining facilities charges and an operations and maintenance charge. The charges are derived from the Cost of Service Study, and will be paid monthly. The fixed facilities charge is designed to recover the depreciation expense and the taxes other than income taxes associated with owning the project facilities. The declining facilities charge is designed to provide a return of 11.17% on FPUC's net investment in the project facilities (i.e. net depreciated plant) over time. The operations and maintenance charge is designed to recover the cost of operating and maintaining the lateral.

(d) Early termination - In the event LWG terminates the Agreement for any reason, LWG must pay FPUC the full amount of FPUC's net investment in the project facilities (i.e. net depreciated plant). An irrevocable letter of credit will secure this obligation. If LWG determines not to proceed with the project prior to the time FPUC commences construction of the lateral, LWG must reimburse FPUC for up-front expenses it may have incurred up to a maximum of \$55,500.

(e) Permitted adjustments to calculations of the cost of the project facilities - The Agreement provides for an initial calculation of the cost of the project facilities ("Preliminary Construction Costs") and allows FPUC to adjust the preliminary estimate by up to a maximum of

10% to determine the Final Construction Cost in the event actual costs vary from the initial estimate. If during the term of the Agreement a change in law or in regulations having the force of law requires FPUC to construct additional facilities or purchase additional equipment for the project facilities, the cost of the additional facilities and equipment will be reflected in the calculation of the Facilities Charges.

(f) Permitted adjustments to the calculation of Operations and Maintenance Charge –

The Operations and Maintenance Charge includes a 25% contingency, and will be escalated annually by a factor reflecting changes in the Consumer Price Index (CPI-U). In addition, in the event LWG requires FPUC to increase the hours of operation of its Gas Supply Department or in the event annual costs of rights-of-way and/or odorant exceed base amounts, the incremental expenses will be reflected in the Operations and Maintenance Charge.

(g) Relocation – In the event governmental agencies, FGT, or other parties identified in the Agreement propose to require FPUC to relocate all or a portion of the project facilities, FPUC shall, after consulting with LWG, pursue measures which could obviate the necessity of relocation, in which case LWG will reimburse FPUC for costs incurred to avoid relocating. If FPUC is required to relocate all or a portion of the project facilities, and the relocation is not caused by FPUC or the result of lack of reasonable effort on the part of FPUC to avoid the necessity of relocation, then the costs of relocating such project facilities will be borne by LWG.

(h) Competitive alternative – In the event a new interstate pipeline is constructed and LWG wishes to pursue the possibility of receiving gas from the new pipeline, FPUC will cooperate with LWG to assess the feasibility of such service and will, if called upon by LWG,

negotiate in good faith an additional gas transportation contract on terms similar to those contained in this Agreement. However, in that event LWG will continue to be obligated to pay for the project facilities that are the subject of this Agreement.

(i) Renewal Term - Under the Agreement, LWG has the right to extend the term of the agreement beyond the thirty (30)-year base term for a single period of ten (10) years (or such other mutually agreed term) by giving notice to FPUC eighteen (18) months in advance of the expiration of the Agreement. If LWG elects to extend, the parties will negotiate in good faith a Renewal Term Charge that recovers the cost of operating and maintaining the lateral at that time and provides a level of margin that would provide a fair and reasonable benefit to FPUC and FPUC's other customers, and allows for reimbursement for any improvements determined to be needed.

(j) Alternative dispute resolution - The Agreement calls for the parties to use a mediation/arbitration process to resolve any disputes that may arise under the Agreement.

(k) Security - To ensure that other customers will not be called upon under any circumstance to bear the costs of the project facilities, the Agreement requires LWG to provide an irrevocable letter of credit in the amount of the net depreciated plant, plus \$37,900 increased by a compounded 3% annually, throughout the thirty (30)- year base term of the Agreement. In the event LWG defaults on its obligations without timely cure, under the Agreement FPUC will have the right to terminate the Agreement and draw on the letter of credit.

9. Pursuant to Chapter 366, Florida Statutes, FPUC is entitled to reasonable compensation for the services rendered and the Commission has the authority to approve rates



and charges to provide such compensation.

10. The Gas Transportation Agreement that is the subject of this Joint Petition is an integral component of a power generation project that will confer the following benefits in the area and the State:

(a) Benefits to the City of Lake Worth - The power generation project served by the dedicated lateral will sell steam to the City of Lake Worth's utility department at a price lower than the City's cost of producing steam from its existing boiler. The City will utilize the steam purchased from LWG in one of its own steam turbine electric generators. According to the City, the lower cost of producing electricity achieved thereby will be flowed through to the City's ratepayers. The City will also retire two old, inefficient boilers as a result of the transaction. Overall, the project will render the City's electric utility operation less costly and more efficient, thereby, according to the City, lowering local electric bills, enhancing the City's ability to remain competitive in a changing industry and preserving current employment levels at the municipal facility. At the same time, displacing the old City boiler with steam purchased from LWG will markedly reduce the quantities of pollutants that are emitted at the City's Tom G. Smith power generation complex.

(b) Benefits to the State - LWG is developing a combined cycle project that will add approximately 200 MW to the wholesale generation market at a time when additional generating capacity is needed in Florida. LWG's objective is to place its unit in service during the summer of 2002.

Based on the foregoing, FPUC and LWG ask the Commission to approve the Gas

Transportation Agreement as a special contract under Rule 25-9.034(1), Florida Administrative Code.

### **REQUEST FOR AUTHORITY TO ACCRUE AFUDC**

11. In accordance with Rule 25-7.0141, Florida Administrative Code, FPUC requests permission to capitalize interest and financing costs on the construction of the project facilities, and in support thereof, states as follows:

- a. The project represents an estimated cost of \$5,452,549 (including all construction costs and estimated accrued interest and financing costs), which is approximately 16% of the Company's total natural gas distribution plant in service (Account 101), as of March 31, 2000. This amount is material and significant to the Company.
- b. Federal income tax considerations require capitalization of interest on projects of this size. The Company's taxable income would increase in the year of construction if FPUC is not allowed to capitalize interest for book purposes. (If the Commission disallows capitalization of interest during construction, the Agreement provides that it shall be paid by LWG as it is incurred and billed by FPUC.)
- c. The project would be left out of rate base while under construction. This would allow for a better match of rate base with associated income and expenses. Construction is expected to take eight (8) to ten (10) months to complete, beginning in or about April, 2001.
- d. The interest cost associated with financing the project is expected to be significant.

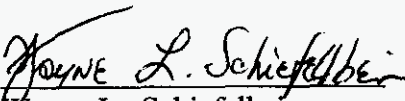
The Company must obtain additional financing and actions to obtain funds for this project would begin the earlier of February 2001 or upon receiving authorization for LWG to commence construction.

### REQUEST FOR EXPEDITED CONSIDERATION

12. LWG'S goal is to test its generator in or about February 2002 and have it in commercial operation during the summer of 2002, in time to provide generation during the summer peak months. However, to adhere to such a schedule, it is necessary for LWG to achieve financial closing as quickly as possible. A decision by the Commission approving the arrangements between LWG and FPUC for gas transportation service is a condition precedent to the financial closing. Accordingly, the parties respectfully request the Commission to consider this Joint Petition on an expedited basis.

WHEREFORE, Florida Public Utilities Company and Lake Worth Generation, LLC request the Commission to

- (1) expedite the processing of this Petition;
- (2) approve the Gas Transportation Agreement between the parties; and
- (3) authorize accrual of AFUDC as set forth in the body of the Joint Petition.

  
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Wiggins and Villacorta  
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(850) 385-6007

Attorneys for Florida Public  
Utilities Company



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(850) 222-2525

Attorneys for Lake Worth Generation, LLC

**EXHIBIT 1**

**GAS TRANSPORTATION AGREEMENT**

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THIS AGREEMENT is made and entered into this 21st day of July, 2000, between Florida Public Utilities Company ("FPUC"), a Florida corporation, and Lake Worth Generation, LLC ("LWG"), a limited liability company organized under the laws of Delaware. FPUC and LWG may be referred to as "the Parties" to this Agreement.

**RECITALS**

WHEREAS, FPUC operates facilities for the distribution of natural gas in the State of Florida; and

WHEREAS, LWG is developing a power generation project ("the Project") in Lake Worth, Florida; and

WHEREAS, as a result of the Project and related contractual arrangements, LWG will require transportation of natural gas from the Delivery Point on the Florida Gas Transmission system to the site of the Project; and

WHEREAS, LWG has requested FPUC to: (1) construct certain pipeline facilities (the "LWG Lateral," as defined in Article 1 below); (2) receive certain quantities of natural gas for the account(s) of LWG and/or the other Project Parties from Florida Gas Transmission ("FGT"); (3) transport such natural gas on the "LWG Lateral" (as defined in Article 1, below); and (4) redeliver such natural gas to the Redelivery Point (as defined in Article 1, below); and

WHEREAS, FPUC is willing to construct the LWG Lateral and to provide such transportation service through the LWG Lateral in accordance with the terms hereof;

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*M. Blackland*  
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JUL 24 2000

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NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, the Parties to this Agreement agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

“Affiliate” shall mean a corporation or other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another corporation or entity.

“Agreement” shall mean this contract, including the exhibits attached hereto, as the same may be amended from time to time.

“Annual Period” shall mean any one of a succession of consecutive 12-month periods, the first of which shall begin on the Commencement Date, provided that such date is the first day of a calendar month, or otherwise on the first day of the month immediately following the month in which the Commencement Date occurs.

“Base Term” shall have the meaning set forth in Section 2.1.

“Btu” shall mean the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at a constant pressure of 14.73 p.s.i.a.

“Commencement Date” shall mean either the day which falls 12 months after LWG provides FPUC written release to begin construction of the LWG Lateral, or the date on which the LWG Lateral is complete and ready for service, whichever is later. Notwithstanding the above, in the event

the LWG Lateral is completed in less than 12 months after LWG provides FPUC the written release to commence construction, and LWG elects to receive gas through the LWG Lateral prior to the expiration of the 12 month period, then the “Commencement Date” shall be the date LWG first receives gas through the LWG Lateral.

“Contribution In Aid of Construction” or “CIAC” for the purposes of this Agreement shall mean a cash payment made by LWG to FPUC to reduce the capital investment that FPUC to the extent required by the FPSC, would otherwise be required to make in order to construct the LWG Lateral. If LWG pays CIAC to FPUC, then the Final Adjusted Construction Cost used in the Cost of Service and the Facilities Charge will be reduced accordingly, such that the charges recover only the investment in the LWG Lateral that is exclusive of the CIAC.

“Cost of Service” shall mean the derivation of revenues, to be paid by LWG to FPUC through the transportation charges delineated herein, that will recover FPUC’s costs of operating and maintaining the LWG lateral and provide FPUC with the agreed upon return of 11.17% on its undepreciated investment in the construction of the LWG Lateral. The transportation charges that will recover the Cost of Service are identified in Section 7 of this Agreement. The Cost of Service is based upon the cost to construct the LWG Lateral and the rate of return, expenses and annual adjustment factors agreed to by the parties. It is developed, quantified and shown on Exhibit A to this Agreement.

“Day” shall mean FGT’s delivery gas day, currently a period of twenty-four (24) consecutive hours beginning and ending at 9:00 a.m. Central Clock Time, as defined by FGT and as may be amended by FGT from time to time in its FERC-approved tariff.



“Delivery Point” shall mean the point at which the LWG Lateral is connected to the fitting on the outlet side of the FGT Facilities to be installed at a location on the FGT system as shown on Exhibit B1.

“°F” shall mean degree(s) Fahrenheit.

“Facilities Charge” shall mean the fixed and declining charges described in Section 7.1.

“FERC” shall mean the Federal Energy Regulatory Commission or any successor agency having like jurisdiction.

