



Writer's Direct Dial Number: (850) 521-1706  
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March 21, 2012

**BY HAND DELIVERY**

Ms. Ann Cole, Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

120058-EQ

RECEIVED-FPSC  
12 MAR 21 PM 4:03  
COMMISSION  
CLERK

Re: Petition for Approval of Negotiated Contract between Florida Public Utilities and Rayonier Performance Fibers, LLC

Dear Ms. Cole:

Enclosed for filing, please find the original and fifteen (15) copies of Florida Public Utilities Company's Petition for Approval of Negotiated Renewable Power Purchase Contract with Rayonier Performance Fibers, LLC.

Please acknowledge receipt of this Petition by stamping the enclosed copy of this letter and returning to me.

As always, please don't hesitate to contact me if you have any questions or concerns in this regard. Thank you for your kind assistance with this filing.

Sincerely,

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706  
*Attorneys for Florida Public Utilities Company*

- COM \_\_\_\_\_
- APA \_\_\_\_\_
- ECR** 14 \_\_\_\_\_
- GCL 1 \_\_\_\_\_
- RAD \_\_\_\_\_
- SRC \_\_\_\_\_
- ADM \_\_\_\_\_
- OPC \_\_\_\_\_
- CLK \_\_\_\_\_

MEK  
cc: Mr. Marshall Willis, Director (ECR)

FPSC-COMMISSION CLERK  
01696 MAR 21 2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition of Florida Public Utilities  
Company for Approval of Negotiated  
Renewable Energy Power Purchase  
Contract with Rayonier Performance  
Fibers, LLC**

Docket No.: 120058 - EG

Filed: March 21, 2012

**Petition for Approval of Negotiated Renewable Energy Power Purchase Contract**

Florida Public Utilities Company (“Company” or “FPUC”) by and through its undersigned attorney, and pursuant to Chapter 366, Florida Statutes, and Rules 25-22.036, 28-106.201, 25-17.0832, and 25-17.240, Florida Administrative Code, hereby petitions the Florida Public Service Commission (“Commission”) for approval of a Negotiated Contract for power purchases (“Contract”) with Rayonier Performance Fibers, LLC (“Rayonier”) which is dated and effective March 14, 2012. FPUC respectfully requests that this Contract, which is attached and incorporated herein (Attachment A – redacted), be approved without modification.

In support of this Petition, the Company hereby states:

1. Notices and communications with respect to this petition and docket should be addressed to:

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 S. Monroe Street, Suite 601  
Tallahassee, FL 32301-1804

Ms. Cheryl M. Martin  
Director of Regulatory Affairs  
Florida Public Utilities Company  
1641 Worthington Road, Suite 220  
West Palm Beach, FL 33409

2. FPUC is an investor-owned electric utility providing retail electric service to customers within its Northwest and Northeast Divisions in Florida and, pursuant to the provisions of Chapter 366 of the Florida Statutes, it is subject to economic regulation by the Commission. The Company's principal offices are located at 1641 Worthington Road, Suite 220, West Palm Beach, Florida 33409.
3. Rayonier Performance Fibers, LLC, a subsidiary of Rayonier, Inc., has mills located in Jesup, Georgia and Fernandina Beach, Florida. These mills produce high-purity cellulose products from wood chips. Rayonier Performance Fibers, LLC's principal offices are located at 4474 Savannah Highway, Jesup, Georgia 31545.<sup>1</sup>
4. Rayonier has long used biomass as a source of renewable energy at its performance fiber mills, as well as other Rayonier facilities in Georgia. As set forth in the attached Contract, Rayonier will construct and install a new "Renewable Generating Facility" as that term is defined in Rule 25-17.210(1), Florida Administrative Code, which will be certified as a Qualifying Facility ("QF") under federal law and will operate as such pursuant to the rules and regulations applicable to such facilities under Florida law. The facility will be installed at Rayonier's mill located at 10 Gum Street in Fernandina Beach, Florida, within FPUC's service territory, and situated such that it will be capable of interconnecting and selling power to FPUC's Northeast Division electric system. The Rayonier facility will consist of a 21 MW turbine generator that will be fueled by wood waste and will be a "renewable energy generating facility" as that term is construed in Sections 366.91 and 366.92, Florida Statutes. The facility will produce "renewable energy" as that term is defined in Sections 377.803(4) and 366.91(2)(d), Florida Statutes,

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<sup>1</sup> Rayonier, Inc.'s corporate offices are located at 1301 Riverplace Blvd., Suite 2300, Jacksonville, FL 32207.

using “biomass,” as that term is defined in Section 366.91(2)(a), Florida Statutes, as its primary fuel source.

5. Commission Rule 25-17.230, F.A.C. states:

Each investor-owned utility shall purchase electricity produced and sold by renewable generating facilities at rates that have been agreed upon by the utility and renewable generating facility or at the utility’s published tariff. Each investor-owned utility shall file a tariff or tariffs and a standard offer contract or contracts for the purchase of energy or capacity, or both, from renewable generating facilities that reflects the provisions set forth in these rules. [*Emphasis added*]

In this instance, the Company and Rayonier have negotiated and agreed upon the rates that the Company is willing to pay to Rayonier that provides sufficient incentives for Rayonier to generate and sell electric energy to the Company. The alternative tariff rates offered by the Company have heretofore provided insufficient incentives for Rayonier to generate and sell electric energy at any time to the Company. The Company believes that, absent the negotiated Contract submitted herein for Commission approval, the alternative tariff rates would continue to be insufficient for Rayonier to consistently generate and sell electric energy to the Company.

6. The Rayonier facility will have the capability of providing not less than 1.700 MW of electric energy to FPUC with Committed Capacity set within a range of 1.700 MW to 3.000 MW. The Contract is for a 10-year term ending on the date that is ten (10) years after the end of the calendar month in which the Commercial Operation Date (“COD”), as that term is defined in the Contract, is established.<sup>2</sup> The expected annual energy from the facilities is 16,980 MWh. The contract also includes a provision (the specifics of which are treated as confidential by the Companies) addressing the purchase of any

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<sup>2</sup> Per the Contract, the COD shall be no later than September 30, 2012, unless otherwise agreed by the parties.

Environmental Attributes associated with the renewable energy produced by the facility and sold to FPUC. A summary of the Contract is set forth below:

CONTRACT SUMMARY

Utility Signatory	Jeffry M. Householder, President/FPUC
Owner and Operator of QF Signatory	Paul G. Boynton, President/Rayonier Performance Fibers, LLC
Committed Capacity	1.700 MW (subject to Section 7)
Facility Type	21 MW Turbine Generator
Fuel	Biomass/Wood pulp
Location	10 Gum Street, Fernandina Beach
Interconnection and Transmission Requirements	69 KV bus-work/ 15 MVA substation transformer (complete)
Expected Total Annual Energy	16,980 MWh
Expected On-Peak Annual Energy	6,282 MWh
Expected Off-Peak Annual Energy	10,698 MWh
Avoided Unit/Avoided Power Purchase*	16,980 MWh
Expected In-Service Date of Rayonier Facility	June 2012 (No later than September 30, 2012)

\* Avoided Power Purchase quantities (MWh) are equivalent to the Expected Total Annual Energy (16,980 MWh). The contract prices are set equal to Decremental Costs (as defined in the Contract) of the Northeast Division of Florida Public Utilities Company, and are below total avoided costs (including reserves).

7. Attachment B (redacted) to this petition is a summary of the projected annual savings under the Contract as compared to the relevant purchased power agreement between FPUC, JEA and the future purchased power provider after the expiration of the current JEA contract.
8. As demonstrated, the rates, terms and conditions of the Contract will contribute to deferral of purchases under that JEA contract at a significant savings to FPUC's ratepayers. Moreover, purchases under this contract will provide additional key benefits, which include: 1) furthering the State's goal of promoting renewable energy resources; 2) increasing investment in the State and facilitating job creation in Northeast Florida; 3) diversifying FPUC's purchased power options to include sources that are not natural gas dependent or coal-fired; 4) providing a means to lessen the impact of fuel price volatility

on the FPUC's customers in the Northeast Division; and 5) promoting Florida's energy independence through the use of Florida renewable energy resources.

9. With regard to interconnection, FPUC has performed the necessary preliminary technical reviews and believes that interconnection with Rayonier's facility can be accomplished safely and without adverse effects on the Company's system or its ability to safely and reliably serve its other customers. (*See Attachment C*)
10. In addition, the Contract specifically requires that electric meters shall be installed and checked annually to ensure that the meters conform to accepted metering tolerances of the industry. The Contract provides for an appropriate true-up process for billings associated with meters shown to be outside tolerance limits; thus, customers are adequately protected from overpaying for renewable energy not actually received from Rayonier.
11. Likewise, the Contract provides that FPUC will not be required to accept delivery, and pay for, power that could impair system reliability and safety; thus, FPUC and its ratepayers are protected from incurring unnecessary costs. Rayonier will only be compensated for energy that is actually metered by FPUC.
12. Currently, FPUC's Northeast Florida Division fulfills its energy needs through a wholesale power purchase contract with JEA. The new Contract with Rayonier provides, however, an excellent opportunity to diversify FPUC's power supply portfolio with renewable energy from a reliable supply source, and on a cost-effective basis. Under the Rayonier Contract, the appropriate cost components for electric energy are included in the value determination of the renewable energy provided, but the average cost, stated on a MWh basis, always remains less than the wholesale power prices paid by

FPUC under its contract with JEA. Specifically, the purchases under this Contract will allow FPUC to reduce its purchases of electric energy from its firm capacity provider, JEA. In other words, the Contract prices will not exceed FPUC's "avoided costs" of total purchased power from JEA. This pricing mechanism promotes price stability, while also ensuring that FPUC never pays more than it otherwise would have paid for purchased power in the absence of this Contract. Moreover, because the term of the contract extends beyond the current power purchase agreement with JEA, the Contract provides for adjustments, renegotiation, or termination depending upon FPUC's future arrangements for power supply to meet its native load obligations.

13. Overall, the Contract between FPUC and Rayonier provides a significant benefit to FPUC's ratepayers, while also promoting the State's goal of encouraging energy independence and the growth of renewable energy projects. Rayonier will be providing electric energy to FPUC from its renewable generating facility on a cost-effective basis, thereby effectuating the Legislature's desire to promote the development of renewable energy and lessen Florida's reliance on fuel oil and natural gas for the production of electricity.<sup>3</sup> The Contract also includes provisions to ensure that purchases under this Contract do not impair FPUC's ability to provide safe and reliable service to its customers. Moreover, the pricing under the contract results in direct, measurable savings for FPUC and its customers. As such, the Contract is in the public interest and should be approved as such for purposes of cost recovery through the Commission's fuel and purchased power cost recovery clause.

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<sup>3</sup> Section 366.92(1), Florida Statutes (2011).

14. The Commission is vested with jurisdiction to grant the relief requested herein by Sections 366.04, 366.06, 366.91, and 366.92, as well as Rules 25-17.240, F.A.C., and 25-17.0832, F.A.C. FPUC is unaware of any disputed facts associated with its request as set forth herein.

WHEREFORE, for the reasons set forth herein, FPUC respectfully requests that the Commission:

1. Review and approve the Negotiated Contract with Rayonier Performance Fibers, LLC as being a reasonable and prudent agreement for purposes of cost recovery through the Commission's Fuel and Purchase Power Cost Recovery Clause; and
2. Issue a final, non-appealable order to this effect by no later than 180 days of filing.

RESPECTFULLY SUBMITTED this 21st day of March, 2012.



Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706



**CERTIFICATE OF SERVICE**

I HEREBY ATTEST that a true and correct copy of the foregoing Petition has been served upon the following by U.S. Mail this 21st Day of March, 2012:

William M. McHugh Associate General Counsel Rayonier Inc. 4474 Savannah Hwy. Jesup, GA 31545	Ms. Cheryl Martin, Director/Regulatory Affairs Florida Public Utilities Company 1641 Worthington Road, Suite 220 West Palm Beach, FL 33409



Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

120058.EQ

ATTACHMENT A

*Negotiated Contract for the Purchase  
of Electric Energy from a Renewable Facility*

*between*

*Florida Public Utilities Company  
And  
Rayonier Performance Fibers, LLC*

**NEGOTIATED CONTRACT  
BETWEEN  
FLORIDA PUBLIC UTILITIES COMPANY  
AND  
RAYONIER PERFORMANCE FIBERS, LLC  
FOR THE PURCHASE OF  
ELECTRIC ENERGY FROM A RENEWABLE GENERATING FACILITY**

This Negotiated Contract for the Purchase of Electric Energy from a Renewable Generating Facility, which incorporates and includes any Appendices, Exhibits and Attachments hereto, (collectively, the "Agreement") is made this 14<sup>th</sup> day of March, 2012 ("Execution Date"), by and between Florida Public Utilities Company, an investor-owned utility company and subsidiary of Chesapeake Utilities Corporation (hereinafter "Buyer") and Rayonier Performance Fibers, LLC, the owner/operator of the Facility, as further defined below (hereinafter "Seller"). Buyer and Seller may herein be referred to jointly as "Parties" or individually as "Party".

**WITNESSETH:**

**WHEREAS**, Seller's Facility located at 10 Gum Street, Fernandina Beach, Florida, is designed and constructed to provide approximately between 1.700 and 3.000 megawatts (MW) of net electric output not needed for the use of Seller's industrial mill facility which is located adjacent to the Facility and is situated at a location electrically interconnected with the electricity transmission system owned and operated by Buyer; and

**WHEREAS**, Seller's Facility has been certified as a Qualifying Facility, as defined under Federal law, produces Electric Energy consistent with Section 366.91(2)(d), Florida Statutes, and otherwise meets the definition of a Renewable Generating Facility found in Rule 25-17.210(1), F.A.C.; and

**WHEREAS**, Seller desires to generate and sell Electric Energy from the Facility to Buyer and Buyer desires to receive and purchase the same from Seller, in accordance with the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be bound hereby, the Parties do therefore agree as follows:

**1. DEFINITIONS**

**1.1 Defined Terms**

Unless otherwise defined herein, the following terms shall have the following meanings:

“Act” means the legislation and statutory policy relating to renewable energy and cogeneration and small power production contained in Florida Statutes Annotated Sections 366.051, 366.91, and 366.92, and all related rules promulgated by the FPSC, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules in force within the State of Florida and applicable to renewable energy facilities such as Seller’s Facility.

“Affiliate” shall mean, with respect to any specified Person (other than a natural person), any other Person who, directly or indirectly, through one or more intermediaries, owns or controls, is under common ownership or control with, or is owned or controlled by, such Person.

“Agreement” means this Special Contract for the Purchase of Electric Energy from a Renewable Generating Facility, and the Appendices, Attachments, and other Exhibits thereto, as may be amended from time to time.

“Ancillary Services” means specific Generation Services according to common industry practice and regulatory authorities, including the Federal Energy Regulatory Commission (“FERC”) and the respective successor authorities to the current authorities, at the time of the Execution Date of the Agreement. Ancillary Services typically refer to reserve services including regulation (frequency response), energy imbalance (load following), spinning reserves, non-spinning reserves (supplemental); reactive power; and black start services.

“Applicable Law” means any and all constitutions, charters, acts, statutes, laws (including, but not limited to, all environmental laws), decrees, ordinances, rules, codes, regulations, orders, conditions, standards and/or objective criteria applicable to this Agreement or to any Party’s obligations, performance, or rights under this Agreement and/or contained in any final decree, judgment or order of any court or Governmental Body of competent jurisdiction.

“Business Day” shall mean any day on which commercial banks are authorized to open for business in Jacksonville, Florida.

“Buyer's Electric Energy Supply” means the firm supply of electric energy, expressed on a MWh basis, available to Buyer during any hour in any Delivery Month from any generating or other source which it owns, leases or controls under contract (but for the avoidance of doubt excluding any source of electric energy supply available on the spot market) to serve its Native Load Obligation

“Capacity” means the capability to produce Net Energy Supply. Capacity is measured as kilowatts (kW) or thousandths of megawatts (0.001 MW).

“Capacity Commencement Status” means that (i) the Facility is in compliance with all applicable project consents and governmental approvals for the Facility required to be obtained from any Governmental Body; and (ii) the Facility has maintained an hourly MW output level, as metered at the Delivery Point, equal to or greater than the Committed Capacity over a continuous four (4) hour Test Period.

"Carbon Offsets" shall mean any avoided emissions of any gas, chemical or other substance into the air, soil or water attributable to the Facility or the generation, purchase, sale, or use of energy therefrom, such as carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases or chemical compounds, particulate matter, soot or mercury, that are subject to regulation or monitoring under any Applicable Law (including without limitation those involving any international treaty or law implementing the United Nations Framework Convention on Climate Change (the "UNFCCC"), the Kyoto Protocol to the Assembly Bill 32 (Global Warming Solutions Act of 2006) or any similar international, foreign, federal, state or local program). Carbon Offsets may be banked, sold or traded via arms length contracts or through an exchange, and may be verified and/or certified to comply with any contracts or through an exchange, and may be verified and/or certified to comply with any standards adopted by any present or future international, foreign or domestic emissions trading program or any federal, state or local law, regulation or bill. One Carbon Offset represents the reduction of one metric ton of carbon dioxide or another greenhouse gas or chemical compound or matter subject to such regulation.

"Charges" shall have the meaning set forth in Section 10 of this Agreement.

"Commercial Operation Date" shall mean the date identified in a written notice from Seller to Buyer as the date upon which Electric Energy deliveries (other than test deliveries) will commence under this Agreement, which shall be no later than September 30, 2012, unless otherwise agreed in writing by the Parties, or as otherwise provided in Sections 2(b) and 7. Upon the Commercial Operation Date, the obligations of Buyer, including compensation, begin to accrue and be paid with corresponding and subsequent flow of compensation and payment over the Term of this Agreement.

"Committed Capacity" means the minimum electrical Capacity of the Renewable Generating Facility which Seller is obligated to provide hereunder. The nominal amount of Committed Capacity under the Agreement is within the range of 1.700 to 3.000 MW, and is subject to increases or decreases in accordance with Section 7.

"Costs" means, with respect to a non-defaulting Party, brokerage fees, commissions, third party transaction costs, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations hereunder or entering into new arrangements which replace the terminated transactions(s) herein contemplated, and all attorneys' fees and other legal costs incurred by the non-defaulting Party in connection with such termination and replacement of such transaction(s). Notwithstanding any provision to the contrary the foregoing definition of "Costs" shall not in any manner be construed in connection with either the definition of "Decremental Costs" set forth herein or such definition's meaning in this Agreement.

"Declined Energy" shall have the meaning set forth in Section 14 of this Agreement.

"Decremental Costs" shall mean the difference between Buyer's total cost of delivering, purchasing, and generating Electric Energy, expressed on a \$/MWh basis, but for the purchase of

any Net Energy Supply (MWh) from Seller hereunder, and Buyer's total cost of delivering, purchasing, and generating Electric Energy, expressed on a \$/MWh basis, inclusive of its purchase of Net Energy Supply from Seller hereunder. Decremental Costs are specific to peak and off-peak periods, and are associated with the provision of Capacity (Capacity-related Decremental Costs) and Energy (Energy-related Decremental Costs) and presumes economic dispatch of Electric Energy such that the highest-priced quantity (MW) of Electric Energy supply to Buyer is purchased or dispatched last.

"Delivery Month" shall mean beginning at 9:30 AM on the last business day of a calendar month and continuing through 9:30 AM on the last business day of the following calendar month. Should the term of this Agreement extend beyond the term of Buyer's current power purchase agreement with JEA (a copy of which has been delivered to Seller), the Delivery Month will be changed to coincide with the timing of those delivery requirements provided under any replacement power purchase agreement entered into between Buyer and a successor wholesale power provider.

"Delivery Point" shall mean, for Electric Energy produced at the Facility, the Interconnection Point, as defined below, which is the point at which the Facility is directly interconnected to Buyer's transmission system.

"Execution Date" shall be defined herein consistent with the first paragraph of this Agreement.

"Electric Energy" or "Energy" shall mean kilowatt hours or megawatt hours of electricity produced or generated, and of the character commonly known as three-phase, sixty hertz at a nominal voltage (+/- 5%), as stated.

"Environmental Attributes" shall mean any and all current or future environmental characteristics and can be described as credit, benefit, reduction, offset, and allowance, howsoever entitled, named, registered, created, measured, allocated, validated, now or hereafter recognized or deemed of value (or both) by Buyer, under any Applicable Law, or any voluntary program of any Governmental Body or other Person, resulting from the use or generation or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water attributable to the Facility during the term hereof, or the generation, purchase, sale, or use of electric energy from or by the Facility during such term, including all evidences (if any) thereof, such as Green Tags, but specifically excluding any and all Tax Credits and any deductions, credits, subsidies or other amounts which may provide any benefit to Seller under the Internal Revenue Code or through federal, state or local tax and incentive programs relating to the use of renewable energy sources. For the avoidance of doubt, "Environmental Attributes" as used herein shall be separate from the Facility's Electric Energy produced from the Facility.

"Environmental Attribute Reporting Rights" means all rights to report ownership of the Environmental Attributes to any person, under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

"F.A.C." means the Florida Administrative Code.

"Force Majeure Event" means an event, condition, or circumstance described in Section 16.

"Forced Outage" shall mean a reduction of, or cessation in the delivery of, or inability to deliver, Electric Energy that is not the result of (a) a Planned Outage, (b) a Force Majeure Event, or (c) an emergency condition.

"FPSC" means the Florida Public Service Commission, and shall include any similar or successor Governmental Body having the same or similar jurisdiction.

"Fuel" means a fuel source that is comprised of biomass, including but not limited to, combustible wastes, residues and gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

"F.S." means the Florida Statutes.

"Generation Services" shall mean Electric Energy and, potentially, Ancillary Services and Environmental Attributes produced by Seller's Renewable Generating Facility and purchased by Buyer under the Agreement. Generation Services are identifiable, measurable, and transferable property rights. Electric Energy is measured as kilowatt hours (kWh) or thousandths of megawatt hours (MWh); all other services (Environmental Attributes, Ancillary Services) are measured as kilowatts (kW), kilowatt hours, megawatt hours, or kilovolt-amperes-reactive (kVar).

"Governmental Body" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Green Tags" means (1) the Environmental Attributes (other than the Carbon Offsets) associated with the Facility, together with (2) the Environmental Attribute Reporting Rights associated with such Environmental Attributes, however commercially transferred or traded as property rights under any or other product names such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents proof that one (1) MWh of energy was generated from a renewable energy source.

"IEEE" means the Institute of Electrical and Electronic Engineers, Inc.

"Interconnection Point" shall mean, for the Facility, the busbar connection to the high side of the Facility's step-up transformer(s) where Electric Energy shall be delivered (Delivery Point) to Buyer's transmission system. Seller intends to transfer to Buyer ownership of the transmission line from this point until the substation busbar connection point, for consideration yet to be

discussed, where the end result is to grant Buyer an easement for such transmission line on Seller's property.

"Internal Use Energy" shall mean the amount of Electric Energy internally consumed by Seller's Facility and Seller's industrial mill facility located adjacent thereto, including all Electric Energy consumed by the Renewable Generating Facility's station service for control and monitoring equipment.