“FGT” shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

“FGT Facilities” shall mean tap(s) on the FGT mainline, and piping, measuring equipment, valves (including emergency shutdown valves), remote telemetry units, controllers, regulators and any other equipment necessary to interconnect the LWG Lateral with FGT, as described in Section 7.3.

“Final Adjusted Construction Cost” means the Preliminary Construction Cost adjusted to reflect the changes and adjustments to the Preliminary Construction Cost pursuant to this Agreement.

“Force Majeure” shall have the meaning set forth in Section 9.2.

“FPSC” shall mean the Florida Public Service Commission or any successor agency having like jurisdiction within the State of Florida.

“Gas” shall mean natural and/or residual gas in any mixture of hydrocarbons or of hydrocarbons and noncombustible gases, including odorant, in a gaseous state, consisting essentially

of methane and meeting the quality specifications which FGT requires with regard to deliveries into its system.

“Lender” shall mean any person or entity lending money to LWG for the construction, operation, maintenance, repair, or alteration of the Project, any person or entity providing funds for the refinancing or the taking-out of such loans, and the nominees or designees of any such persons or entities.

“Letter of Credit” shall have the meaning set forth in Section 4.8.

“LWG Lateral” shall mean the pipe, fittings, regulators, cocks, valves, vaults, vents, connectors, appliances and apparatus of every kind and nature installed by FPUC to transport Gas from the Delivery Point to the Redelivery Point, including all additions, replacements, improvements, substitutions, and increments thereto, and all related personal and/or tangible property and all real property interests necessary for the operation, maintenance and modification of such facilities, as more particularly described in Exhibit B2 hereto.

“Mcf” shall mean 1,000 Standard Cubic Feet of Gas.

“Month” shall mean a calendar month.

“Party” or “Parties” shall mean FPUC and LWG, as the case may be, and their successors and assigns.

“Preliminary Construction Cost” means the estimated total cost (exclusive of up-front costs) that FPUC will incur to finance, construct and place in service the LWG Lateral. The Preliminary Construction Cost, shown on Exhibit A, Cost of Service, is based upon a bid or bids received by FPUC, FPUC’s own costs of construction and the cost of the FGT Facilities.

“Project” shall mean LWG’s Gas-fired electric generation facility with a planned initial net electrical generating capacity of approximately 210 MW, and including a potential expansion phase that would increase the capacity to a total of approximately 500 MW, including the boilers, turbines, generators and all appurtenant structures, equipment and real property interests owned or leased by LWG, to be located within the City of Lake Worth’s power and water utility complex located on College Street in Lake Worth, Florida, as shown on Exhibit B3 hereto.

“Project Party” or “Project Parties” shall include LWG, an Affiliate of LWG, the City of Lake Worth, and/or any entity that both supplies gas to and purchases electrical energy from the Project.

“p.s.i.a.” shall mean pounds per square inch absolute.

“p.s.i.g.” shall mean pounds per square inch gauge.

“Redelivery Point” shall mean the point at which the LWG Lateral is connected to LWG’s fitting on the outlet flange of FPUC’s valve to be installed within the City of Lake Worth’s power and water utility complex located on College Street in Lake Worth, Florida, as described on Exhibit B4 hereto.

“Renewal Term” shall have the meaning set forth in Section 2.2.

“Renewal Term Charge” shall mean the charges applicable to the provision of the transportation services provided by FPUC hereunder in the event LWG elects to extend the Agreement for a period of ten years pursuant to Section 2.2. The Renewal Term Charge shall be as provided in Section 7.10.

“Standard Cubic Foot of Gas” shall mean the amount of Gas which occupies one cubic foot of space when the Gas is at a pressure of 14.73 p.s.i.a. and a temperature of 60°F.

“Tariff” shall mean FPUC’s Natural Gas Tariff currently filed with the FPSC, as such tariff may be amended with approval of the FPSC from time to time.

## ARTICLE 2

### **TERM**

2.1 Base Term. Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective on the date first set forth above, and shall continue in full force and effect for a period of thirty (30) Annual Periods from the Commencement Date (the “Base Term”).

2.2 Renewal Term. At its option, LWG may elect to extend the term of this Agreement by one period of 10 years or such other period to which the Parties may mutually agree. With respect to such extension, LWG may exercise its right to extend by providing notice to FPUC of its election at least eighteen months prior to the date on which the Base Term is scheduled to terminate. If LWG elects to extend the agreement pursuant to this section, during said extension LWG shall pay FPUC the Renewal Term Charge as provided in Section 7.10.

2.3 Early Termination. Notwithstanding the foregoing:

A. Should the FPSC fail to approve this Agreement on terms acceptable to both Parties, either Party shall have the right, within fifteen (15) days of the effective date of any such final FPSC order, to terminate this Agreement upon thirty (30) days’ prior notice to the other Party; provided however, that any FPSC approval shall be deemed to be acceptable if it does not materially alter the terms and conditions of this Agreement. Such a material alteration would include, but would not be limited to, failure by the FPSC to approve the 11.17% return on investment negotiated by the

parties to be used in calculating the Cost of Service for purposes of this Agreement.

B. LWG shall have the right to terminate this Agreement upon thirty (30) days' prior notice to FPUC, upon the occurrence of any of the following events: (i) LWG fails to obtain construction and/or permanent financing for the Project on terms acceptable to LWG in its sole discretion; (ii) LWG permanently discontinues the development and/or operation of the Project in its sole discretion; (iii) FPUC experiences an event of force majeure that continues for a period of six months or more, as more fully described in Article 9.

C. Termination of this Agreement for any reason, including those set forth in this Section 2.3, and in Section 9.4 shall not relieve LWG of its obligations to pay certain amounts expended by FPUC. If termination occurs prior to the delivery by LWG to FPUC of a written release to commence construction, LWG's obligation shall be limited to the "up-front" expenses incurred by FPUC for obtaining an estimate from FGT of the cost of the FGT Facilities, the designing and permitting of the LWG Lateral, and legal fees and costs incurred in obtaining regulatory approval, except that LWG's responsibility for said "Up-Front Expenses" shall not exceed the amount provided in Section 6.1 in the aggregate in any event. In the event termination occurs after the delivery of the release to commence construction, LWG shall be obligated to pay FPUC (1) any up-front expenses described above (up to the amount described in Section 6.1) not already reimbursed, plus (2) the amount, if any, expended or committed to be expended by FPUC to construct the LWG Lateral and to procure materials, net of any depreciation applied to said construction costs. FPUC agrees to utilize all reasonable measures to mitigate its costs in the event of early termination.

**ARTICLE 3**

**PIPELINE FACILITIES**

3.1 Construction. In order to provide service under this Agreement it will be necessary for FPUC to construct the LWG Lateral. Unless expressly authorized in writing by LWG upon terms agreed on by both parties, the LWG Lateral shall be dedicated solely to the purpose of providing transportation services under this Agreement. The parties understand and agree that, in implementing the Project, LWG may act as the agent for other Project Parties who require transportation service through the LWG Lateral from the Delivery Point to the Redelivery Point. FPUC agrees that LWG may serve as the agent for others, provided LWG promptly notifies FPUC of any such agency and LWG continues to be directly responsible (except in the event of an assignment permitted herein) for the payment of all charges for transportation service and for providing the security required by the terms of this Agreement. FPUC shall obtain all necessary permits, rights-of-way and any other authorizations required to construct the LWG Lateral. Subject to receipt of all necessary approvals, including approval of this Agreement by the FPSC, FPUC shall construct the LWG Lateral from the Delivery Point to the Redelivery Point as required to provide service under this Agreement. Following the date the conditions precedent identified as 12.1(1), 12.1(2), 12.1(3) and 12.2(1) have been satisfied, but in no event later than February 15, 2001, LWG shall provide FPUC a written release to commence construction in substantially the form attached as Exhibit C. Section 13.1, "Notice and Service"; shall apply to the delivery of the written release. FPUC obligates itself to complete the LWG Lateral and place it in service within 12 months of receiving the release to commence construction, said obligation to be excused only if the delay is the

result of an event of Force Majeure.

3.2 Capacity. The LWG Lateral shall be designed, constructed, operated and maintained so as to not exceed a maximum allowable operating pressure (“MAOP”) of 975 p.s.i.g., and shall have the capability of transporting at least 4,070 Mcf per hour to the Redelivery Point at a minimum pressure of 450 p.s.i.g. LWG shall be entitled to receive transportation service equal to the total capacity of the LWG Lateral, subject to the terms and conditions herein. For the initial phase of the Project, LWG shall require up to 2,427 Mcf per hour at the Redelivery Point at a minimum pressure of 450 p.s.i.g. LWG shall provide advance notice of no less than 180 days prior to exceeding 2,427 Mcf per hour.

3.3 Ownership. The LWG Lateral shall be designed, constructed, owned, operated and maintained by FPUC, and shall remain the property of FPUC upon termination or expiration of this Agreement.

3.4 Compliance With Applicable Law. FPUC shall operate and maintain the LWG Lateral in accordance with applicable federal, state and local laws, ordinances and regulations, including, without limitation, any environmental laws, rules, ordinances or regulations.

3.5 Pipeline Relocation. In the event relocation of all or a part of the LWG Lateral is sought by a governmental entity, an owner of property for which FPUC holds a permit, license, right-of-way or an easement, a licensor, FGT, or similarly situated entity, FPUC shall take all reasonably available measures to avoid the necessity of relocation. In addition, FPUC shall promptly notify LWG of the possibility of relocation so that LWG may assist in efforts to avoid the relocation and otherwise act to protect its interests in a timely manner.

If relocation is required, LWG shall be responsible to reimburse FPUC for the actual costs of relocating the LWG Lateral, but only if FPUC has exhausted all reasonable measures available to FPUC to avoid such relocation requirement and only if the requirement of relocation is not due to the fault or negligence of FPUC. LWG understands that during a required relocation FPUC may not be able to flow gas to the Project through the LWG Lateral. FPUC shall use all reasonably available means to minimize any interruption of flow through the LWG Lateral during relocation. FPUC agrees to work diligently and cooperatively with LWG to find other means of flowing gas to the Project in that event. During any relocation LWG shall continue to be obligated to make the payments delineated in Article 7.

If FPUC identifies an action on its part which could obviate-in whole or in part-the necessity of relocation, but which would require FPUC to incur costs to implement, FPUC shall promptly notify LWG of the proposed action and the cost that FPUC would incur to implement the action. If LWG directs FPUC to undertake the measure, FPUC shall do so, and LWG shall reimburse FPUC for the related costs.

If the costs of a required relocation or of avoiding relocation are projected to exceed \$50,000, the Parties will coordinate a reasonable payment schedule such that FPUC is paid prior to incurring the cost.

#### **ARTICLE 4**

#### **TRANSPORTATION OF GAS**

4.1 LWG's Responsibility. LWG, or the entities for whom LWG acts as agent, or their



authorized representatives, shall make all necessary arrangements with other parties for transportation of Gas to the delivery point to be redelivered by FPUC to the Redelivery Point at the Project site. FPUC shall have no responsibility under this agreement for obtaining pipeline capacity on FGT's system or for transportation of gas prior to receipt of such Gas from FGT at the Delivery Point.

4.2 Quantities of Gas. FPUC agrees to receive from FGT at the Delivery Point daily quantities of Gas, specified in Section 3.2 of this Agreement and as nominated by LWG, other Project Parties, or their agents, and to redeliver such quantities of Gas to the Project Parties at the Redelivery Point. FPUC shall be under no obligation and shall have no responsibility to redeliver quantities of Gas on any Day greater than or less than the quantities received from FGT at the Delivery Point on such Day. In the event of a dispute regarding the quantities of Gas received and/or redelivered under this Section 4.2, the Parties agree to use the meter installed by FGT at the Delivery Point and generally accepted natural gas utility practices to determine the quantities received and/or redelivered hereunder. LWG may, at its option and expense, install, operate and maintain one or more check meters downstream of the Redelivery Point to check the FGT meter at the Delivery Point. Such check meters shall be for check purposes, and shall not be used in the measurement of gas under this Agreement, but shall be used for the purposes of verifying the FGT measurement of gas as between FGT and LWG or other Project Parties.