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

"Losses" shall mean, with respect to any Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to the terminated transaction(s) hereunder, determined in a commercially reasonable manner.

"Monthly Effective Capacity" means the amount of Capacity that is available to provide Net Energy Supply and, potentially, other Generation Services (Renewable Attributes, Ancillary Services), within each Delivery Month of each year of the term of this Agreement.

"Native Load Obligation" means, during any hour, the obligation, expressed on a MWh basis, of Buyer under any Applicable Law (whether pursuant to a requirement thereof or the exercise of any franchise or other authority granted thereunder), or under any contract or other agreement permitted under Applicable Law, to provide Electric Energy supply to retail end-users, wholesale, industrial or other customers.

"Net Energy Supply" means the Electric Energy produced by Seller's Renewable Generating Facility, over and above the amount of Internal Use Energy and delivered to Buyer under the Agreement. Net Energy Supply is always a positive (greater than zero) amount.

"Off-Peak Hours" shall mean any and all clock hours that are not On-Peak Hours.

"On-Peak Hours" shall mean the clock hours of 5:01 am – 7:00 pm of Winter Season Week Days; 10:01 am – 9:00 pm of Summer Season Week Days; and 8:01 am – 11:00 pm for November Week Days.

"Person" shall mean an individual corporation, limited liability company, partnership, association, trust, unincorporated organization, joint venture, Governmental Entity, other entity or group.

"Planned Outage" means a scheduled outage that may require removal of the Facility, in whole or in part, from service in order to perform specified work on specific components of the Facility. A Planned Outage has a pre-determined start date, an estimated duration, which may



last for several weeks, and occurs as scheduled in a notice given by Seller to Buyer in accordance with Section 13. A Planned Outage shall not include a minor reduction in the Capacity of the Facility to address unplanned maintenance or operational requirements.

“Point of Metering” shall mean the Delivery Point or other point(s) where the Electric Energy being made available for delivery to Buyer is measured.

“Renewable Generating Facility” or “Facility” shall mean the generating facility that satisfies the definition of, and qualifies as, a renewable generating facility in accordance with the provisions of Section 366.91(2)(b), F.S., and Rule 25-17.210(1), F.A.C., as those definitions are in effect on the Execution Date of this Agreement. For purposes of this Agreement, the identified electric power production facility located at Seller’s industrial mill site, known as the Fernandina Mill located at 10 Gum Street, Fernandina Beach, Florida 32034, and which shall provide the Generation Services identified above, shall be the Renewable Generating Facility. As used herein, the terms “Renewable Generating Facility” and “Facility” shall have the same meaning and be assigned the same interpretation.

“Seasons” shall mean Winter, including the months of December – March; Summer, including the months of April – October; and November.

“Start-Up” means the ignition of the Renewable Generating Facility, for the purpose of synchronization of the electrical output of the Facility to Buyer’s transmission system to produce Net Energy Supply.

“Tax Credits” means the Investment Tax Credit under Section 48 of the Internal Revenue Code, the Production Tax Credit under Section 45 of the Internal Revenue Code, as the same may be amended, supplemented, extended or replaced from time to time, and including all successor enactments or legislation relating thereto, and including any tax incentives which may be available under Florida law (including without limitation under Section 220.193 F.S.) and any cash grant which may be issued in lieu thereof or other benefit under the American Recovery and Reinvestment Act of 2009 (and any regulations issued thereunder) and any other similar tax credit, subsidy, incentive or benefit available to Seller as the owner of the Facility under any other Applicable Law.

“Termination Date” means the hour, day, month, and year that the flow of Generation Services ceases, consistent with Section 2 of this Agreement.

“Weekend Days” means Saturday and Sunday, as well as New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day.

## 1.2 Interpretation

(a) Words singular and plural shall be deemed to include the other, and pronouns having masculine or feminine gender shall be deemed to include the other.

(b) Article or section headings appearing in this agreement are inserted for convenience only and shall not be construed as interpretations of text.

(c) Any reference in this Agreement to any Person, whether or not a Party to this Agreement, includes its permitted successors and assigns and, in the case of any Governmental Body, any Person succeeding to its functions and capacities.

(d) Any reference in this Agreement to any Section, Attachment, Exhibit or Appendix means and refers to the Section contained in, Attachment, Exhibit or Appendix attached to, this Agreement.

(e) Other grammatical forms of defined words or phrases have corresponding meanings.

(f) A reference to writing includes typewriting, printing, lithography, photography, electronic mail, and any other mode of representing or reproducing words, figures or symbols in a lasting or visible form.

(g) Unless otherwise provided, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(h) A reference to a document, code, contract or agreement, including this Agreement, includes a reference to that document, code, contract or agreement as novated, amended, modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant provisions thereof.

(i) Unless otherwise expressly provided for as set forth herein, if any payment, act, matter or thing hereunder would occur on a Day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next succeeding Business Day.

(j) Where reference is made to an Applicable Law, such reference, to give meaning to the intent of the Parties hereto, shall be deemed to include all prior and subsequent enactments, amendments and modifications pertaining thereto.

(k) Any reference to the words "include and including" shall be interpreted to mean "including without limitation."

## **2. TERM OF THE AGREEMENT AND TERMINATION**

(a) This Agreement shall be in full force and effect as of the Execution Date and shall continue to remain in full force and effect for a period ending on that date which is ten (10) years after the end of the calendar month in which the Commercial Operation Date is established by Seller, unless otherwise extended or terminated earlier in accordance with the provisions of this Agreement, including, without limitation, due to Seller's failure to satisfy the conditions precedent set forth herein.

(b) Seller may terminate the Agreement by notice given to Buyer at any time prior to the Commercial Operation Date, without penalties, should Seller be unable to:

(i) satisfy the conditions precedent set forth in Sections 4 (a)-(d) hereof which are applicable to it;

(ii) secure, through reasonable due diligence and effort, the necessary permits associated with construction, property use, environmental compliance, and public safety of the Facility; or

(iii) complete any Interconnection Facilities required to deliver Generation Services hereunder; provided that, upon Seller's failure to secure the necessary permits or to complete the requisite Interconnection Facilities, Seller can extend the Commercial Operation Date for six (6) months by notice given to Buyer within six (6) months following the Execution Date of the Agreement.

(c) If Seller fails to achieve the Commercial Operation Date for any reason (other than as addressed in Sections 2(b) and 7 or to the extent prevented by Force Majeure), Buyer may notify Seller in writing of its intent to terminate the Agreement. Within thirty (30) days of Seller's receipt of such notice, Seller shall provide a written report to Buyer describing the reason(s) for such failure, the action plan that Seller is following to resolve such failure and the date by which Seller commits to resolve the failure and achieve the Commercial Operation Date. If Seller is unable to achieve the Commercial Operation Date within ninety (90) days of providing said written report, Buyer, as its sole right and remedy, shall have the right, but not the obligation, to terminate this Agreement prior to the end of the term hereof, upon fifteen (15) days' notice.

(d) Notwithstanding any provisions to the contrary set forth herein, if Seller does not receive any Capacity-related Charge or any All In Price set forth in Section 10.2 drops below the initial Energy price (\$/MWh) for any two (2) consecutive calendar quarters during the term of this Agreement for any reason whatsoever (including without limitation a change in Buyer's Capacity-related Decremental Costs) then, in any such event Seller shall be entitled to terminate this Agreement prior to the end of the term hereof, upon sixty (60) days' prior written notice.

(e) In the event of any termination of this Agreement pursuant to Sections 2(b), (c) or (d) hereof and notwithstanding any other provision of this Agreement, Seller shall not be considered in default of this Agreement or be liable for any Costs, Losses, damages or other amounts payable to Buyer on account of such termination and Buyer shall have no further rights or remedies against Seller, whether for failure to construct the Facility or to deliver Net Energy Supply under the Agreement or otherwise.

### 3. REGULATORY APPROVALS

(a) The obligations of the Parties hereunder, including but not limited to Buyer's and Seller's respective obligations to perform under this Agreement, shall be conditioned upon Buyer obtaining prior to the Commercial Operation Date any regulatory approvals from Governmental Bodies it, acting in its sole discretion, deems necessary or desirable, including but not limited to those approvals set forth in Appendix B hereto and a final non-appealable order or other regulatory determination from the FPSC that Buyer shall have cost recovery associated with its performance under this Agreement. If such FPSC regulatory approval is not obtained to Buyer's satisfaction, in its sole discretion, within one hundred eighty (180) days of such request being made to the FPSC (which Buyer agrees to do as promptly as possible after the Execution Date) and in any event prior to the Commercial Operation Date, then this Agreement shall terminate upon fifteen (15) days notice given by either Party, with neither Party having any liability under this Agreement and neither Party having any further obligations or rights relating to this Agreement other than those obligations which have accrued and remain undischarged as of such date.

(b) Except as expressly contemplated herein, neither the execution of this Agreement nor the consummation of any transactions hereunder, requires the consent or approval of, notice to or recording with, or any other action by a Governmental Body, except with regard to permits.

(c) If the FPSC or any other Governmental Body asserting jurisdiction over the Facility issues an order, ruling, decision or regulation which substantively modifies the terms and conditions of this Agreement, so as to result in a material adverse effect on either Party's rights and benefits under this Agreement, each Party (without any diminution of its rights under Section 2 hereof) shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary approvals and authorizations, if any, of the FPSC and such other applicable Governmental Body, to amend the terms and conditions of this Agreement as may be reasonably required in order that the sale and purchase of Net Energy Supply under this Agreement may commence and/or continue; provided that neither Party shall be required to take any action pursuant to this section which is reasonably likely to have a material adverse effect on such Party's rights and benefits under this Agreement. Except as provided herein, neither Party shall seek to terminate this Agreement or request or support administrative or judicial modification of any term hereof without the other Party's prior written consent and, in the event such termination or modification is requested by any other Person, each of the Parties shall exercise its commercially reasonable efforts (including available legal challenges) in opposition thereto for a reasonable period of time.

(d) In the event of the occurrence of any event described in Section 3(c) above, the Party receiving such order, approval, authorization or evidence of such occurrence shall promptly transmit to the other Party a copy or notice thereof, as appropriate, and each Party shall, within ten (10) calendar days after delivery of such notice, give notice to the other Party whether the terms and conditions of such order, approval, authorization or occurrence are reasonably likely to have a material adverse effect on such Party or its rights and obligations under this Agreement, setting forth the reasons therefor. If the Parties are unable, after the exercise of the efforts and cooperation required pursuant to Section 3(c) to agree to those amendments to this Agreement which will permit the sale and purchase of Net Energy Supply contemplated by this Agreement to commence and/or continue, and to obtain any regulatory authorizations necessary therefor,

then either Party shall be entitled to terminate this Agreement in accordance with Section 2 hereof.

#### **4. CONDITIONS PRECEDENT AND ADDITIONAL OBLIGATIONS OF THE PARTIES**

(a) The obligations of Buyer to purchase and for Seller to sell Net Energy Supply from the Renewable Generating Facility pursuant to this Agreement are subject to the satisfaction (or waiver) by Buyer of all of the following conditions:

i. Any and all approvals from any Governmental Body necessary for Buyer to enter into this Agreement and which are set forth on Appendix B of this Agreement;

ii. The approval of this Agreement by the Board of Directors of Buyer;

iii. Regulatory Authority from the FPSC to allow full recovery from Buyer's customers of all payments required to be made by this Agreement consistent with FPSC Order No. 25668 issued February 3, 1992, shall have been obtained and shall have become non-appealable through the lapse of time or otherwise;

iv. Transfer of ownership from Seller to Buyer of the existing interconnecting transmission line in consideration of the agreements of the Parties herein contained, and pursuant to such documents which the Parties shall in good faith negotiate to effect such transfer (including without limitation an easement permitting Buyer's maintenance and the continued reasonable use of such line over Seller's property, which easement shall terminate no later than December 31, 2014). After such transfer, unless otherwise agreed by the Parties in accordance with Section 4(i), Seller shall remain responsible for all maintenance and servicing of such transmission line (at its sole cost and expense).