4.3 Interruption of Service. FPUC shall provide "Firm" quality transportation service to LWG, and the parties for whom LWG acts as agent, at all times, excepting only (1) events of Force Majeure; (2) interruptions as necessary to avoid unsafe situations; and (3) necessary relocations, as

provided in Section 3.5. An exercise by FPUC of the right to terminate service in the event of default by LWG and failure to cure shall not constitute an interruption of service within the meaning of this subsection.

4.4 Delivery Pressure. FPUC agrees to contract with FGT on terms that obligate FGT to guarantee a minimum pressure at the Delivery Point of 525 p.s.i.g., at a pressure no greater than 625 p.s.i.g., or at such lower pressure that enables FPUC to operate the LWG Lateral so as to deliver the Gas to the Redelivery Point at a pressure of no less than 450 p.s.i.g. LWG shall be responsible for installing and maintaining (1) regulators at the Redelivery Point to reduce the pressure to that of the Project's requirements and (2) over-pressure protection devices to protect LWG's facilities downstream of the Redelivery Point in the event of a delivery pressure up to the MAOP of 975 p.s.i.g.

4.5 No Treatment of Gas. FPUC will not compress, heat, scrub, strip, or treat gas tendered from FGT, with the exception of providing additional odorization prior to delivery to the Project site.

4.6 Shrinkage. There is to be no shrinkage in the quantity of natural gas received from FGT and delivered to the Project. Measurement of quantities delivered shall be based on the measurement data provided by FGT.

4.7 Nominations. It shall be the responsibility of LWG and/or the other Project Parties to nominate expected natural gas quantities for each day directly to FGT. LWG and/or the other Project Parties shall notify FPUC in writing if they authorize a third party to exercise such function. Said entities shall follow FGT's rules and regulations for the purpose of providing nominations. Intra-day changes in scheduled quantities shall be allowed to the extent permitted by FGT. During the term

of this Agreement LWG or another Project Party shall be FGT's Delivery Point Operator. LWG, the other Project Parties, and/or their authorized representatives shall be responsible for meeting scheduling obligations on FGT, and shall be responsible for any imbalance between quantities scheduled and quantities delivered, and any charges or penalties connected therewith. LWG, the other Project Parties, and/or their authorized representatives shall promptly notify FPUC of daily nominations and any changes thereto via facsimile or by such other means as may be agreed to by the Parties. Upon request of FPUC following termination of this Agreement, LWG or the other Project Party serving as Delivery Point operator shall cooperate with FPUC in good faith to achieve, to the extent possible, an assignment of the Delivery Point operator agreement to FPUC.

4.8 Security. No later than the date on which LWG provides FPUC the written release to commence construction, LWG shall provide to FPUC an irrevocable Letter of Credit ("LC") in a form substantially similar to Exhibit D issued by a bank or institution reasonably acceptable to FPUC. The initial amount of the LC shall be the Preliminary Construction Cost for the LWG Lateral, less any CIAC, plus the amount of \$37,900. Upon determination of the Final Adjusted Construction Cost, the required LC amount shall be the Final Adjusted Construction Cost, less any CIAC, plus the amount of \$37,900. Each year on the anniversary of the Commencement Date, provided there has been no default by either party, the required LC will be modified as follows. The amount of the LC will be recalculated by (1) subtracting the amount of depreciation applied to the LWG Lateral during the prior annual period, and (2) increasing the original \$37,900 component of the beginning LC annually by a factor of 3%, applied on a compounded basis. If at any time LWG terminates this Agreement, or if FPUC terminates this Agreement as the result of a default by LWG,

and LWG fails to pay FPUC the amounts due FPUC from LWG upon termination, FPUC may then draw on the LC to the extent of the amount owed. In addition, in the event the LC is not renewed as required by the terms of this Agreement, FPUC may draw on the LC. In the event the LC is drawn by FPUC as a result of LWG's failure to renew on a timely basis, LWG shall have 30 days following receipt of written notice from FPUC within which to replace the LC. If LWG replaces the LC as provided above, FPUC shall promptly thereafter refund to LWG the amount drawn by FPUC. LWG's replacement of the original LC as provided above shall cure LWG's failure to renew the required LC and this Agreement will continue in accordance with its terms.

## **ARTICLE 5**

### **TITLE, CONTROL AND INDEMNIFICATION**

5.1 Good and Merchantable Title to Gas. LWG warrants that it and/or the other Project Parties for the purposes of this Agreement will hold good and merchantable title to all Gas delivered to FPUC by FGT for their respective accounts at the Delivery Point.

A. LWG will indemnify FPUC and save it harmless from all suits, actions, debts, accounts, damages, costs including reasonable attorney's fees, losses, and expenses arising out of the adverse claim of any person or persons to said Gas, or title thereto, for any royalties, taxes, licenses, fees or charges which are applicable prior to the time of delivery of said Gas to FPUC and after redelivery by FPUC to the Redelivery Point.

B. FPUC will indemnify LWG and save it harmless from all suits, actions, debts, accounts, damages, costs, including reasonable attorney's fees, losses, and expenses arising out of the adverse

claim of any person or persons to said Gas, or title thereto, for any royalties, taxes, licenses, fees or charges which are applicable while said Gas is in FPUC's possession and control prior to the time of redelivery of said Gas to the Project.

5.2 Control. FPUC shall be deemed to be in control and possession of the Gas to be transported by it upon delivery of such Gas at the Delivery Point and until it shall have been redelivered to LWG and/or the other Project Parties at the Redelivery Point; and LWG and each other Project Party receiving gas shall be deemed to be in control and possession of its respective Gas prior to such delivery to FPUC and after such redelivery at the Redelivery Point. Each Party, while deemed to be in control and possession of such Gas, shall be responsible for, and will indemnify and hold the other harmless from, any and all claims, actions, suits, including attorney's fees, arising out of or relating in any way to custody and control of such Gas.

## **ARTICLE 6**

### **UP-FRONT EXPENSES**

6.1 Up-Front Expenses. LWG agrees to pay FPUC for services by FPUC rendered in connection with the cost of obtaining an estimate from FGT of the cost of the FGT Facilities, designing and permitting the LWG Lateral, and the legal fees and costs of obtaining regulatory approval of the LWG Lateral, up to an amount not to exceed \$55,500 plus the amount invoiced by FGT to FPUC to file for and obtain permits necessary to construct FGT's portion of the FGT Facilities. A portion of the said amount of Up-Front Expenses is intended to cover the potential cost of a performance bond to secure the performance of the contractor to whom FPUC awarded the bid

for construction of the LWG Lateral. The cost of the performance bond shall not exceed \$40,000. FPUC shall not incur the expense of the performance bond prior to September 1, 2000. FPUC will bill LWG monthly, based on actual expenditures, adjusted to include overheads associated with the aforesaid designing and permitting. Such reimbursements shall not constitute CIAC.

## ARTICLE 7

### TRANSPORTATION CHARGES

7.1 Facilities Charge. The following charges are based on and derived from Exhibit A, "Cost of Service." Beginning on the Commencement Date and on the first day of each month thereafter during the Base Term, LWG shall pay FPUC a Facilities Charge consisting of "fixed" and "declining" components. The "fixed" component of \$25,648.33 per month, as such amount may be adjusted pursuant to Section 7.5, Section 7.9 or Section 7.11, shall compensate FPUC for depreciation expenses, property taxes, and other taxes associated with the construction and ownership of the LWG Lateral. The "declining" component per month of the Facilities Charge shall be one twelfth of the annual amount shown in the schedule of charges contained in Exhibit A, page 6 (initially \$69,240.42 per month), as such amount may be adjusted pursuant to Section 7.5, Section 7.9, or Section 7.11. In the event that the Commencement Date falls on a date other than the first day of a month, the Facilities Charge for that initial period shall be reduced proportionately.

7.2 The Facilities Charge includes only FPUC's charges for transportation service associated with Gas transported and redelivered under this Agreement and does not include any charges for transportation service by FGT or any other entity transporting Gas prior to delivery to FPUC at the

Delivery Point.

7.3 The Facilities Charge includes an estimate (\$699,582) of the cost of the FGT Facilities to be paid for by FPUC. It is understood and agreed by the parties that, if and to the extent the actual cost of the FGT Facilities borne by FPUC differs from the estimate of \$699,582 used to calculate the Facilities Charge, the difference will increase or reduce the Final Adjusted Construction Cost used in the Cost of Service calculation.

7.4 It is the intent of the Parties that there be no CIAC. If a CIAC is required by the FPSC, it shall include a tax gross-up on the CIAC based upon FPUC's Federal tax rate to the extent that such CIAC is taxable. To the extent that LWG supplies any CIAC, the construction cost used to calculate the Facilities Charge shall be reduced by the amount of the CIAC.

7.5 The beginning levels of the fixed and declining components of the Facilities Charges have been calculated on the basis of the Preliminary Construction Cost. The Preliminary Construction Cost includes financing costs and construction interest. If the FPSC disallows capitalization of those items, they shall be removed from the Preliminary Construction Cost and LWG shall pay them as they are incurred and billed by FPUC. Such payments shall not constitute CIAC under Section 7.4 or up-front expenses under Section 6.1. In the event the actual costs associated with constructing the LWG Lateral, including the cost of the FGT Facilities, differ from the Preliminary Construction Cost, FPUC shall determine the Final Adjusted Construction Cost and the fixed and declining component of the Facilities Charge shall be increased or decreased by the percentage amount that the Final Adjusted Construction Cost is above or below the Preliminary Construction Cost. However, the adjustment for construction costs other than the cost of the FGT

Facilities shall not be greater than 10% above or less than 10% below the estimate used in the Preliminary Construction Costs.

7.6 LWG shall pay FPUC each month an Operations and Maintenance Charge designed to compensate FPUC for the annual costs of operating and maintaining the LWG Lateral. The details of the operations and maintenance expenses are delineated in Exhibit A, entitled the "Cost of Service Study". The beginning Operations and Maintenance Charge shall be \$6,312.17 monthly. There shall be an annual adjustment in the Operations and Maintenance Charge based upon the United States Department of Labor Bureau of Labor Statistics CPI-U Series #CUUR0000SA0. If actions by LWG or another Project Party necessitate an increase in the operating hours of FPUC's Gas Supply Department for the purpose of providing service under this Agreement, such increased cost will be billed to LWG in addition to the Operations and Maintenance Charge and paid by LWG monthly.

The Operations and Maintenance Charge includes the current cost of maintaining a license to cross the CSX Railroad right-of-way. It is understood and agreed by the Parties that to the extent right-of-way costs and related fees imposed by any municipalities traversed by the LWG Lateral or by owners of the property for which FPUC holds permits, licenses, easements or rights-of-way total in excess of \$2,500 per year, as adjusted in the preceding paragraph, such fees in excess of \$2,500 will be added to the Operations and Maintenance Charge.

LWG shall assign to FPUC an easement on the City of Lake Worth's power and water utility complex located on College Street in Lake Worth, Florida, necessary to construct, operate, and maintain the LWG Lateral on such site that LWG holds or receives from the City of Lake Worth.



7.7 In the event the delivered cost of odorant exceeds 125% of the amount of such costs included in the Operations and Maintenance Charge, as adjusted by the index identified in Section 7.6, then the increment by which such costs exceed the 125% level shall be added to the Operations and Maintenance Charge.

7.8 Start-up. During start-up procedures associated with placing the LWG Lateral in service, LWG shall be responsible for providing gas used in purging the line and for creating line pack. In addition, LWG shall provide water used in the hydrostatic testing of the LWG Lateral. FPUC shall employ good utility practices designed to minimize the cost associated with start-up testing and procedures.