(b) This Agreement is contingent upon the Facility achieving and maintaining its status as a certified "Qualifying Facility" by the Federal Energy Regulatory Commission ("FERC") in accordance with Applicable Law.

(c) Buyer shall submit this Agreement and related documentation to the FPSC for approval within ten (10) days of the Execution Date. A descriptive statement of the Facility, including capacity, location including road and county in the State of Florida, technology, fuel type, physical attributes, steam pressure, steam consumption, operating constraints (including ramp rates, if relevant), and general operating characteristics, which shall be included in such submission is set forth in Appendix A of the Agreement.

(d) The continuation of this Agreement shall be contingent upon Seller's satisfaction of the following specific conditions necessary for the delivery of Generation Services to the Delivery Point. These conditions include:

i. Completion of, and operability of, any and all electric interconnection facilities and changes thereto (collectively "Interconnection Facilities"), necessary for the delivery of Generation Services to the identified Delivery Point (other than Buyer's meters which are located on Buyer's side of the Delivery Point);

ii. Completion of the installation of any and all physical equipment, software and operational procedures necessary for the transportation, delivery, handling, and processing of Fuel to be used to provide Generation Services;

iii. Demonstration to Buyer's reasonable satisfaction that Seller holds all necessary permits required under Applicable Law and listed in Appendix B of this Agreement to own and operate the Facility; and,

iv. Demonstration, to Buyer's reasonable satisfaction, that the Renewable Generating Facility of Seller has undergone Capacity testing and obtained performance levels that satisfy the commercial operation criteria set forth in Appendix C of this Agreement (consistent with any criteria as set forth in Section 7(a) herein), thus providing Buyer with reasonable assurance that the Renewable Generating Facility will be capable to providing not less than 1.700 MW of Committed Capacity.

(e) Seller shall maintain in effect over the term of the Agreement all approvals from all Governmental Bodies that have authority and jurisdiction over the Facility insofar as necessary:

i. For the construction, development, operation, and maintenance of the Facility in accordance with this Agreement; and

ii. For Seller to otherwise perform its obligations hereunder.

Upon reasonable request from Seller, Buyer shall make commercially reasonable efforts to assist Seller in procuring all necessary approvals from all Governmental Bodies for which Seller is responsible hereunder, provided that any reasonable and documented expenses incurred by Buyer in providing such assistance shall be reimbursed by Seller;

(f) If the Parties are required to make any regulatory filings under the jurisdiction of any Governmental Body, including but not limited to the FPSC, Seller and Buyer each agree to abide by any and all applicable regulatory rulings or orders issued by such authorities.

(g) Notwithstanding the foregoing, a Party shall not be deemed to be in breach of its obligations to acquire any approval or consent from Governmental Bodies to the extent that such Party is in good faith contesting the application, interpretation, order or other legal direction that would mandate a Party to obtain any approval or consent of a Governmental Body or the decision of any Governmental Body with respect thereto.

(h) Seller shall at all times comply with all Applicable Laws to which it or any part of the Facility may be subject, including but not limited to:

i all environmental Applicable Laws in effect during the term of this Agreement;

ii all Applicable Laws pertaining generally to Fuel storage, back-up or security or otherwise relating to the generation of Electric Energy.

Notwithstanding the foregoing, Seller shall not be deemed to be in breach of its compliance obligations with respect to any Applicable Laws to the extent that it is in good faith contesting the application, interpretation, order or other legal direction pursuant to which it or the Facility would be rendered subject to any such Applicable Laws or the decision of any Governmental Body with respect thereto.

(i) As soon as practicable after the Execution Date, the Parties shall meet and negotiate in good faith the terms on which Buyer shall agree to relocate the transmission line being transferred to it pursuant to Section 4(a)(iv) to a mutually acceptable location on Seller's property during Seller's spring 2014 outage, including without limitation the terms of an acceptable easement agreement relating to the continued existence of such transmission line over Seller's property after its relocation and Buyer shall be thereafter responsible for all maintenance and servicing of such transmission line. Buyer shall bear costs of relocating the transmission line and removal and disposition of the transmission line and equipment the use of which is discontinued upon the relocation, said removal to be complete by December 31, 2014.

## 5. REPRESENTATIONS AND WARRANTIES

Each Party to the Agreement represents and warrants to the other Party that as of the Execution Date and throughout the term of this Agreement that:

(a) It is duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

(b) It has all authorizations under the Applicable Laws, necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

(c) The execution, delivery, and performance of this Agreement will not conflict with or violate any Applicable Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(d) This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally and general principles of equity;

(e) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;

(f) No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(g) There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any permitted Affiliate, that could materially adversely affect its ability to perform its obligations under this Agreement;

(h) Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and such Party will be bound by such execution.

In addition, Seller makes the following representations and warranties:

(i) Seller has knowledge of all Applicable Laws relating to the Facility that must be followed in performing its obligations under this Agreement, and is (or will as of the Commercial Operation Date be) in material compliance with all such Applicable Laws.

(j) The Facility will be a Renewable Generating Facility in accordance with the provisions of Section 366.91(2)(b), F.S., and Rule 25-17.210(1), F.A.C., as those definitions are in effect on the Execution Date of this Agreement.

## **6. METERING AND INTERCONNECTION FACILITY STANDARDS**

(a) Buyer shall install, operate, maintain, and replace (as needed and at its expense) electric meters at its side of the Delivery Point to determine the Net Energy Supply delivered to the Delivery Point by Seller. The meters will be sealed by both Parties, which seals will only be broken by both Parties for inspection, testing or adjustment. The electric meters shall conform to the specifications and commonly accepted practices of the electric utility industry, and shall be checked and tested annually by Buyer in conformance with such practices. Buyer shall provide Seller with not less than fourteen (14) days prior notice of such tests as well as with copies of all test reports and results as soon as they are available. Seller shall, as part of its easements granted to Buyer pursuant to Section 4, allow Buyer to locate on Seller's property the transmission line from the Facility, and to grant Buyer a license to locate Buyer's meters on Seller's property and to access such property to read, service, maintain and test the same.

(b) Buyer shall be responsible for the reading, testing, service, and maintenance of the meter(s) it installs hereunder. Either Party may, from time to time, request a retest of the meters if it has reasonable cause to believe that the accuracy of the meters do not conform to



commonly accepted metering tolerances ("Metering Tolerances") used in the electric utility industry. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior notice of such retest. Such other Party will have the right to have a representative present during such retest. The Party requesting any test or retest of the meters hereunder shall pay the full cost and expense of conducting such test or retest, except that if any tested or retested meter is found to be not accurate within Metering Tolerances and such inaccuracy results in a payment being made to either Party, the Party making such payment shall pay the full cost and expense of conducting such tests.

(c) If any tested or retested meter is found to be not accurate within Metering Tolerances, Buyer shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from (any) back-up meters to determine the amount of the inaccuracy. If the back-up meters are found to be not accurate within the Metering Tolerances and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (i) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (ii) 180 days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the Metering Tolerances will be invoiced by such Party within 15 days of the discovery of such inaccuracy, with payment due within 30 days thereafter.

(d) To support invoice settlement purposes, Buyer shall provide Seller with access to all real-time meters, billing meters, and back-up meters (i.e., all metering). Buyer shall authorize Seller to view the on-line meter data, if relevant and available to support any invoice rendered hereunder.

(e) Seller shall obtain and secure any and all Interconnection Facilities on Seller's side of the Delivery Point between Seller's Facility and the Delivery Point in a timely manner to satisfy the provisions of this Agreement and shall assume all costs and expenses associated with the same.

(f) Buyer shall ensure, prior to the Start-Up and Commercial Operation Date of the Facility that the Interconnection Facilities, completed as necessary by Seller, satisfy the requirements set forth in Appendix D hereto. Buyer shall provide to Seller a letter with an authorized signature stating that such Interconnection Facilities are deemed satisfactory within ten (10) days after a request therefore is made by Seller.

## **7. PURCHASE AND SALE COMMITMENT**

Commencing on the Commercial Operation Date and thereafter during the term hereof, Buyer agrees to purchase and Seller agrees to sell and deliver to Buyer all Net Energy Supply at the Delivery Point at a delivery voltage compatible with the operating voltage of Buyer at the Delivery Point.

(a) Committed Capacity shall be designated by Seller prior to the Commercial Operation Date, but in no event shall be less than 1.700 MW or greater than 3.000 MW (provided the Capacity test demonstrates a Capacity not less than that set by Seller). The Capacity test shall be based on a test period of four (4) consecutive hours at the highest sustained net MW rating, expressed in thousandths of MW, at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility (and without exceeding applicable environmental and safety requirements and the operational limitations of the industrial facility of Seller located adjacent thereto) and the Capacity of the Facility determined under such test shall be the minimum average hourly net output in MW measured over such test period, expressed in thousandths of MW. If the Capacity of the Facility is demonstrated to be greater than 3.000 MW, Seller, in its sole discretion, may establish the Committed Capacity at a greater value up to and including the net generating Capacity demonstrated by the Capacity test, but in no instance shall it be set higher than 5.000 MW without the written consent of Buyer.

(b) Notwithstanding anything herein to the contrary, during the term of the Agreement, Seller, in its sole discretion, will at all times independently determine the amount of Net Energy Supply to be provided based on its operation of the Facility and the needs both of the Facility as well as the industrial facility of Seller located adjacent thereto.

(i) Seller therefore reserves the right not to provide Net Energy Supply if it is unable to do so because of unexpected physical limitations of Seller's Facility or if it determines that providing Net Energy Supply poses any risk or potentially has any negative implications that could adversely affect the physical nature of the Facility or Seller's industrial facility adjacent to Seller's Facility, or its operation thereof; and

(ii) Under no circumstances shall Seller be considered in default of this Agreement or be liable for any Costs, Losses, damages or other amounts payable to Buyer (or be entitled to any other remedy) on account of any failure to deliver Net Energy Supply or Capacity in accordance with this Agreement (including the failure to deliver Net Energy supply pursuant to Sections 7(b) or 7(b)(i) hereof), whether under tort (including strict liability), contract, statute or any other theory of liability, provided however that the foregoing shall not be construed to limit Buyer's right to terminate this Agreement in accordance with Section 2(d).

(c) Title and risk of loss to Net Energy Supply sold hereunder shall pass to Buyer at the Delivery Point.

## **8. SCHEDULING OF CAPACITY**

Seller shall provide annual notice to Buyer by electronic media (e-mail) sent at least 30 days prior to the commencement of each calendar year during the term hereof) of the estimated

Committed Capacity and generation of Net Energy Supply to be provided by Seller at the Delivery Point over the course of the succeeding calendar year.

## **9. METER READING, QUANTITIES OF NET ENERGY SUPPLY**

(a) Metering Net Energy Supply for the Delivery Month: Buyer shall read, or have read on its behalf, the metering equipment at the Delivery Point on a schedule consistent with Buyer's metering schedule, but no less frequently than monthly.

i. Immediately after Buyer reads the meter, Buyer shall advise Seller of the total metered Net Energy Supply for the Delivery Month, using electronic media. The Net Energy Supply shall reflect the integrated continuous supply (MW-hour) for clock hour intervals, as measured (metered) at approximately 15-minute frequency during the hour;

ii. Buyer will transmit to Seller an electronic data file containing, in hourly frequency, the amount of Net Energy Supply provided by Seller to Buyer during each clock hour of the Delivery Month.

(b) Maintenance of Metered Data: In electronic form, Buyer shall retain and make available to Seller, the metered amounts of Net Energy Supply for each Delivery Month, in 15-minute frequency.

## **10. CHARGES, PURCHASE PRICES, AND PAYMENTS FOR NET ENERGY SUPPLY**

### **10.1 Capacity and Energy Charges**

(a) Buyer shall pay Capacity and Energy charges ("Charges") for Net Energy Supply delivered by Seller in accordance with this Section 10.

i. Hourly Capacity Charge: Determined as the product of Net Energy Supply (MWh) for the clock hour, and the applicable hourly \$/MWh Capacity price. Prices for Capacity are specific to Peak and Off-Peak Hours of Seasons;

ii. Hourly Energy charge: Determined as the product of Net Energy Supply (MWh) for the clock hour, and the applicable hourly \$/MWh Energy price.

(b) For the Delivery Month, the total Charges are equal to the sum, over all hours, of all Charges (\$) for Capacity and for Net Energy Supply provided by Seller to the Delivery Point during the Delivery Month. Prices for Capacity (\$/MWh) and Energy (\$/MWh) are set forth in Section 10.2.

### **10.2 Purchase Prices including Capacity and Energy Prices**



purchased, for its use during the previous six month period, as defined in Buyer's then-current tariff titled REN-1 or successor tariff.

### 10.3 Adjustments to Prices for Net Energy Supply

(a) The Capacity purchase price(s) set forth in Section 10.2 are based on the Capacity-related Decremental Costs for Peak Hours and Off-Peak Hours as set forth in Exhibit F and shall be adjusted downward or upward to account for changes in the actual Capacity-related Decremental Costs of Buyer, provided that such adjustments occur no more frequently than the actual change in Capacity-related Decremental Costs of Buyer for delivering, purchasing, and/or generating Electric Energy. Adjustments to Capacity-related prices set forth herein as a result of any change in Buyer's Capacity-related Decremental Costs shall be equal to the actual change in Buyer's Capacity-related Decremental Costs from the amounts therefor set forth in Exhibit F.

(b) The Energy purchase prices set forth in Section 10.2 are based on the Energy-related Decremental Costs for Peak Hours and Off-Peak Hours as set forth in Exhibit F and shall be adjusted downward or upward to account for changes in the actual Energy-related Decremental Costs of Buyer, provided that such adjustments occur no more frequently than the actual change in Energy-related Decremental Costs to Buyer for delivering, purchasing, and generating Electric Energy. Adjustments to Energy-related prices set forth herein as a result of any change in Buyer's Energy-related Decremental Costs shall be equal to the actual change in Buyer's Energy-related Decremental Costs from the amounts therefor set forth in Exhibit F.

(c) Subject to the foregoing, all adjustments to the Capacity and Energy purchase prices hereunder will be equal to the change in Capacity- and Energy-related Decremental Costs. Examples of the calculations of such changes are set forth in Appendix E.

### 10.4 Service Guarantee/Invoice Credit

Seller shall provide Buyer with a Service Guarantee, which is defined as the minimum quantity of Net Energy Supply to be delivered to the Delivery Point.

(a) The Service Guarantee includes two minimum quantity conditions. For On-Peak Hours, the minimum quantity of Net Energy Supply is equal to the product of [REDACTED] and the declared Committed Capacity; this result is then multiplied by the number of On-Peak Hours in the Delivery Month. For Off-Peak Hours, the minimum quantity of Net Energy Supply is equal to the product of [REDACTED] and the declared Committed Capacity; this result is then multiplied by the number of Off-Peak Hours in the Delivery Month. The minimum quantity of Net Energy Supply for On-Peak and Off-Peak hours will be calculated independently for purposes of this Section 10.4(a). On-Peak and Off-Peak hours are adjusted for Planned Outages. Examples of the calculations of such amounts are set forth in Appendix F.

(b) For any Delivery Month where Seller delivers less than the minimum quantity of Net Energy Supply for either On-Peak Hours or Off-Peak Hours or both, the purchase price for the MWh's delivered during the On-Peak Hours or Off-Peak Hours or both that fails to meet the minimum quantity of Net Energy Supply shall be calculated using the then-current Energy Price only, in lieu of the All-In Price. For example, in a particular Delivery Month, Seller delivers less than the minimum quantity of Net Energy Supply for the On-Peak Hours, but delivers more than the minimum quantity of Net Energy Supply for the Off-Peak Hours. The On-Peak MWh's delivered would be purchased at the Electric Energy Price and the Off-Peak MWh's delivered would be purchased at the All-In Price for that Delivery Month. Buyer's sole and exclusive remedy for Seller's failure to deliver the minimum quantity of Net Energy Supply in accordance with this Agreement shall be the pricing adjustments set forth in this Section 10.4(b).

(c) Notwithstanding any term to the contrary set forth herein, for any Delivery Month Seller shall not have a maximum limit on Net Energy Supply, provided that Buyer is capable of taking delivery of Net Energy Supply from Seller in excess of the Committed Capacity at any time without Buyer incurring physical or financial harm (other than any payment required hereunder) or impairment to its transmission or distribution system. Buyer shall have the burden of demonstrating that such condition (physical or financial harm; transmission and distribution system impairment) exists. Subject to the foregoing and to any limitation in Section 10.7 hereof, Buyer shall accept and pay for all Charges for all Net Energy Supply delivered hereunder. If any amounts of Net Energy Supply are proffered or supplied hereunder in excess of the Committed Capacity and Buyer refuses to accept such excess in accordance with this Section 10.4(c) or Section 10.7 or Section 14 hereof, the greater of 3,000 MW or the then-current Committed Capacity shall nonetheless be included in the calculation of Net Energy Supply delivered by Seller during any particular month for purposes of making the calculations specified in Section 10.4 (a) and (b) hereof.

#### 10.5 Purchase Prices for Ancillary Services

The purchase prices for potential Ancillary Services provided by Seller to Buyer under the Agreement shall be mutually agreed upon within a timeframe preceding the provision of such services, as determined through contract negotiations between Seller and Buyer. At the time of execution, the Parties do not anticipate that Ancillary Services will be included within the scope of Generation Services provided during the term of the Agreement. Should future conditions change, including market and regulatory requirements, the Parties shall develop mutually agreed upon amendments to the Agreement, as necessary in order to facilitate such expanded scope of Generation Services to include Ancillary Services. Until such time as Seller shall deliver any Ancillary Services to Buyer, Seller shall retain title to such Ancillary Services.

#### 10.6 Invoices and Payments

(a) Buyer shall remit monies, in U.S. dollars, to Seller in an amount equal to the invoice amount, within fifteen (15) Business Days upon receipt of each monthly invoice.

(b) On or before the tenth (10<sup>th</sup>) Business Day of each month following the month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the charges (in U.S. dollars) payable by Buyer to Seller pursuant to the Agreement.

i. The calculation of charges for Net Energy Supply shall be the sum, over all hours of the Delivery Month, of the hourly product of (1) each hour's purchase price (\$/MW-hour); and 2) each hour's Net Energy Supply (MW-hour).

ii. Monthly Invoices shall present information and calculations in reasonable detail for the Delivery Month including 1) delivered Net Energy Supply (MW-hours) according to, in total, On-Peak and Off-Peak Hours, 2) the total number of Hours within On-Peak and Off-Peak periods 3) purchase prices for Capacity and Energy during On-Peak and Off-Peak Hours 4) minimum quantities under the Service Guarantee (Section 10.4), and such other required information agreed upon by the Parties.

(c) Buyer shall be responsible for the payment (either directly or by reimbursing Seller therefore) for all sales, use, excise, franchise and similar taxes and levies which might be imposed by any Governmental Body on the purchase and sale of Energy Supply and/or any other Generation Services, Electric Energy, Ancillary Services, Capacity or any Environmental Attributes purchased and/or sold hereunder; provided, that (i) neither Party shall be responsible for any taxes or levies imposed on the other Party's income or property and (ii) Buyer shall provide Seller with a resale certificate and such other documents and information which Seller may reasonably request in connection with any taxes or levies which may be imposed in connection with the transactions herein contemplated. Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority that are the responsibility of such Party pursuant to this Section 10.6(c).

(d) Payments to be made for Generation Services provided under the Agreement shall cease as of the Termination Date, but shall be extended, if necessary, beyond the Termination Date in order to include final payment and settlement of all outstanding amounts due to Seller through and including the Termination Date.

(e) Any amount payable hereunder by one Party to the other Party which is not paid when due shall bear interest at the Interest Rate from the date such payment was due until the date payment is actually made.

#### 10.7 Limits to Payments Made by Buyer to Seller

If during any hour of any Delivery Month Buyer can demonstrate that Buyer's Electric Energy Supply is greater than Buyer's Native Load Obligation for such hour, the charges paid by Buyer

to Seller for the quantity (MWh) of Net Energy Supply delivered during such hour that is 1) greater than Seller's Committed Capacity but 2) cannot be used by Buyer to serve its Native Load Obligation, shall be based on the price set forth in Buyer's then-current REN-1 tariff or successor tariff, in lieu of the Capacity and Energy prices therefor set forth in Section 10.2 hereof. Buyer shall bear the burden of demonstrating that such condition exists.

11.

[REDACTED]



[REDACTED]

**12. REPORTING OF FORCED OUTAGES OR FORCE MAJEURE**

Seller shall provide as soon as reasonably practicable via electronic media notice to Buyer upon the occurrence of any Forced Outage or Force Majeure Event materially affecting the Facility, in full or in part, indicating the amount of capability affected and the anticipated period of such Forced Outage or Force Majeure Event. Seller shall provide updated information regarding such Forced Outage or Force Majeure Event from time to time as reasonably requested or periodically (but not less than once per month) until such Forced Outage or Force Majeure Event ceases to exist. An acceptable reporting form is attached as Appendix G.

**13. OPERATIONS, SCHEDULING AND NOTICE OF PLANNED OUTAGES**

13.1 Notice Generally. Seller will provide notice to Buyer of Planned and Forced Outages via electronic media (e-mail).

(a) At a least ninety (90) days prior to the Commercial Operation Date; and no later than the Friday of the first full week of December of each calendar year thereafter over the term of this Agreement, Seller shall submit to Buyer a schedule of Planned Outages for the Facility over the succeeding calendar year. The schedule will specify the days of Planned Outages. Seller shall use reasonable efforts to coordinate the scheduling of Planned Outages of the Facility with Buyer and, where possible, accommodate the expressed preferences for Planned Outages of Buyer, provided that, notwithstanding any term set forth herein, in no event shall any Planned Outages interfere with or in any manner adversely affect the continued and planned operation of

the Facility for the benefit of Seller's industrial facility located adjacent thereto and Seller shall have complete discretion as to the performance of all operations and maintenance regarding the Facility which might affect such operations. Seller shall provide written notice to Buyer of changes to the schedule for Planned Outages within thirty (30) days prior to the Outage.

(b) Within seven (7) days of receiving the proposed schedule of Planned Outages, Buyer may propose modifications thereto. Seller may accept or reject Buyer's proposed modifications in its sole and absolute discretion, consistent with the continued and planned operation of the Facility for the benefit of Seller's industrial facility located adjacent thereto or the operations of such facility itself and Seller's business performance and results.

(c) During each Planned Outage, Seller shall keep Buyer apprised of the status of the Facility, and changes to the schedule of the Planned Outage.

(d) Seller shall electronically provide notice to Buyer immediately (within 15 minutes of the event) of Forced Outages and, as soon as practicable and when reliable information becomes available, electronically provide Buyer with a schedule (date and hour of day) as to when the Facility is expected to return to service. Seller shall provide Buyer with updates of the status and changes in the expected schedule of the Facility during Forced Outages, when such information becomes available in a reliable form.