7.9 Effect of change in law. If a change in law, or a change in regulations having the force of law, requires FPUC to purchase and install new or additional facilities or equipment for compliance or to incur additional direct costs of operating the LWG Lateral beyond those included in the Cost of Service, LWG shall be responsible for bearing the cost of FPUC's compliance with such requirement. FPUC shall be responsible for employing good utility practices and other reasonably available means for minimizing the cost of compliance. The Parties will determine whether the cost associated with the new legal requirement shall be borne through adjustments to charges or through a CIAC, based on circumstances at the time the cost is identified and quantified.

7.10 Renewal Term Charge. If LWG decides to exercise its right to renew this Agreement for a Renewal Term, it shall notify FPUC in writing of its election to renew at least eighteen months prior to the expiration of the Base Term. Section 13.1, Notice and Service, shall apply to the delivery of such notice. Upon delivery by LWG of notice of its decision to renew, the Parties shall

negotiate in good faith the charges for transportation service that will apply during the Renewal Term. In such negotiations the Parties will take into account (1) the condition of the LWG Lateral, and any improvements and/or repairs needed to enable FPUC to continue to provide service under the Agreement; (2) the level of operations and maintenance expense necessary to operate and maintain the LWG Lateral during the Renewal Term; (3) the level of margin above actual operations and maintenance expense that would provide a fair and reasonable benefit to FPUC and FPUC's other customers; and other relevant considerations. If the Parties fail to agree to the charges that will be applicable to the Renewal Term within 60 days of the receipt by FPUC of LWG's notice of the decision to renew, the Parties will submit the matter to the FPSC or, if applicable, a successor agency having similar regulatory jurisdiction over the transportation of natural gas as provided under this Agreement for resolution. If no governmental agency has such jurisdiction over the transportation of natural gas as provided under this Agreement at the time the Agreement is renewed, the Parties shall submit the matter to arbitration in the manner delineated in Section 11.6. In the event the rates applicable to the Renewal Term are undetermined at the time the Renewal Term begins, FPUC shall continue to provide service under the Agreement and LWG shall pay the charges in effect at the time the Base Term expired on an interim basis. Once the Renewal Term charges have been determined, they will, to the extent allowed by law, relate back to the beginning of the Renewal Term and the interim charges will be trued up accordingly.

7.11 Taxes. If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such State, should increase any present tax or fees or levy any additional tax or fees relating to the service provided by FPUC under this Agreement, any such

additional tax or fees directly attributable to such service and actually paid by FPUC shall be added to the fixed component of the Facilities Charge, and in such event FPUC shall provide to LWG supporting documentation with any bill or statement. In the event that Florida state sales tax is levied on the labor expense of FPUC's contractors associated with the construction of the LWG Lateral, the amount of such sales tax shall be paid by LWG.

7.12 Except for the specific adjustment factors and items delineated herein, FPUC and LWG agree that they will not seek to adjust the Facilities Charge or the Operations and Maintenance Charge during the Base Term. If another party seeks to modify either charge, FPUC and LWG agree to support the rates agreed to herein by demonstrating the appropriateness of the rates in light of (a) the binding bids FPUC obtained as the basis for the cost of construction; (b) the cost of service analysis on which the Facilities Charge is based; (c) the benefits of this transaction derived by other customers of FPUC; and (d) other relevant considerations supporting the concept and level of the contract rates agreed to by the parties.

7.13 FERC Order No. 636 Transition Costs. LWG shall not be liable under this Agreement for any costs directly or indirectly associated with FGT's compliance with FERC Order No. 636 (57 Fed. Reg. 13,267 (April 16, 1992), III FERC Stats. And Regs. ¶ 30,939(1992)), which are incurred by or allocated to FPUC under FPUC's service agreements with FGT, and FPUC shall take no affirmative action seeking to impose upon LWG under this Agreement any Order No. 636 - related charges which are incurred by or allocated to FPUC under its service agreements with FGT.

7.14 Information for Audit. LWG shall have the right to review and audit during normal business hours on reasonable prior notice, and at its own expense, FPUC's records relating to the

Final Adjusted Construction Cost and any increase in costs on which FPUC exercises the right to modify the Facilities Charge or the Operation and Maintenance Charge pursuant to adjustments contemplated by this Section.

## **ARTICLE 8**

### **APPLICABILITY OF TARIFF**

8.1 The Miscellaneous General Information section, the Technical Terms and Abbreviations, and the Rules and Regulations (excluding Item 7, Extensions) of FPUC's Gas Tariff, including any amendments thereto which become effective during the term of this Agreement, are hereby incorporated into this Agreement and made a part hereof for all purposes. Any and all other provisions of such Tariff are specifically waived by the Parties. In the event of any conflict between the terms of said tariff provisions and specific provisions of this Agreement, the latter shall prevail.

## **ARTICLE 9**

### **FORCE MAJEURE**

9.1 Suspension of Performance. In the event of either Party, FPUC or LWG, being rendered unable wholly or in part by Force Majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that on such Party giving notice and full particulars of such Force Majeure to the other Party as soon as possible after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused but for no

longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. If an event of Force Majeure occurs, in addition to pursuing a remedy to the cause of the event, the party experiencing the event of Force Majeure agrees to use its best efforts to avoid or mitigate any adverse impacts associated with the event of Force Majeure. Such efforts shall include, but shall not be limited to, exploring an alternative means of transporting gas.

9.2 Definition. The term “Force Majeure”, as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, hurricanes, lightning, earthquakes, fires, storms of unusual magnitude, floods greater than the recorded 25-year flood, washouts, arrests and restraints of government and people, civil disturbances, explosions, breakage or freezing of or accidents to the Pipeline Facilities, and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome; such term shall likewise include: (a) in those instances where either Party is required to maintain, or, in the event of a required relocation of all or a portion of the LWG Lateral, to obtain servitude, rights of way grants, permits, or licenses to enable such Party to fulfill its obligations hereunder, the inability of such Party to maintain or acquire, or the delays on the part of such Party in maintaining or acquiring, at reasonable cost and after the exercise of due diligence, such servitudes, rights of way grants, permits, or licenses; and (b) in those instances where either party is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure grants or permissions from any governmental agency to enable such Party to acquire, or the delays on the part of such Party in acquiring, at reasonable cost

and after the exercise of due diligence, such materials and supplies, permits and permissions.

9.3 Settlement of Strikes. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts when such course is inadvisable in the discretion of the Party having the difficulty.

9.4 If an event of Force Majeure experienced by FPUC continues for a period of six months or longer, LWG shall have the right, at its option, to terminate this agreement. In the event LWG invokes its right to terminate under this provision, it will be obligated to compensate FPUC consistent with the provisions of Section 2.3. In addition, upon exercise of LWG's termination rights under Section 9.4 hereunder, FPUC shall cooperate with LWG and any new contractor engaged by LWG to complete construction of the LWG Lateral to ensure a smooth and efficient transfer of the work in progress, including, but not limited to (1) convey to LWG all pipe, equipment and materials purchased or installed with respect to construction of the LWG Lateral, (2) to the extent possible assignment of permits, easements and rights of way related thereto, (3) to the extent possible termination of subcontracts entered into by FPUC on terms satisfactory to LWG, or at LWG's request, to the extent possible assignment of subcontract to LWG on terms satisfactory to LWG, (4) delivery to LWG of all drawings, purchase orders and other contract documents related to the LWG Lateral. All deliveries hereunder shall be made free and clear of liens, encumbrances and security interests, except those created by LWG.

**ARTICLE 10**

**AGREEMENT TO COOPERATE IN THE  
EVENT OF COMPETITIVE ALTERNATIVE**

In the event an additional interstate pipeline is built in the vicinity of the Project, and LWG requests an interconnection with the alternative interstate pipeline, FPUC agrees to cooperate with LWG in the evaluation of the construction of a lateral to the alternative pipeline. FPUC will negotiate an agreement with LWG in good faith for the construction of such a lateral and the transportation of gas from a delivery point on the alternative interstate pipeline to a redelivery point at the Project site on terms substantially similar to those of this agreement. The development of an alternative lateral shall not affect the obligation of LWG to pay for the LWG Lateral pursuant to Article 7 and the other relevant provisions of this agreement.

**ARTICLE 11**

**DISPUTE RESOLUTION**

11.1 Purpose and Scope.

A. The Parties agree that any dispute arising under this Agreement which is not subject to the exclusive jurisdiction of the FPSC shall be resolved solely by application of the procedures set forth in this Article 11. The procedures set forth herein may be modified by agreement of the Parties with respect to any particular dispute which is subject to these procedures.

B. Each Party shall continue to perform its obligations under this Agreement pending final resolution of any dispute which is subject to these procedures. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this

Article 11 are pending. The Parties shall take such action, if any, as may be required to effectuate such tolling.

11.2 Commencement of Dispute Resolution Proceeding. A dispute subject to the procedures provided herein shall be resolved in a dispute resolution proceeding (“DRP”). A DRP shall be commenced by either party giving written notice to the other of the matter in dispute.

11.3 Negotiations. Within ten (10) days after delivery of such notice, authorized officers of the Parties shall meet at a mutually acceptable time and place in or near Lake Worth, Florida to exchange relevant information and to attempt to resolve the dispute through good faith negotiations. Requests for information shall be reasonable; responses shall be prompt and complete. If the matter is not resolved within thirty (30) days after delivery of the notice to commence, the DRP shall proceed to mediation.

11.4 Mediation.

A. Within forty (40) days after delivery of the notice to commence the DRP, the Parties shall attempt to agree on the selection of a mediator with professional experience in natural gas and electric generation issues (the “Mediator”), or, failing such agreement, the Parties shall select a Mediator from the Center from Public Resources’ Panel of Neutrals or other agreed upon registry of persons skilled in dispute resolution. The Parties shall bear equally the costs of the mediator.

B. Within twenty (20) days after selection of the Mediator, the Parties shall meet at a mutually acceptable time and place to present their positions to the Mediator. At least five (5) days prior to such meeting, each Party shall submit to the Mediator and to the other Party a statement of



position on the issues remaining in dispute and a summary of the evidence and arguments supporting its position.

C. The Mediator shall prescribe the order of, and appropriate time limits for, the Parties' presentations at the meeting. The Mediator may request the Parties to provide additional information or arguments in support of their positions at or following the meeting. The Mediator, with the agreement of the Parties, may schedule additional mediation meetings.

D. The Mediator shall not have any ex parte communication with either of the Parties.

#### 11.5 Mediator's Recommended Decision.

A. If the Parties fail to resolve all disputed issues through the mediation process described above, the Mediator shall submit to them, within thirty (30) days after the final mediation meeting a draft recommended decision. The Parties may submit to the Mediator their comments on the draft recommended decision within fifteen (15) days after its issuance, and each Party shall submit a copy of such comments to the other Party. The Mediator shall submit to the Parties a final decision on all remaining issues within fifteen (15) days after receipt of any comments by the Parties.

B. The Parties agree to be bound by the Mediator's final decision, except that either Party may, within fifteen (15) days after the issuance of the Mediator's final decision file a petition with the FPSC seeking review of the decision solely on the grounds that such decision: (i) was procured by corruption, fraud or undue means; (ii) was the result of evident partiality or misconduct by the Mediator; or (iii) would, if given effect, be unlawful under the laws of the State of Florida. If the FPSC makes any such finding, the Mediator's decision shall be given no effect, and the FPSC shall issue its own decision on the issues remaining the dispute.

#### 11.6 Arbitration Agreement

A. If a dispute arises under this Agreement at a time when the FPSC no longer has regulatory

jurisdiction over the intrastate transportation of natural gas, the Parties agree that in that event the dispute will be subject to arbitration under the commercial arbitration rules of the American Arbitration Association, and the following provisions shall govern in lieu of Sections 11.1 through 11.5.

B. If a dispute should arise under this contract, either Party may within 30 days make a demand for arbitration by filing a demand in writing with the other Party.

C. The Parties may agree on one arbitrator, but in the event that they cannot agree, there shall be three arbitrators, one named in writing by each of the parties within 14 days after the demand for arbitration is made and a third to be chosen by the two named. Should either party refuse or neglect to join in the appointment of the arbitrator, the arbitrators shall be appointed in accordance with the provisions of the commercial arbitration rules.

D. All arbitration hearings, and all judicial proceedings to enforce any of the provisions of this agreement, shall take place in Palm Beach County, Florida. The hearing before the arbitrators of the matter to be arbitrated shall be at the time and place within the County as selected by the arbitrators. Notice shall be given and the hearing conducted in accordance with the provisions of the commercial arbitration rules. The arbitrators shall hear and determine the matter and shall execute and acknowledge their award in writing and deliver a copy to each of the parties by registered or certified mail.

E. If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties. If there are three arbitrators, the decision of any two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of the arbitrator(s)' decision shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award of the arbitrators may be rendered by any court having jurisdiction; or the court may vacate, modify, or correct the award.

F. The costs and expenses of arbitration, including the fees of the arbitrators, shall be borne by the non-prevailing Party or in such proportions as the arbitrators shall determine.

11.7. Confidentiality. All communications by the Parties or their representatives with respect to a dispute which is the subject of a DRP shall be privileged and confidential and shall not be disclosed or admissible in evidence, unless: (i) they bear directly on allegations that the Mediator's decision should be rejected for reasons of fraud, corruption, misconduct or evident partiality; or (ii) the FPSC or a court of competent jurisdiction determines that such disclosure is necessary.

## ARTICLE 12

### CONDITIONS PRECEDENT

12.1. The following conditions precedent must be satisfied before FPUC will have any obligations under this Agreement:

- (1) Approval of this Agreement by a final order of the Florida Public Service Commission;
- (2) Receipt of all permits and authorizations necessary to construct the LWG Lateral, including those necessary for the construction of the FGT Facilities. FPUC shall file all applications for such permits within 15 days of the execution of this Agreement, and shall make all reasonable efforts to secure them within 60 days of the execution of this Agreement;
- (3) Execution of an agreement between FPUC and FGT for the construction of the FGT Facilities reasonably acceptable to FPUC; and
- (4) Receipt of a written release from LWG, in substantially the form shown in Exhibit C, and delivered in accordance with Section 13.1, directing FPUC to commence construction.

12.2. The following conditions precedent must be satisfied before LWG will have any obligations under this Agreement other than the obligation to reimburse FPUC for up-front expenses, as provided in Section 2.3(C).

- (1) The Project, or any portion thereof, has achieved a financial closing

- satisfactory to LWG in its sole discretion; and
- (2) LWG has delivered to FPUC a written release to commence construction of the LWG Lateral.

**ARTICLE 13**

**MISCELLANEOUS**

13.1 Notice and Service. All notices, consents or approvals required or permitted to be given hereunder shall be in writing and shall be deemed given to a Party at its address set forth below, or to such other address as any Party may designate from time to time by notice to the other Party given in accordance herewith: (i) upon delivery in person; (ii) on the third (3rd) business day after mailing by registered or certified mail, postage prepaid; (iii) on the next business day after timely delivery to an overnight common carrier service, service fee payable by the sending Party, for next-day delivery; or (iv) on the date of facsimile transmission by telephone line provided such transmission is followed by delivery of a copy of such notice within twenty-four (24) hours pursuant to clauses (i) or (iii):

LWG:           Manager, Lake Worth Generation LLC  
  
                  245 Winter Street, Suite 300  
  
                  Waltham, MA 02451  
  
                  Fax # 781-370-1594

FPUC: Division Manager, WPB  
Florida Public Utilities Company  
401 South Dixie Highway  
West Palm Beach, FL 33401  
General Fax #561-833-8562  
Gas Supply Fax # 561-838-1713

or such other address or fax numbers as such Party may hereafter specify for the purposes by notice to the other Party.

13.2 Captions. The captions in this Agreement are for the convenience of the Parties in identifications of the provisions hereof and are not intended to be inclusive, definitive or to affect the meaning, content or scope of this Agreement.

13.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties. The respective rights and obligations of either Party hereto shall not be assignable without the consent of the other Party, and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, LWG is expressly permitted to assign this Agreement without further approval by FPUC to any Lender, to any limited or general partnership in which LWG is a partner, and to any Project Party. LWG shall provide notice of 30 days prior to any such assignment. Any assignee shall be entitled to all rights and shall be liable for all obligations under the Agreement, including all payment obligations.

13.4 Cooperation with Lender.

A. FPUC agrees that in connection with the collateral assignment by LWG to Lender, it will execute an appropriate consent to such assignment as reasonably requested by such Lender acknowledging, in effect, that this agreement has been duly authorized and is valid and enforceable against FPUC and does not conflict with any law binding upon FPUC or its articles of incorporation or by-laws, that this Agreement is in full force and effect, that FPUC will not agree to any amendment to this Agreement without Lender's approval in writing, that it will deliver to Lender a copy of each notice of default and will give Lender a reasonable opportunity (in any event not less than thirty (30) days) to cure, that it will not terminate this Agreement without giving Lender prior notice, and that in the event Lender succeeds to the interest of LWG under this Agreement by reason of the exercise of its rights under its loan documentation with LWG, FPUC will accept performance by Lender or its successor or assigns notwithstanding any restriction under or in accordance with this Agreement. FPUC also agrees, upon request of LWG, to furnish to Lender a reasonable opinion of counsel to FPUC with respect to the enforceability of the Agreement against FPUC. Notwithstanding the foregoing FPUC shall not be obligated to agree to any modification requested by Lender or take any action to benefit Lender if such modification or action would result in a material adverse effect upon FPUC.

B. The Parties recognize that this Agreement is subject to approval by Lender and if any such Lender requires any reasonable modification to the provisions of this Agreement, LWG shall request that FPUC consent to such modification. FPUC may withhold its consent if the requested modification is: (i) made after LWG and Lender have entered into a credit facility and the Lender has authorized the release of funds under such credit facility; (ii) inconsistent with the regulatory

requirements of the FPSC or any other body having jurisdiction over the Parties; or (iii) will have a material adverse effect on FPUC.

13.5 Consents and Approvals. Consents and approvals contemplated by this Agreement shall not be unreasonably delayed or withheld.

13.6 Governing Law. The interpretation and performance of this Agreement shall be in accordance with the laws of the State of Florida. The Parties agree that the appropriate venue for the filing of any judicial action shall be in Palm Beach County, Florida.

13.7 Applicable Law.

A. This Agreement shall be subject to all of the rules, regulations, and orders of any duly constituted federal or state regulatory authorities having jurisdiction hereof. The Parties shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. FPUC and /or LWG will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement.

B. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any such law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either Party from contesting the validity of any such law, order, directive, rule or regulation, nor shall anything in this Agreement be construed to require either Party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the FPSC over this Agreement or any Party thereof. In the event of such contestation, and unless otherwise prohibited from doing so, FPUC shall continue to transport and

LWG shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance is precluded.

13.8 Filing with FPSC. Not later than five (5) business days after execution of this Agreement by both Parties, the Parties shall file this Agreement with the FPSC for approval.

13.9 Entire Agreement. This Agreement supersedes any and all oral or written agreements and understandings heretofore made relating to the subject matters herein and constitutes the entire agreement and understanding of the Parties relating to the subject matters herein.

13.10 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either Party, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

13.11 Survival of Obligations. LWG's obligation with respect to payments and the Letter of Credit required under Section 4.8 of this Agreement, and LWG's and FPUC's obligations with respect to indemnification under this Agreement shall survive termination or expiration of this Agreement. LWG's obligation with respect to the Letter of Credit required under Section 4.8 of this Agreement shall survive assignment of this Agreement until a replacement letter of credit on similar terms and conditions as the Letter of Credit is put in place by LWG's assignee.

13.12 Legal Fees. In the event of litigation between the Parties arising out of or in connection with this Agreement, then the reasonable attorneys' fees and costs of the Party prevailing in such



litigation shall be paid by the other Party.


13.13. Amendments. No amendment or modification of the terms of this Agreement shall be binding on FPUC or LWG unless reduced in writing and signed by both Parties.

13.14 Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

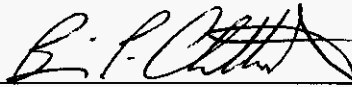
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first stated above.

WITNESS:

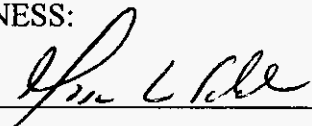
  
Name: LEONARD SHAPIRO

LAKE WORTH GENERATION, LLC

By: 

Title: Manager

WITNESS:

  
Name: MARC L. SCHNEIDEMANN

FLORIDA PUBLIC UTILITIES COMPANY

By: CL Stern

Title: Ta Vice President

EXHIBIT A  
COST OF SERVICE

**COST OF SERVICE STUDY  
 FLORIDA PUBLIC UTILITIES COMPANY  
 TO SERVE LAKE WORTH GENERATION, LLC**

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**Preface / Assumptions**

Phase 1	New Plant for Lake Worth S-5	2,027	MMBtu/hour
	Total Phase 1	<u>400</u>	MMBtu/hour
		<b>2,427</b>	MMBtu/hour
	Projected Annual Consumption	<u>16,250,000</u>	MMBtu/year
<hr/>			
Possible			
Phase 2	Total Phase 2	2,100	MMBtu/hour
	Expected Hours per year	1,500 Hours	
	Projected Annual Consumption	<u>3,150,000</u>	MMBtu/year
<hr/>			
Phase 1+2	Total Phase 1 + Phase 2	<u>4,070</u>	MMBtu/hour
	Projected Annual Consumption	<u>19,400,000</u>	MMBtu/year

Note: Combined total is less than the individual Phase 1 and Phase 2 data.

**COST OF SERVICE STUDY  
FLORIDA PUBLIC UTILITIES COMPANY  
TO SERVE LAKE WORTH POWER PARTNERS**

Page 2 of 7

**ESTIMATED RATE BASE AND RETURN**

	<u>Amount</u>	<u>Notations</u>
1 FGT FACILITIES UPGRADE COST	\$699,582	FGT Level "B" Estimate
2a FPU PIPELINE CONTRACTOR COST INCL INTEREST	\$4,108,767	Includes Lowest Contractor bid increased for .375"wt 14" SCW pipe
2b FPU's ESTIMATE FOR CONSTRUCTION, INSPECTION, PERMITS,	\$394,200	
2c FPU's FINANCING ESTIMATE	\$250,000	
4 PROPERTY ACQUISITION	\$0	
3 Cost of Plant: Gross Investment in Plant (a/k/a "Facilities Charge")	\$5,452,549	
4 Less: A/D Provision	\$0	
5 Less: Contribution	\$0	
6 Net Plant	<u>\$5,452,549</u>	
7 Working Capital	\$0	
8 Accumulated Deferred Income Taxes	\$0	
9 Deferred Investment Tax Credit	\$0	
10 Rate Base = PRELIMINARY CONSTRUCTION COST	<u>\$5,452,549</u>	
11 Return on Rate Base	11.17%	
12 Less Adjustments based on mid-year start	\$0	Expected start-up near beginning of year.
13 Total Return @	<u>\$609,050</u>	

**COST OF SERVICE STUDY  
FLORIDA PUBLIC UTILITIES COMPANY  
TO SERVE LAKE WORTH GENERATION, LLC**

**ESTIMATED INCOME TAXES**

		<u>Total</u>
1 Rate Base		\$5,452,549
2 Return on Rate Base (Line 1 x Rate of Return)		\$609,050
3 Less Interest on Debt	4.4267%	<u>(\$241,368)</u>
4 Net Income After Taxes		\$367,682
5 Divided by 1- Tax Rate		<u>62.37%</u>
6 Taxable Income		\$589,517
7 Income Taxes @	37.63%	<u>\$221,835</u>