### 13.2 Access and Information

(a) Seller shall provide Buyer and its authorized agents, employees and inspectors during normal business hours and at such location as Seller shall designate with reasonable access to records relating to the Capacity of the electrical generating units of the Facility and data relating to the Net Energy Supply being generated by such electrical generating units for sale hereunder. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Facility in any way or grant it any right not otherwise provided herein. The exercise by Buyer of its rights under this Section 13 shall be at its own risk and expense.

(b) Any inspections or testing by Buyer shall not relieve Seller of its obligation to maintain the electrical generating units in the Facility in accordance with its obligations hereunder. In no event shall any Buyer statement, representation, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for such electrical generating units. Any Buyer inspection of property or equipment owned or controlled by Seller or any Buyer review of or consent to Seller plans with respect thereto, shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as warranty or guarantee of any nature.

### 13.3 Operation of Facility Pursuit to Safety and Reliability

Seller agrees that all Net Energy Supply delivered by Seller hereunder shall be delivered in accordance with the Facility Connection Requirements attached hereto as Appendix D and will meet any and all applicable requirements for voltage level, harmonics, power factors, vars, ancillary services and other electrical specifications reasonably required by Buyer or as specified

by National Reliability Standards enforced by the FERC. Seller shall provide adequate system protection and control devices within the Facility to ensure safe and protected operation of all energized equipment during normal testing and repair and the Facility's protective equipment shall meet IEEE standards and those standards utilized generally by other biomass fueled independent power facilities in the southeastern United States region. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper function of all protective equipment in the Facility at least once every twelve (12) months and also shall perform a unit functional trip test after each overhaul of the Facility's turbine, generator and boilers and shall provide results thereof to Buyer in writing prior to retuning the equipment to service, provided that, for the avoidance of doubt, the foregoing shall not be construed to give Buyer any ability to direct, modify, control or be involved with the operation of the Facility in any manner whatsoever.

#### **14. DECLINED ACCEPTANCE AND RECEIPT OF RENEWABLE ENERGY**

From time to time, Buyer, upon prior notice to Seller may decline to accept Net Energy Supply delivered hereunder during any given hour, due to an emergency condition, or due to the non-economic reasons set forth below. Buyer shall not be obligated to purchase and may require curtailed or reduced deliveries of Net Energy Supply, to the extent necessary to maintain the reliability and integrity of any part of Buyer's system, or if Buyer determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to Buyer's customers. Buyer shall use commercially reasonable efforts to give Seller as much prior notice as reasonably practicable of its intent to refuse, curtail or reduce its acceptance of Net Energy Supply pursuant to this Section 14 and will use commercially reasonable efforts to minimize the frequency and duration of such occurrences. Seller shall not be responsible for any damages which may be incurred by Buyer as a result of its failure to provide adequate notice of its desire to curtail any Net Energy Supply or other Generation Services hereunder.

#### **15. RESERVED**

#### **16. FORCE MAJEURE/MITIGATION**

"Force Majeure" shall mean an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including, but not limited to, arson and vandalism), epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered a Force Majeure event. Except as otherwise provided in this Agreement, each Party shall be excused from performance

only to the extent non-performance was caused by a Force Majeure. Notwithstanding any provision to the contrary set forth herein, in no event shall either Party be excused from any obligation to pay any monies due and owing hereunder as a result of any Force Majeure hereunder.

The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this Agreement; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable in its sole and absolute discretion.

## **17. INSURANCE**

(a) At all times after the Commercial Operation Date, at Seller's sole cost and expense, Seller shall obtain and maintain in accordance with the provisions of this Section 17, the following insurance coverage with reputable companies authorized to do business in the State of Florida and reasonably acceptable to Buyer. Insurance coverage shall be maintained in such amounts which are not less than the amounts set forth below:

i. Comprehensive or general liability insurance, including bodily injury and property damage, in an amount not less than \$2,000,000.00 for each occurrence. The required insurance policy shall be endorsed with a provision requiring the insurance company to notify Buyer at least thirty (30) days prior to the effective date of any cancellation or material change in the policy and such policy shall include coverage for (1) premises and operations; (2) contractual liability; (3) products and completed operations; and (4) broad form property damage (including completed operations). The required minimum limits may be satisfied by a combination of primary policy and an excess or umbrella policy, but in any case shall list the Buyer as an additional insured with respect to liability arising out of or in connection with this Agreement.

ii. Worker's Compensation insurance (including coverage for Occupational Disease) as required by all applicable laws and regulations;

iii. Employer's liability insurance of no less than \$1,000,000.00 for each occurrence and in the aggregate.

(b) Seller shall be responsible for deductible amounts or self-insured retention amounts associated with losses insured by Seller unless the loss is the result of an act of omission of Buyer.

## **18. CERTIFICATES OF INSURANCE**

(a) Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the policies and endorsements required by Section 17.

(b) If Seller is unable to obtain any of the insurance coverages required by Section 17, it shall promptly notify Buyer.

(c) Failure by Seller to obtain any insurance coverage or certificate of insurance required by Sections 17 and 18 shall not in any way relieve or limit the obligations and liabilities of Seller under any provision of this Agreement.

(d) If Seller fails to procure or maintain any insurance required pursuant to Section 17, then Buyer shall have the right, but not the obligation, after prior notice to Seller of not less than 30 days, to procure such insurance and in any such event Buyer shall be entitled to recover the premiums paid for such insurance as if the same were a debt due and such premiums may be off-set by Buyer against any amounts owed to Seller pursuant to the terms of this Agreement.

## 19. DEFAULT

(a) Either Party shall be considered in default under this Agreement ("Event of Default") if:

i. Such Party fails to perform any material obligation hereunder, except to the extent prevented by a Force Majeure Event, and such failure continues for thirty (30) days after written notice by the other Party demanding cure of such failure, provided that where cure reasonably requires more than 30 days, so long as such Party has commenced within thirty days of the notice and diligently pursues a cure, such Party shall have such additional time as is reasonably required to effectuate the necessary cure;

ii. Any representation or warranty made by a Party herein shall have been false when made and such misrepresentation has had or could reasonably be expected to have a material adverse effect on the other Party;

iii. Such Party voluntarily declares bankruptcy or suffers the filing of an involuntary bankruptcy petition against it and fails to obtain the dismissal of such petition within sixty (60) days; or

iv. Such Party has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed discharged, stayed or restrained, in each case within thirty (30) days thereafter, and such party fails to assume all the obligations of such Party under this Agreement.

(b) Upon the occurrence and during the continuation of any Event of Default involving a Party, the other Party shall have the right to deliver a written notice of intent to terminate ("Notice of Intent to Terminate") this Agreement to such Party, provided that with respect to Seller, as long as Seller is continuing to deliver Net Energy Supply from the Facility to Buyer, any Event of Default as defined in Section 19(a) above shall not constitute grounds for any right of Buyer to terminate this Agreement. Any Notice of Intent to Terminate shall specify

the Event of Default giving rise to such Notice of Intent to Terminate. Following the giving of a Notice of Intent to Terminate, the Parties shall consult for a period of up to thirty (30) Business Days as to what steps shall be taken. At the expiration of the thirty (30) Business Day period and unless the Parties shall have otherwise mutually agreed on a remedy or the affected Party has cured such Event of Default, Buyer or Seller, as applicable, may terminate this Agreement by giving notice thereof to the affected Party, whereupon this Agreement shall immediately terminate.

## **20. LIABILITY AND INDEMNIFICATION**

### **20.1 LIMITATION OF LIABILITY**

THE PARTIES AGREE THAT ANY EXPRESS REMEDIES AND MEASURE OF DAMAGES, PROVIDED FOR HEREIN ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSE HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND THAT SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES THEREFORE SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH BREACH AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, EITHER PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, PROVIDED THAT NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE.

EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

### **20.2 INDEMNIFICATION**

Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party, and each of the other Party's Affiliates, directors, officers, employees, agents and permitted assigns (collectively, the "Indemnified Party"), from and against any and all claims, losses, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements) directly incurred in connection with or directly arising from or out of any unrelated third party claim for damage to property or injury (including death and disease) to any person to the extent caused by: (i) any negligent act or omission or willful misconduct, breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by said Party or (ii) any violation of Applicable Law by said Party.

The Indemnified Party shall promptly notify the Indemnifying Party of any claim or proceeding in respect of which it seeks to be indemnified. Such notice shall be given in writing as soon as reasonably practicable after the Indemnified Party becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects or prejudices the indemnifying Party's interests. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that in the context of such indemnification there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party and that a conflict of interest exists such that designated counsel can no longer effectively protect the rights of the Indemnified Party, the Indemnified Party shall have the right to select and be represented by separate counsel; provided however, the foregoing shall not preclude the Indemnified Party from otherwise participating in any such proceeding at its own expense. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

## **21. CONTINUING QUALIFICATION AND REGULATORY APPROVAL**

Notwithstanding any other provisions of this Agreement, Buyer shall have the right to terminate this Agreement, by written notice to Seller giving the reasons therefore, without cause, liability or obligation, if any of the following conditions subsequent has occurred, in Buyer's good faith judgment:

(a) The Facility shall fail to maintain its status as a Qualifying Facility. By the end of the first quarter of each calendar year, Buyer may request and, if so, Seller shall furnish to Buyer a notarized certificate by an officer of Seller certifying that the Facility has continuously maintained its status as a Qualifying Facility on a calendar year basis since the Commercial Operation Date under this Agreement;

(b) Any approval from any Governmental Body having jurisdiction thereof necessary for Buyer to enter into this Agreement or to allow full recovery by Buyer from its customers of all payments required to be made by this Agreement shall no longer be in full force and effect, and some portion or all of such payments shall have become disqualified for such recovery in contravention of FPSC Order No. 25668, issued February 23, 1992. In connection with the foregoing, Buyer and Seller agree, at Buyer's expense, to support and defend this Agreement and their respective rights to cost recovery and payment, against any challenge thereto by any Person.

## **22. ASSIGNMENT**

(a) Seller shall not have the right to assign this Agreement without Buyer's prior written consent and such consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Seller may, without Buyer's prior written consent, (i) assign its benefits under this Agreement; (ii) assign, pledge or otherwise encumber this Agreement to any lender or financial institution as collateral security for any financing of the Facility; or (iii) assign and transfer this Agreement to an Affiliate with credit worthiness equal to or higher than that of Seller. If Seller shall sell or otherwise dispose of the Facility, Seller shall, at the request of Buyer, assign this Agreement to any successor owner of the Facility, which request constitutes the consent of Buyer under this Section 22. Seller shall cause any assignee of this Agreement to assume the obligations of Seller hereunder.

(b) Buyer shall not have the right to assign this Agreement without Seller's prior written consent and such consent shall not unreasonably be withheld, conditioned or delayed; provided, however, the Buyer may, without the Seller's prior written consent, (i) assign its benefits under this Agreement; (ii) assign, pledge or otherwise encumber this Agreement to any lender as collateral security for financing the Facility; or (iii) assign and transfer this Agreement to an Affiliate with credit worthiness equal to or higher than that of the Buyer, provided that such Affiliate assignment is subject to Seller's written consent, which will not be unreasonably withheld, conditioned or delayed.

**23. DISCLAIMER**

Except as otherwise expressly contemplated in this Agreement, Buyer does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller or any assignee of this Agreement.

**24. NOTIFICATION**

Any notice required or permitted to be given hereunder shall be in writing and shall be: (i) personally delivered; (ii) transmitted by posted prepaid certified mail; (iii) transmitted by a recognized overnight courier service; or (iv) transmitted by electronic mail with a request for electronic receipt confirmation, to the receiving Party as follows, as elected by the Party giving such notice:

<p><u>For Seller</u></p> <p>Rayonier Performance Fibers, LLC          General Manager, Fernandina Mill          10 Gum Street          Fernandina Beach, Florida 32034</p> <p>With a copy to:</p> <p>Vice President and General Counsel          Rayonier Inc.</p>	<p><u>For Buyer</u></p> <p>P. Mark Cutshaw          Florida Public Utilities Company          911 South 8th Street          Fernandina Beach, Florida 32034  <a href="mailto:Mcutshaw@fpuc.com">Mcutshaw@fpuc.com</a></p>
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1301 Riverplace Blvd, ste 2300 Jacksonville, Florida 32207	
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All notices and other communications shall be deemed to have been duly given on: (i) the date of receipt if delivered personally; (ii) the date of receipt if transmitted by mail; (iii) the date of receipt if transmitted by courier; or (iv) the date of transmission with confirmation if transmitted by electronic mail, whichever shall first occur. Any Party may change its address or other contact information for purposes hereof by notice to the other Party.

## **25. RESOLUTION OF DISPUTES**

### **25.1 NOTICE OF DISPUTE**

If any dispute (including payment dispute), controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the Parties (a "Dispute"), the Party wishing to declare a Dispute shall deliver to the other Party a written notice identifying the disputed issue.

### **25.2 RESOLUTION BY PARTIES**

Following delivery and receipt of a notice of Dispute, executives of both Parties shall meet at a mutually acceptable time and place within ten (10) Business Days after receipt of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. If the matter has not been resolved in the aforementioned manner within thirty (30) Days after the notice of Dispute has been issued by a Party, or if the Parties fail to meet within ten (10) Business Days as required above, either Party may initiate any legal action, suit or other proceeding available to it to resolve such Dispute.

## **26. VENUE**

This Agreement shall be governed by and construed and enforced in accordance with the laws, rules, and regulations of the State of Florida without regard to the choice of law provisions thereof. THE PARTIES AGREE THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE INSTITUTED IN A COURT OF COMPETENT JURISDICTION LOCATED IN NASSAU COUNTY, FLORIDA. THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL FOR ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

## **27. COMPLETE CONTRACT/SEVERABILITY**

This Agreement together with any Appendices, Exhibits or Attachments thereto, represents the entire agreement of the Parties with respect to the subject matter contained herein.

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Agreement, are hereby abrogated. If any part of this Agreement, for any reason, be declared invalid, or unenforceable by a court or public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Agreement, which remainder shall remain in force and effect as if this Agreement had been executed without the invalid or unenforceable portion.

## **28. CONFIDENTIALITY**

Neither Party shall disclose the terms of this Agreement concerning the price for Energy or Environmental Attributes to any third Party, other than a Party's and its affiliates' employees, lenders, counsel, accountants or other representative who have agreed to keep such terms confidential, except as required to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure at the earliest practicable time in order to enable the other Party to take any action it may want to take to limit or prevent such disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce this confidentiality obligation; provided, however, that any monetary damages awarded in connection therewith shall be limited to actual, direct damages.

## **29. RECORD RETENTION/AUDIT**

Each Party agrees to retain during the term hereof and thereafter for a period of five (5) years from the Termination Date hereof, all records relating to the performance of its obligations hereunder, and to cause any Affiliate to retain all such records for the same period. Either Party shall have the right throughout the term of this Agreement, and thereafter for a period of five (5) years from the Termination Date hereof, on an annual basis and upon reasonable prior notice, to audit the other Party's metering and other records relating to this Agreement to the limited extent necessary to verify the basis for any claim by either Party regarding payments hereunder. Each Party shall make such metering and other records available at its corporate office during normal business hours and the auditing Party shall reimburse the other Party for those reasonable out of pocket costs incurred by it in respect of such audit, as supported by appropriate documentation.

## **30. BENEFIT/NO WAIVER**

This Agreement, as it may be amended from time to time, shall be binding and inure to the benefit of the Parties and their respective successors-in-interest and legal representatives. No Person not a signatory hereto shall be deemed an intended third party beneficiary of this Agreement.

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

**31. VARIABLE INTEREST ENTITY**

Accounting rules set forth in the Financial Accounting Standards Board Interpretation No. 46 (revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require that either Party evaluate whether the other must be consolidated, as a variable interest entity (as defined in FIN 46R), in the reporting Party's financial statements. The Parties agree to cooperate to make available to the reporting Party's independent auditors (subject to appropriate confidentiality provisions agreed to by the Parties and such auditors) all financial data and other information, as deemed reasonably necessary by either Party's independent auditors, to perform that evaluation on a timely basis as of the Commercial Operation Date and periodically thereafter as required by FIN 46R. Upon request, a Party will furnish the necessary information to the reporting Party's auditor when it receives a written request that such information is necessary and material to prepare the reporting Party's financial statements. If the reporting Party does not receive the necessary information within sixty (60) days of the request, the reporting Party may claim an Event of Default within the meaning of Section 19 of this Agreement. If the result of a Party's evaluation under FIN 46R indicates that the other Party must be consolidated in its financial statements, the Parties agree to provide, upon reasonable advance written notice and subject to appropriate confidentiality provisions negotiated by and between the Parties and their independent auditors, such financial statements and other information, as reasonably determined by the reporting Party's independent auditors to be necessary for inclusion in disclosures contained in the footnotes to the reporting Party's financial statements and required filings with the Securities and Exchange Commission ("SEC"), provided that, notwithstanding any provision herein to the contrary, either Party may decline to provide such financial statements and information and instead terminate this Agreement without penalty or damages payable to the Party or any other Person. Provided that a Party is given reasonable advance written notice, all information properly requested by the reporting Party and its independent auditors hereunder must be received the reporting Party's independent auditors in a timeframe consistent with the reporting Party's earnings release and SEC filing schedules, to be determined at the sole discretion of the reporting Party's independent auditors. Additionally, if the result of the valuation under FIN 46R indicates that a Party must be consolidated into the financial statements of the other Party and neither Party terminates this Agreement within 90 days after notice of such determination, the Parties agree to cooperate with each other and their independent auditors in completing an assessment of internal controls as required by the Sarbanes-Oxley Act of 2002 and performing any audit procedures necessary for the reporting Party's independent auditors to issue their opinion on the consolidated financial statements of the reporting Party. The reporting Party shall reimburse the other Party for any costs and expenses (including reasonable legal fees) incurred by the other Party to comply with the requirements of this Section 31.

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement effective as of the day and year first above written.

WITNESSES:

Wanda Kopuga  
Shellee Simmons

WITNESSES

[Signature]  
Mark Cutshaw

RAYONIER PERFORMANCE FIBERS, LLC

BY: [Signature] MCH  
Paul G. Boynton  
Title: President

FLORIDA PUBLIC UTILITIES COMPANY

BY: [Signature]  
Title: PRESIDENT

## Appendix A

### Facility Description

**Generation Facility:** Rayonier Performance Fibers, LLC

**County of Operation:** Nassau County, Florida

**Address:** 10 Gum Street, Fernandina Beach, Florida 32034

**Facility Description:** This facility will produce renewable energy through the production of steam associated with the burning of biomass and natural products in a BFB and Recovery Boilers.

**Technology:** Recovery Boiler and Bubbling Fluidized Bed.

**Capacity:** The new system will have the ability to produce a total of 35 MW's of electrical capacity from two 22 MW (maximum rating) generators. During normal operations, this electrical capacity will provide electrical service to all the Rayonier internal operations with approximately 3.0 MW's of additional capacity available to FPU.

**Fuel:** See Attachment 1 to this Appendix A for a description of the fuel used in the facility.

**Physical Attributes:** All facilities are contained within the Rayonier Performance Fibers, LLC mill which manufactures high quality wood cellulose for use in a multitude of products.

**Steam Pressure and Consumption:** The two boilers are rated for 900 PSI steam with the Recovery Boiler capable of producing steam at a rate of 390,000 pounds per hour and the Bubbling Fluidized Bed Boiler capable of producing steam at a rate of 305,000 pounds per hour. During normal operations the facility has the ability to consume all steam produced.

**Operating Constraints (including ramp rates):** The facility will typically supply capacity and energy to FPU based on internal operating conditions of the mill. During maintenance operations, a portion of the mill can be shut down within four hours and can return to normal operations within eight hours after restart.

**General Operating Characteristics:** Generally the facility will be operating at normal conditions with the exception of outages to perform necessary maintenance. Maintenance will occur on a monthly basis during which the mill will require approximately 14 MW's from FPU to continue operations. On an annual basis, the facility will shut down to perform major maintenance.

## Attachment 1 to Appendix A

### Fernandina Mill - Boiler Fuel Description

#### PRIMARY FUEL

Pine Bark - Southern pine bark used to generate steam in the facility's #6 Power Boiler, which is a Bubbling Fluidized Bed Boiler (BFB).

Spent Sulfite Liquor SSL: Spent Sulfite Liquor - Liquor originating from the sulfite pulping process of southern pine. The pulping process separates the cellulosic fibers from the lignin structure within the wood using ammonium bisulfite cooking chemicals. The cooking chemicals and degraded lignin and hemicellulose from the pulped southern pine is separated from the cellulosic fibers and concentrated through evaporation. This concentrated liquor is then burned in the Recovery Boiler (RB) to generate steam and recover the inorganic chemicals used in the pulping process.

#### SECONDARY FUEL

Sludge - The used process water from the facility's pulp mill contains a lot of organic material such as lignin and other organic material from the trees. Recycling the effluent, burning it, helps to reduce water pollution. The Facility produces sludge, which is de-watered and then either land filled or burned. The sludge is produced from secondary treatment plants, power boiler ash, chemical processing, and other sources.

Knots - Knots are unwanted, large, dark aggregates of wood fibers when making chemical pulp. Knots are incompletely cooked wood chips coming out the digester. Their origin is often dense parts of branches, such as compression wood or timber knots - hence the name. Knots can also stem from large/oversized wood chips due to insufficient impregnation with cooking liquors.

#### FOSSIL FUEL - USED Pursuant to 18 C.F.R. § 292.204 (b),

No.6 Fuel Oil - No. 6 Fuel oil (Bunker C) is a fraction obtained from petroleum distillation. It is used for start-up, testing, flame stabilization, and the alleviation or prevention of unanticipated equipment outages.

No.2 Fuel Oil - No. 2 Fuel oil (Diesel) is a fraction obtained from petroleum distillation. It is used for start-up, testing, flame stabilization, and the alleviation or prevention of unanticipated equipment outages.

Tire Derived Fuel - Tire derived fuel (TDF) is consumed in the form of shredded or chipped material with most of the metal wire from the tire's steel belts removed. TDF is used for flame stabilization during wet climate conditions.