**COST OF CAPITAL**

	<u>Amount</u> (in \$1,000)	<u>Ratio</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Equity	\$25,900	41.51%	14.40%	5.98%
Long-Term Notes	\$23,500	37.66%	9.93%	3.74%
Notes	\$13,000	20.83%	7.00%	1.46%
Total	\$62,400	100.00%		<u>11.17%</u>

**COST OF SERVICE STUDY  
FLORIDA PUBLIC UTILITIES COMPANY  
TO SERVE LAKE WORTH GENERATION, LLC**

**ESTIMATED O & M EXPENSES**

	<u>Annualized Amount</u>
1 System Protection	
Cathodic Protection	\$600
Leak Survey	\$300
Valve Maintenance	\$400
Marker Replacements	\$700
Repainting of Facilities / 3 year cycle	\$2,400
Anode Replacement	\$600
Odorant	\$29,250
Line Locating Expense	\$2,400
Inspection during Construction near line	\$2,300
2 Measurement Related Expense	
EFM Testing, Maint. and Calibration	\$2,000
Odorizer repair @\$2K/yr & Replacement on 15 yr cycle	\$7,547
Annual Meter Tests	\$500
Meter Reading	\$100
3 Account Management Expense	
Management	\$700
Administrative and General	\$5,000
Billing / Customer Service	\$100
Emergency Response / Utility ROW issues	\$5,000
Gas Supply	\$700
Subtotal	\$60,597
Contingencies	\$15,149
Total	<u>\$75,746</u>
<hr/>	
Note:	Current Odorant Costs which will vary over time:
Odorant Costs	0.6 LBs per 1,000,000 cf \$3.00/LB = \$1.80 per 1,000,000 cf
	Projected annual Phase I deliveries 16,250 MMcf/year
	Annual Odorant Expense \$29,250 Based on Phase I Projected Consumption

**COST OF SERVICE STUDY  
FLORIDA PUBLIC UTILITIES COMPANY  
TO SERVE LAKE WORTH GENERATION, LLC**

<u>Cost of Service</u>		<u>Amount</u>
<b>1. Operations and Maintenance Charge:</b>	<i>See Note 2/</i>	
a. Operation & Maintenance		\$75,746
<b>2. Fixed Component of the Facilities Charge:</b>	<i>See Note 2/</i>	
a. Depreciation	3.3333% 30.00 year cycle	\$181,752
b. Taxes Other Than Income Tax	<i>See Note 1/</i>	\$126,028
<b>3. Declining Component of the Facilities Charge:</b>	<i>See Note 2/</i>	
a. Income Tax		\$221,835
b. Return @	11.17%	\$609,050
Total Operating Costs		<b>\$1,214,411</b>

**Notes:**

**1/ Taxes Other Than Income Taxes - Property and Revenue Related**

Average Property Tax Rate - PB County	2.2000%	Revenue Related Taxes	0.500%
x Gross Plant	<u>\$5,452,549</u>	Projected Revenue	<u>\$1,214,411</u>
Property Tax Expense	<u>\$119,956</u>	<small>(Directly enter Total Operating Costs projected above)</small>	
		Related Revenue Taxes	<u>\$6,072</u>
		Total Taxes	<u><u>\$126,028</u></u>

2/ Pages 6 and 7 contain the projected Operations and Maintenance Charge and the fixed and the declining components of the Facilities Charge over a 30 year period. These are subject to adjustment under the Gas Transportation Agreement.



**COST OF SERVICE STUDY  
FLORIDA PUBLIC UTILITIES COMPANY  
TO SERVE LAKE WORTH GENERATION, LLC**

**Illustrative 30 Year Schedule Based on Costs Included in this Cost of Service Study (See Notes) - CONTINUED ON PAGE 7 OF 7**

Year	Gross Plant	Accumulated Depreciation	Net Plant	Return at 11.17%	Interest on Debt 4.4267%	Net Income After Taxes	Net Income before Income Taxes
							Taxable Income = Net Income After Taxes Divided by 1- Income Tax Rate
1	\$5,452,549	\$0	\$5,452,549	\$609,050	\$241,368	\$367,682	\$589,517
2	\$5,452,549	\$181,752	\$5,270,797	\$588,748	\$241,368	\$347,380	\$556,967
3	\$5,452,549	\$363,504	\$5,089,045	\$568,446	\$233,322	\$335,124	\$537,316
4	\$5,452,549	\$545,256	\$4,907,293	\$548,145	\$225,277	\$322,868	\$517,665
5	\$5,452,549	\$727,008	\$4,725,541	\$527,843	\$217,231	\$310,612	\$498,015
6	\$5,452,549	\$908,760	\$4,543,789	\$507,541	\$209,186	\$298,356	\$478,364
7	\$5,452,549	\$1,090,512	\$4,362,037	\$487,240	\$201,140	\$286,100	\$458,714
8	\$5,452,549	\$1,272,264	\$4,180,285	\$466,938	\$193,094	\$273,844	\$439,063
9	\$5,452,549	\$1,454,016	\$3,998,533	\$446,636	\$185,049	\$261,587	\$419,412
10	\$5,452,549	\$1,635,768	\$3,816,781	\$426,334	\$177,003	\$249,331	\$399,762
11	\$5,452,549	\$1,817,520	\$3,635,029	\$406,033	\$168,957	\$237,075	\$380,111
12	\$5,452,549	\$1,999,272	\$3,453,277	\$385,731	\$160,912	\$224,819	\$360,460
13	\$5,452,549	\$2,181,024	\$3,271,525	\$365,429	\$152,866	\$212,563	\$340,810
14	\$5,452,549	\$2,362,776	\$3,089,773	\$345,128	\$144,821	\$200,307	\$321,159
15	\$5,452,549	\$2,544,528	\$2,908,021	\$324,826	\$136,775	\$188,051	\$301,509
16	\$5,452,549	\$2,726,280	\$2,726,269	\$304,524	\$128,729	\$175,795	\$281,858
17	\$5,452,549	\$2,908,032	\$2,544,517	\$284,223	\$120,684	\$163,539	\$262,207
18	\$5,452,549	\$3,089,784	\$2,362,765	\$263,921	\$112,638	\$151,283	\$242,557
19	\$5,452,549	\$3,271,536	\$2,181,013	\$243,619	\$104,593	\$139,027	\$222,906
20	\$5,452,549	\$3,453,288	\$1,999,261	\$223,317	\$96,547	\$126,771	\$203,256
21	\$5,452,549	\$3,635,040	\$1,817,509	\$203,016	\$88,501	\$114,514	\$183,605
22	\$5,452,549	\$3,816,792	\$1,635,757	\$182,714	\$80,456	\$102,258	\$163,954
23	\$5,452,549	\$3,998,544	\$1,454,005	\$162,412	\$72,410	\$90,002	\$144,304
24	\$5,452,549	\$4,180,296	\$1,272,253	\$142,111	\$64,364	\$77,746	\$124,653
25	\$5,452,549	\$4,362,048	\$1,090,501	\$121,809	\$56,319	\$65,490	\$105,003
26	\$5,452,549	\$4,543,800	\$908,749	\$101,507	\$48,273	\$53,234	\$85,352
27	\$5,452,549	\$4,725,552	\$726,997	\$81,206	\$40,228	\$40,978	\$65,701
28	\$5,452,549	\$4,907,304	\$545,245	\$60,904	\$32,182	\$28,722	\$46,051
29	\$5,452,549	\$5,089,056	\$363,493	\$40,602	\$24,136	\$16,466	\$26,400
30	\$5,452,549	\$5,270,808	\$181,741	\$20,300	\$16,091	\$4,210	\$6,750

[A]  
[See P.5 Line 3b]

**Notes:**

- This is an illustrative schedule which may be modified based on certain adjustments under the Gas Transportation Agreement ("GTA").
- ALL CHARGES ARE ILLUSTRATIVE BASED ON THE PRELIMINARY CONSTRUCTION COST UNDER THE GTA.
- THE CPI-U INDEX IS PROJECTED AT 3% PER YEAR, HOWEVER THE ACTUAL CPI-U RESULTS WILL BE APPLIED ANNUALLY.

**COST OF SERVICE STUDY  
FLORIDA PUBLIC UTILITIES COMPANY  
TO SERVE LAKE WORTH GENERATION, LLC**

**Illustrative 30 Year Schedule Based on Costs Included in this Cost of Service Study (See Notes) - CONTINUED FROM PAGE 6 OF 7**

Year	Income Taxes = Taxable Income Multiplied By 37.63%	Net Operating Income before Income Taxes	O&M Charge Increase by a typical 3%/yr Index="CPI-U"	Taxes other than Income Tax	Depreciation Expense	Total Fixed Portion of the Facilities Charge	Total All Charges
		Return+Income Taxes = Total Declining Portion of the Facilities Charge					
1	\$221,835	\$830,885	\$75,746	\$126,028	\$181,752	\$307,780	\$1,214,411
2	\$209,587	\$798,335	\$78,018	\$126,028	\$181,752	\$307,780	\$1,184,133
3	\$202,192	\$770,638	\$80,359	\$126,028	\$181,752	\$307,780	\$1,158,777
4	\$194,797	\$742,942	\$82,770	\$126,028	\$181,752	\$307,780	\$1,133,492
5	\$187,403	\$715,246	\$85,253	\$126,028	\$181,752	\$307,780	\$1,108,279
6	\$180,008	\$687,550	\$87,811	\$126,028	\$181,752	\$307,780	\$1,083,141
7	\$172,614	\$659,853	\$90,445	\$126,028	\$181,752	\$307,780	\$1,058,079
8	\$165,219	\$632,157	\$93,158	\$126,028	\$181,752	\$307,780	\$1,033,095
9	\$157,825	\$604,461	\$95,953	\$126,028	\$181,752	\$307,780	\$1,008,194
10	\$150,430	\$576,765	\$98,832	\$126,028	\$181,752	\$307,780	\$983,377
11	\$143,036	\$549,069	\$101,797	\$126,028	\$181,752	\$307,780	\$958,646
12	\$135,641	\$521,372	\$104,851	\$126,028	\$181,752	\$307,780	\$934,003
13	\$128,247	\$493,676	\$107,997	\$126,028	\$181,752	\$307,780	\$909,453
14	\$120,852	\$465,980	\$111,237	\$126,028	\$181,752	\$307,780	\$884,997
15	\$113,458	\$438,284	\$114,574	\$126,028	\$181,752	\$307,780	\$860,638
16	\$106,063	\$410,587	\$118,011	\$126,028	\$181,752	\$307,780	\$836,379
17	\$98,669	\$382,891	\$121,551	\$126,028	\$181,752	\$307,780	\$812,222
18	\$91,274	\$355,195	\$125,198	\$126,028	\$181,752	\$307,780	\$788,173
19	\$83,880	\$327,499	\$128,954	\$126,028	\$181,752	\$307,780	\$764,233
20	\$76,485	\$299,803	\$132,823	\$126,028	\$181,752	\$307,780	\$740,406
21	\$69,091	\$272,106	\$136,808	\$126,028	\$181,752	\$307,780	\$716,694
22	\$61,696	\$244,410	\$140,912	\$126,028	\$181,752	\$307,780	\$693,102
23	\$54,302	\$216,714	\$145,139	\$126,028	\$181,752	\$307,780	\$669,633
24	\$46,907	\$189,018	\$149,493	\$126,028	\$181,752	\$307,780	\$646,291
25	\$39,512	\$161,321	\$153,978	\$126,028	\$181,752	\$307,780	\$623,080
26	\$32,118	\$133,625	\$158,597	\$126,028	\$181,752	\$307,780	\$600,002
27	\$24,723	\$105,929	\$163,355	\$126,028	\$181,752	\$307,780	\$577,064
28	\$17,329	\$78,233	\$168,256	\$126,028	\$181,752	\$307,780	\$554,269
29	\$9,934	\$50,537	\$173,304	\$126,028	\$181,752	\$307,780	\$531,621
30	\$2,540	\$22,840	\$178,503	\$126,028	\$181,741	\$307,769	\$509,112

[B]  
[See P.5 Line 3a]

[C] = [A] + [B]

[D]  
[See P.5 Line 1a] [See P.5 Line 2b] [See P.5 Line 2a]

[E]

[F]=[C]+[D]+[E]

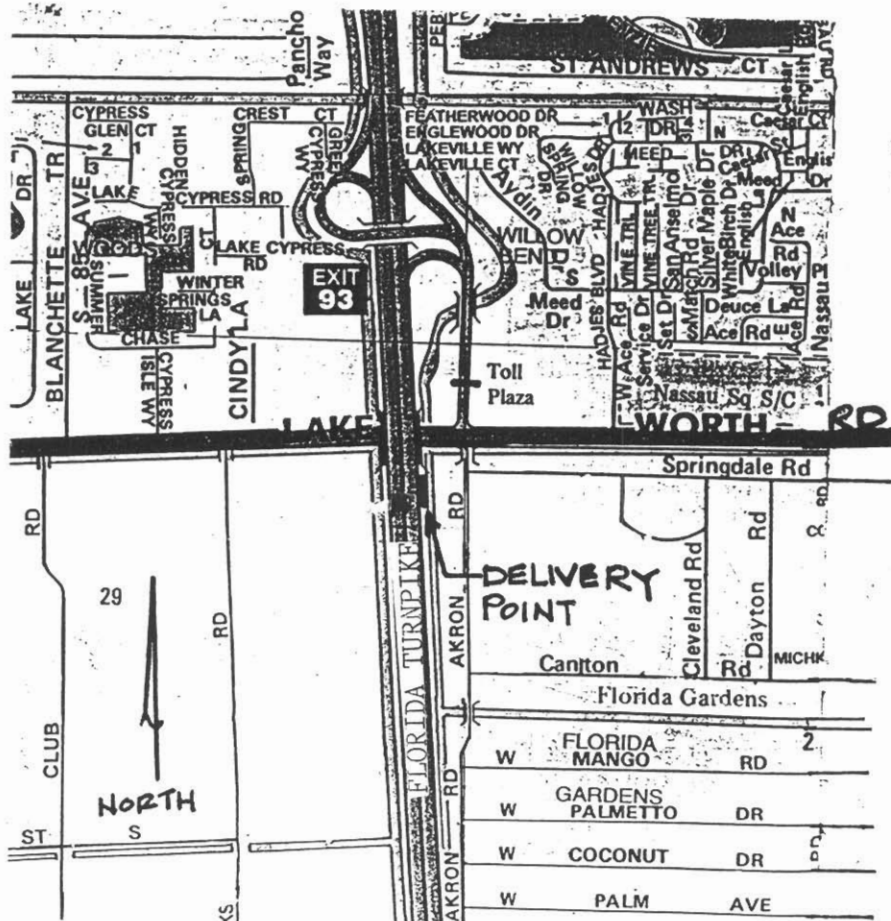
Notes:

- This is an illustrative schedule which may be modified based on certain adjustments under the Gas Transportation Agreement ("GTA").
- ALL CHARGES ARE ILLUSTRATIVE BASED ON THE PRELIMINARY CONSTRUCTION COST UNDER THE GTA.
- THE CPI-U INDEX IS PROJECTED AT 3% PER YEAR, HOWEVER THE ACTUAL CPI-U RESULTS WILL BE APPLIED ANNUALLY.

# EXHIBIT B1

## DELIVERY POINT—VICINITY MAP

The delivery point to be located in Palm Beach County, Florida on Florida Turnpike Authority property south of Lake Worth Road and west of the east right-of-way of the Florida Turnpike as indicated on the map below:



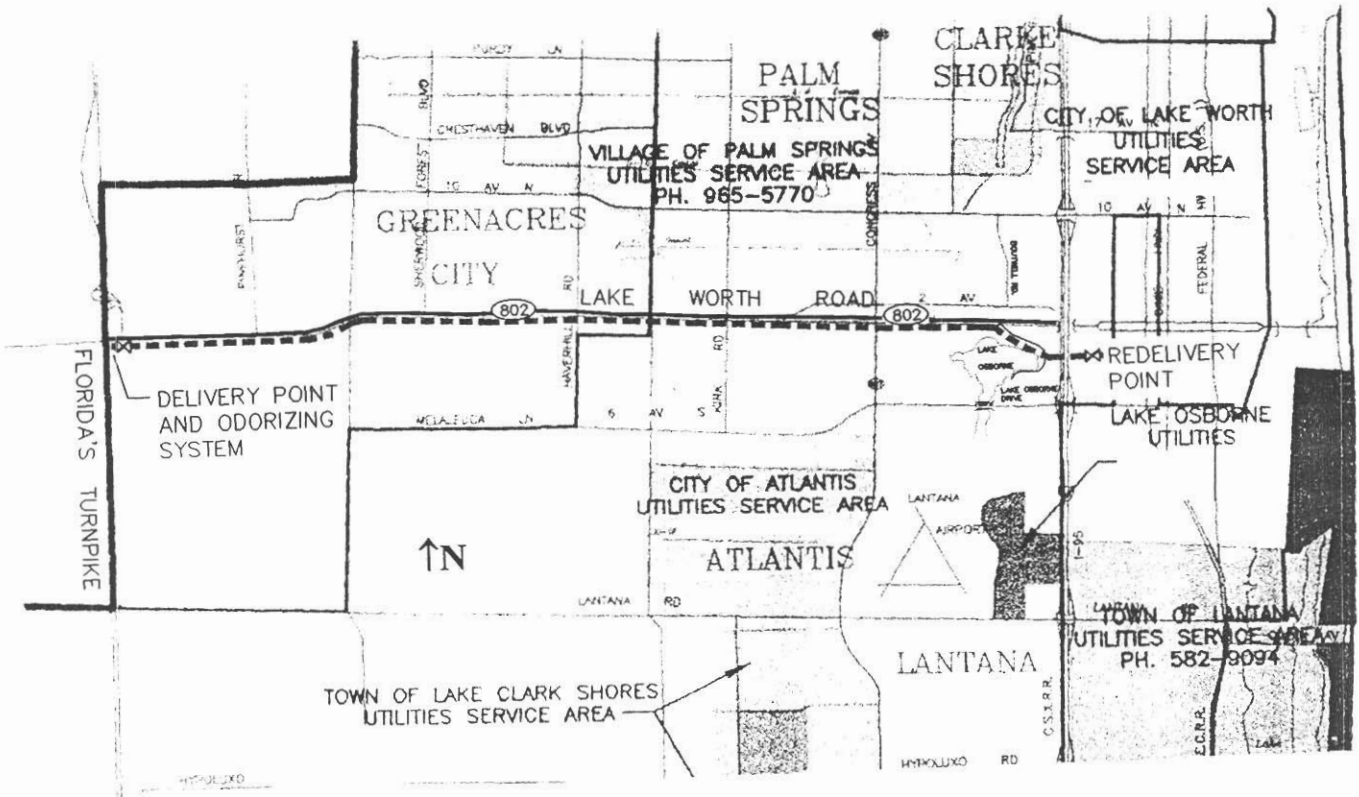
Not to Scale

# EXHIBIT B2

## DESCRIPTION OF LWG LATERAL

- A. A continuous steel gas main having a nominal outside diameter of fourteen inches connecting the Delivery Point to the Redelivery Point, including: (i) approximately Thirty Four Thousand Five Hundred (34,500) feet of fourteen (14) inch coated steel pipe (0.375" nominal wall thickness) along the south side of Lake Worth Road (SR 802) from the FGT, Lake Worth Lateral Station south of SR 802 at the Florida Turnpike to Lake Osborne Drive; (ii) approximately Two Thousand (2,000) feet of Fourteen (14) inch coated steel pipe along the west side of Lake Osborne Drive; (iii) approximately Five Hundred (500) feet of Fourteen (14) inch coated steel pipe across Lake Osborne Drive and under the Chese System (CSX) Railroad right-of-way and I-95 (SR9) to the site of the power Generation Facility; (iv) minimum of One (1) Fourteen (14) inch block valve at the FGT Delivery Point and ; (v) One (1) Fourteen (14) inch block valve at the site of the Power Generation Facility.
- B. An odorizing system for odorizing Shipper's Gas consisting of One (1) odorant injector assembly with above-ground bulk odorant storage facilities (not to exceed Ten Thousand (10,000) gallons capacity) to be installed at the FGT Delivery Point Site.

A map illustrating the general routing of the gas main is shown below.  
All facilities to be located in Palm Beach County, Florida



Not to scale

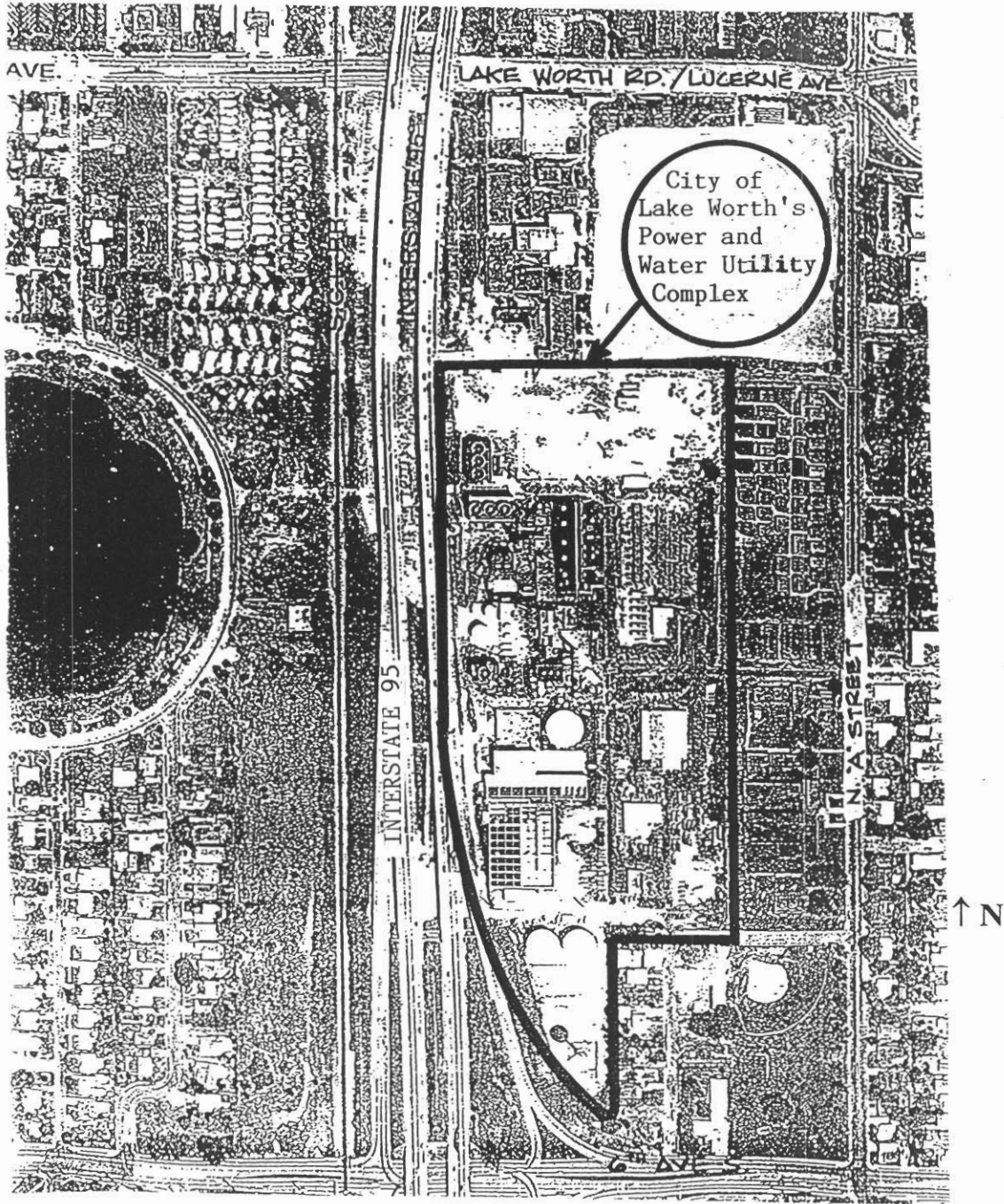
### LEGEND

LWG LATERAL - - - - -

# EXHIBIT B3

## CITY OF LAKE WORTH'S POWER AND WATER UTILITY COMPLEX

Located in Palm Beach County, Florida  
(Not to scale)



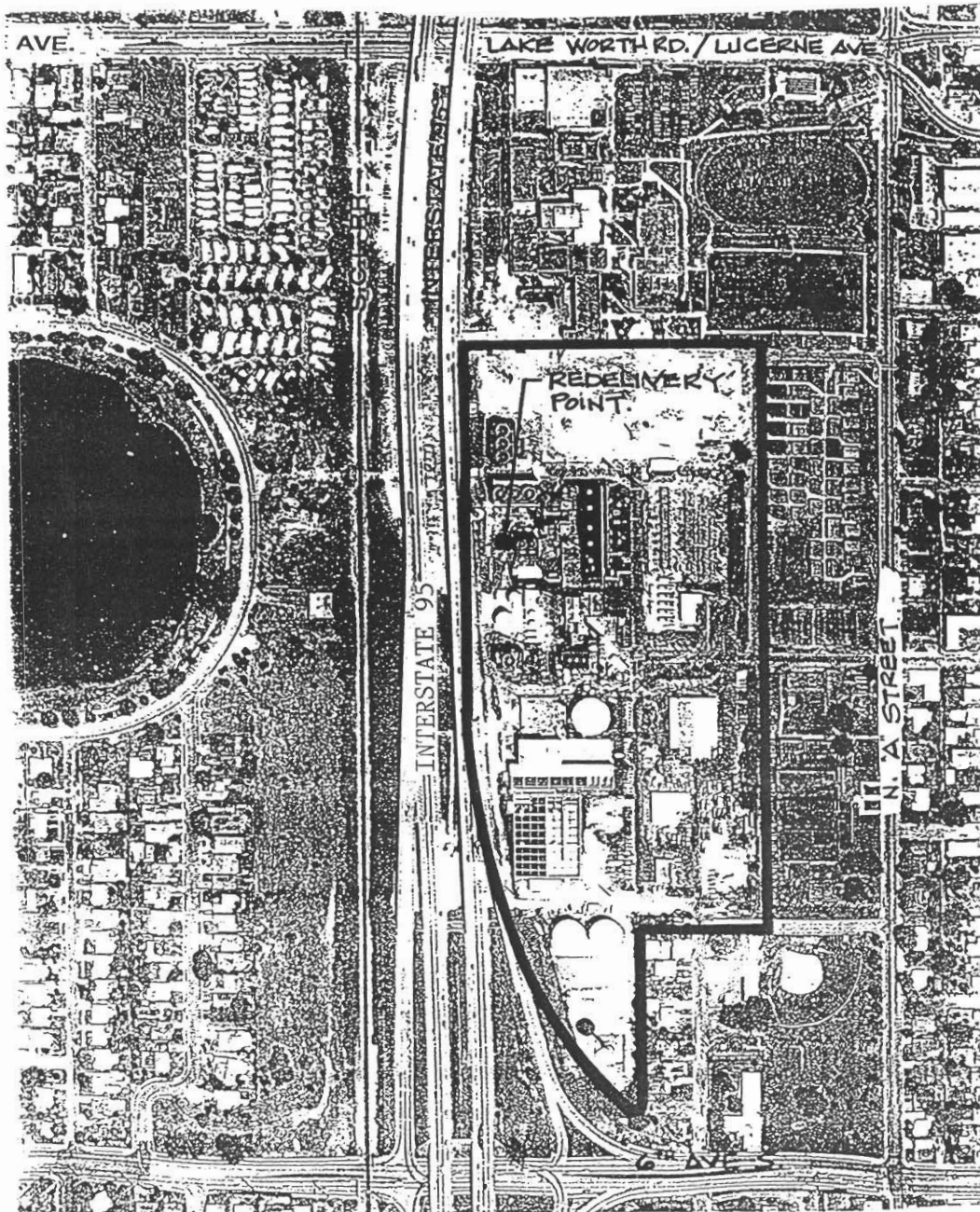
# EXHIBIT B4

## REDELIVERY POINT VICINITY MAP

(Not to scale)

The Redelivery Point shall be located within Palm Beach County, Florida, in an area located within the City of Lake Worth's power and water utility complex located on College Street in Lake Worth, Florida, within an area approximately 30 feet (east to west) by 50 feet (north to south) adjacent to and immediately west of the City of Lake Worth's unit S-2 cooling tower.

See aerial map below:



**EXHIBIT C**

**RELEASE TO COMMENCE CONSTRUCTION**

TO: Division Manager - West Palm Beach  
Florida Public Utilities Company  
401 South Dixie Highway  
West Palm Beach, FL 33401

Pursuant to Section 3.1 of the Gas Transportation Agreement between Florida Public Utilities Company ("FPUC") and Lake Worth Generation, LLC ("LWG"), dated July 21, 2000, LWG hereby confirms that the Conditions Precedent under Section 12.2(1) of the Agreement has been achieved and hereby releases FPUC to commence construction of the LWG Lateral, as defined in Article 1 and described in Exhibit B2 to said Agreement.

\_\_\_\_\_  
Lake Worth Generation, LLC

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

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

**EXHIBIT D**

**FORM OF LETTER OF CREDIT**

(LETTERHEAD OF ISSUING BANK)

**IRREVOCABLE LETTER OF CREDIT**

NO. \_\_\_\_\_

DATE \_\_\_\_\_

BENEFICIARY: Florida Public Utilities Company

APPLICANT: Lake Worth Generation, LLC

Dear Beneficiary:

At the request of , and for the account of Lake Worth Generation, LLC, ("LWG") we hereby establish in your favor our Irrevocable Letter of Credit No. \_\_\_\_\_ ("Letter of Credit") whereby, subject to the terms and conditions contained herein, you hereby are irrevocably authorized to draw on us by your draft or drafts at sight, an aggregate amount not to exceed \_\_\_\_\_) (the "Stated Amount") , effective immediately and expiring on the Expiration Date (as hereinafter defined). This Letter of Credit is established pursuant to that certain Gas Transportation Agreement, dated as of July 21, 2000, ("the Gas Transportation Agreement") between you and LWG.

Funds under this Letter of Credit shall be available to you upon presentation to us of (i) a Sight Draft drawn on us in the form of Exhibit A hereto in the amount of such demand (which shall not exceed the Stated Amount) and (ii) a Drawing Certificate in the form of Exhibit B hereto executed by your authorized representative.

Presentation of any such Sight Draft and Drawing Certificate shall be made at our office located at \_\_\_\_\_, Attention: \_\_\_\_\_.



We hereby agree that any Sight Draft drawn under and in compliance with the terms of this Letter of Credit shall be duly honored by us upon delivery of the above-specified Drawing Certificate, if presented on or before the Expiration Date at the office specified above. If a drawing is made by you hereunder at or prior to 3:00 p.m., Eastern Standard Time, on a Business Day, and provided that such drawing and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you of the amount specified, in immediately available funds, on the immediately following Business Day by a transfer to your account number \_\_\_\_\_ maintained at \_\_\_\_\_ or at such other account at such other financial institution of which you notify us in writing. As used herein, "Business Day" shall mean any day other than a Saturday, Sunday or day or which banking institutions in the States of \_\_\_\_\_ or \_\_\_\_\_ are authorized or required by law to close.

This Letter of Credit shall expire and shall be delivered to us for cancellation on the Expiration Date which shall be the earliest to occur of:

(a) \_\_\_(Insert expiration date of LC here)\_\_\_\_\_;

(b) the date you or your account have been paid the full Stated Amount; or

(c) the date on which we have received your certificate to the effect that you have received a substitute Letter of Credit complying with the requirements of the Gas Transportation Agreement.

The Stated Amount of this Letter of Credit shall be modified in accordance with the Gas Transportation Agreement on each anniversary of the Commencement Date to reflect (i) the revised portion of the investment after accumulated depreciation of the LWG Lateral, and (ii) the application of a factor of 3% to the amount of \$37,900 on a compound basis, all as set forth and

described in Section 4.8 of the Gas Transportation Agreement. It shall automatically reduce on the date any demand for payment hereunder is honored, in an amount equal to the amount of such payment. The Stated Amount of this Letter of Credit, once reduced, shall not be reinstated.

This Letter of Credit shall be interpreted in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and any successor thereto. This Letter of Credit shall be supplemented by the laws of the State of \_\_\_\_\_, including (except as otherwise provided herein) the Uniform Commercial Code as in effect in such State (to the extent that such laws are consistent with this Letter of Credit). Communications with respect to this Letter of Credit shall be in writing and shall be addressed to (Issuing Bank) Attention: \_\_\_\_\_, specifically referring therein to \_\_\_\_\_, Irrevocable Letter of Credit No. \_\_\_\_\_.

Only you or your permitted assigns under the Gas Transportation Agreement may draw upon this Letter of Credit. Upon the payment to you and your account of the full aggregate Stated Amount specified herein, we shall be fully discharged of our obligations under this Letter of Credit.

The Letter of Credit sets forth in full the terms of our undertaking. Reference in this Letter of Credit to other documents or instruments is for identification purposes only and such reference shall not modify or affect the terms hereof or cause such documents or instruments to be deemed incorporated herein.

Very truly yours,

(Issuing Bank)

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

Authorized Signature

**Attachment A to Letter of Credit**

**SIGHT DRAFT**

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

TO: (Issuing Bank)

Attention:

Reference No.:

— Re: (Issuing Bank), Irrevocable Letter of Credit No. \_\_\_\_\_.

On Sight

Pay to the order of Florida Public Utilities Company or its assign(s) in immediately available funds \_\_\_\_\_ U.S. Dollars (U.S. \$ \_\_\_\_\_) on the following business day, if this Sight Draft is presented prior to 3:00 p.m., \_\_\_\_\_ time on the immediately preceding business day, pursuant to Irrevocable Letter of Credit No. \_\_\_\_\_ of \_\_\_\_\_, by transfer to account number at your office located at \_\_\_\_\_.

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

Name:

Title:

**Attachment B to Letter of Credit**

**DRAWING CERTIFICATE**

TO:

(Issuing Bank)

Attention:

- A. This is a Drawing Certificate under Irrevocable Letter of Credit No. \_\_\_\_\_  
(the "Letter of Credit").
- B. I, \_\_\_\_\_, an authorized representative of Florida  
Public Utilities Company, (the "Company"), do hereby certify to \_\_\_\_\_  
\_\_\_\_\_, that:
- C. In Accordance with the terms and conditions of (i) that certain Gas Transportation  
Agreement dated as of July 21, 2000 between the Company and LWG (the "Gas  
Transportation Agreement"), \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_).
- D. The amount demanded hereby represents the amount due and payable to the  
Company by LWG as the result of a default by LWG on its obligations under the Gas  
Transportation Agreement, failure to cure the default and termination of the  
Agreement by FPUC pursuant to its rights under the Gas Transportation Agreement.
- E. This drawing is made pursuant to Irrevocable Letter of Credit No. \_\_\_\_\_  
issued by \_\_\_\_\_ to the Company.

IN WITNESS WHEREOF, The \_\_\_\_\_ has executed and  
delivered this Drawing Certificate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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