FACILITY NOMINAL FUEL ALLOCATION		
<b>PRIMARY FUEL</b>		
SSL	449,736,152 BTU/hr	51.0 %
Bark	387,488,527 BTU/hr	43.8 %
<b>SECONDARY FUEL</b>		
Knots	23,828,212 BTU/hr	2.70 %
Sludge	To come later	
<b>FOSSIL FUEL</b>		
No. 6	18,478,438 BTU/hr	1.90 %
No. 2	439,372 BTU/hr	0.05 %
TDF	4,402,283 BTU/hr	0.55 %

Appendix B  
List of Applicable Permits Received

- FERC Form 556
  - Submission ID: 331276
  - Filed by : Rayonier Performance Fibers, LLC
  - Signed by: William Manzer
  - Filing Description: Public Form 556 of Rayonier Performance Fibers, LLC under Docket QF12-47-000
  - Submission Date/Time: 12/7/2011 3:52:02 PM
  - Filed Date: 12/7/2011 3:53:02 PM
  
- Title V Permit Number 0890004-029-AV

## Appendix C

### Commercial Operation Criteria

- Committed capacity of a minimum of 1.700 MW's but not more than 3.000 MW's have been designated by Seller that will be available to Buyer.
- Capacity tests will be performed during such a time that the Sellers operation is in a near normal condition in order to adequately assess the net capacity available to Buyer.
- Seller will notify Buyer of proposed test date and time and allow Buyer to participate as needed in order to verify the test results.
- Capacity tests will be performed by Seller which will be based on a minimum test period of four (4) consecutive hours.
- Capacity test will cause the Facility to operate at its highest sustained net MW rating without exceeding the design operation conditions, temperature, pressures and other parameters defined by the applicable manufacturer(s) for steady state operations (and without exceeding applicable environmental and safety requirements and the operational limitations of the industrial facility of Seller located adjacent thereto).
- Capacity of the Facility shall be the minimum average hourly net output in MW's measured over such test period.
- Seller and Buyer shall independently monitor voltage levels, system performance and meter the net capacity being produced during the capacity test.
- Should the capacity test demonstrate that the Committed Capacity may exceed the 3.000 MW amount, the Seller, in its sole discretion, may increase the Committed Capacity up to 5.000 MW. However, Seller may not increase the Committed Capacity above 5.000 MW without written consent of Buyer.



## **Appendix D**

### **Florida Public Utilities Company Facility Connection Requirements**

#### **1. Introduction**

1.1 This Facility Connection Requirements document covers the requirements for connection or interconnection of new facilities with, or major revisions to existing facilities connected to, facilities owned by Florida Public Utilities Company. The document addresses generating, transmission, and load serving (end-user) facilities.

1.2 Florida Public Utilities Company (FPU) presently owns an eight mile double circuit 138kV transmission line and a Step-down Substation which are the only Bulk Electric System (BES) facilities owned by FPU. The double circuit 138kV transmission line is interconnected with JEA at the JEA Nassau Switching Substation.

1.3 JEA is the Balancing Authority and Transmission Operator for the FPU facilities interconnected with JEA at the JEA Nassau Switching Substation. The operation of these facilities is governed by the NETWORK OPERATING AGREEMENT BETWEEN JEA AND FLORIDA PUBLIC UTILITIES COMPANY (aka NOA).

1.4 Any request for interconnection of new generating or transmission facilities would first be evaluated by FPU. The interconnection study would address the impact of the facilities as initially connected and also throughout the planning horizon. The results of the study will be shared with the requestor.

1.5 New facilities interconnected by third parties must adhere to the requirements contained in the facility connection requirements documents of FPU.

1.6 Unless otherwise agreed upon, the facility is required to bear all costs associated with the change-out, upgrade or addition of protective devices, transformers, lines, services, meters, switches and associated equipment and devices beyond that which would be required to provide normal service to the qualifying facility if the qualifying facility were a non-generating customer. Should this be necessary and prior to any work being performed, FPU will provide a written estimate to facility.

#### **2. Common Requirements**

2.1 This section covers both general and technical requirements which are applicable to both generation and transmission facilities.

2.2 Facilities interconnected with FPU must be designed, constructed, operated, and maintained so that they will not adversely affect the reliability of the electrical system. The design, operation and maintenance of the facilities must at all times comply with NESC requirements, applicable ANSI and IEEE standards.

### 2.3 Common Technical Requirements

- 2.3.1 Voltage Level – The FPU interconnection facilities for this agreement are 69kV and shall be maintained within a range of plus or minus 5%.
- 2.3.2 Frequency – The frequency shall be maintained at 60 hertz, plus or minus an instantaneous variation of less than 1%, for load levels from no-load to fully rated output.
- 2.3.3 MW and MVAR capacity – The MW and MVAR capability of any proposed new generator, the MVA rating of any proposed transmission lines, or the MVA requirements of any proposed load serving facilities must be clearly specified in the facility connection request.
- 2.3.4 Breaker duty, breaker operating time, and surge protection must coordinate with existing equipment as well as projected fault current levels during the current planning horizon.
- 2.3.5 System protection equipment shall be equivalent to existing primary and back-up schemes of FPU and shall be designed to coordinate properly with the existing protection systems.
- 2.3.6 Metering equipment shall be supplied by FPU and will be of the configuration and accuracy as required for the specific type of facility and as detailed further below under the technical requirements for the individual types of facility connections. Telecommunications for data and/or voice communications shall be provided also as specified below.
- 2.3.7 Grounding shall be designed to meet the requirements of ANSI/IEEE 80, IEEE Guide for Safety in AC Substation Grounding, and ANSI/IEEE C2, National Electrical Safety Code. All facilities shall be adequately bonded and grounded to control step and touch potential in compliance with the NESC. New facilities may increase the fault current levels at existing substations. The interconnection studies will evaluate this effect and determine if existing facilities require upgrading.
- 2.3.8 Insulation design levels must be selected so as not to degrade the BIL or BSL of existing facilities. The facility connection request shall provide adequate details on the BSL, conductor spacing, transmission line insulation, surge arrestors, and lightning protection (shielding) needed for evaluation.
- 2.3.9 Voltage, Reactive Power, and Power Factor controls or devices shall be provided as detailed below under the technical requirements for the individual types of facility connections.
- 2.3.10 Power Quality must be maintained at a level of 0.85 lagging through 0.85 leading such that it will not impact the FPU electrical system or the facilities of the other interconnected entities. Capacitor installation may be required if this level cannot be maintained.
- 2.3.11 Harmonics distortion shall be avoided and not have any impact of the FPU electrical system facilities.
- 2.3.11 Equipment ratings shall be specified such that the ratings of existing facilities are not adversely affected.
- 2.3.13 Synchronizing and closing coordination controls shall be designed as specified further below under the technical requirements for the individual types of facility connections.
- 2.3.14 Facilities shall be maintained in accordance with good utility practices and in a manner which prevents any adverse impact on the FPU electrical system.
- 2.3.15 Operational issues pertaining to abnormal voltage and frequency conditions are unique to each type of facility and the requirements are listed below under the technical requirements for the individual types of facility connections.
- 2.3.16 Facilities interconnected with the FPU electrical system shall be available for inspection with reasonable notice. If disconnecting devices or equipment owned by others is located on the premises of the interconnected facility, that equipment must be accessible at all times or on short notice in the event of an emergency operational condition.
- 2.3.17 Communications procedures and protocols during both normal and emergency operating conditions can vary according to the type of facility. Requirements are listed below under the technical requirements for the individual types of facility connections.

### **3. Technical Requirements for Generator Interconnections**

- 3.1 The requirements listed in this section are particular to generator interconnections and are in addition to the requirements in Section 2, Common Requirements, above. The facility interconnection study and the requirements of the other interconnected entities may dictate additional requirements which must be complied with.
- 3.2 The following information shall be included with any generator interconnection request:
  - 3.2.1 Generator Nameplate MVA Rating
  - 3.2.2 Generator Maximum MW capability and Maximum Leading and Lagging MVAR at Maximum MW Output
  - 3.2.3 Generator Step-Up Transformer MVA Rating, Voltage Ratings and Tap Settings.
- 3.3 Protection and control equipment for the prevention of damage to the generator and associated auxiliaries is the responsibility of the generator owner.
- 3.4 Generator voltage rating, reactive capability, voltage regulator, and transformer tap settings shall be designed and coordinated such that the generating unit is capable of helping to support the voltage and reactive requirements in the area.
- 3.6 The generator shall have automatic synchronizing equipment to synchronize the generator to the FPU electrical system. Dead bus or other closing permissives shall not be permitted unless agreed to or requested in the interconnection agreement.
- 3.7 Communications channels and protocols between the generator and FPU shall be established for use during normal and emergency conditions.

### **4. Technical Requirements for Transmission Interconnections**

- 4.1 The requirements listed in this section are particular to transmission interconnections and are in addition to the requirements of Section 2, Common Requirements, above. The facility interconnection study and the requirements of the other interconnected entities may dictate additional requirements which must be complied with.
- 4.2 The following information shall be included with any transmission interconnection request:
  - 4.2.1 Transmission line MVA rating based upon limiting element.
  - 4.2.2 Specifications for all components, i.e. conductor, insulators, structures, terminal components, etc.
- 4.3 Line primary, back-up, and breaker failure protection equipment shall be high speed equivalent to existing equipment.
- 4.4 Synchronizing, synch-check, hot bus-dead line, or other permissive schemes shall be included as specified in the interconnection agreement.
- 4.5 Communications channels and protocols between the generator and FPU shall be established for use during normal and emergency conditions.

4.6 A manual disconnect switch of the visible load break type will be provided as a separation point between the facility and the FPU electrical system. FPU will designate the location of this switch, place a lock on the switch, have access to this switch at all times and be able to operate this switch (with notification to facility) as required.

## **5. Technical Information from Qualifying Facility**

5.1 The following information will be provided to FPU.

5.1.1 Drawing showing the physical layout of the facility.

5.1.2 Equipment specifications and characteristics including technical parameters, ratings, basic impulse levels, main electrical one line diagrams, schematics, frequency protection, voltage/current protection.

5.1.3 Functional and logic diagrams and other relevant data such as control, meter, conductor, etc. information in order to better understand and coordinate with other systems.

5.1.4 Power requirements and outputs in MW and MVAR.

5.1.5 Harmonic distortion and/or radio or telephone interference that may be expected.

5.1.6 Method and specifications of synchronizing the generator with the FPU electrical system.

5.1.7 Necessary operating or instructions manuals that may be needed.

5.2 Operating procedure to ensure adequate personnel safety. Procedure shall address maintenance, access, operations, clearances, etc. necessary for the safe operation of both facility and FPU personnel.

## EXHIBIT E

### DECREMENTAL COST-BASED PRICES FOR RAYONIER POWER PURCHASE AGREEMENT

#### DEFINITIONS OF PRICES AND INPUT PARAMETERS

##### Energy Losses

$$LF^G = \text{LossFactor}^{\text{Generation}} = 1 / (1 - \text{LossPercent}^{\text{Generation}})$$

$$LF^T = \text{LossFactor}^{\text{Transmission}} = 1 / (1 - \text{LossPercent}^{\text{Transmission}})$$

$$LF^D = \text{LossFactor}^{\text{Distribution}} = 1 / (1 - \text{LossPercent}^{\text{Distribution}})$$

##### Costs/Prices Paid by FPU for Delivered Power, Purchased and Generated

$$P_{kW}^G = \text{Demand Price for Generation Capacity, } (\$/kW)$$

$$\Delta P_{kW}^G = \text{Forward Year Change in Demand Price for Generation Capacity, } (\$/kW)$$

$$P_{MWh}^G = \text{Energy Price for Generation Capacity, } (\$/MWh)$$

$$P_{MWh}^{G-Et} = \text{Energy Price for Environmental Compliance, } (\$/MWh)$$

$$\Delta P_{MWh}^G = \text{Forward Year Change in Energy Price for Generation Capacity, } (\$/MWh)$$

$$\text{Fuel Price} = \text{Charge Covering Costs of Fuel Inputs, } (\$/MWh)$$

$$P_{kW}^T = \text{Transmission Demand Price, } (\$/kW)$$

##### Peak Demand Likelihood, Billing Interval Deration

$$\rho^{\text{Peak}_{\text{Season}}} = \text{Probability of Peak Load occurring during Season, } (\rho < 1.0)$$

$$F^{\text{BI, Deration}} = \text{Factor for Billing Interval Deration, } (\%)$$

##### Reserves

$$R^{\text{Capacity}} = \text{Generation Capacity Reserves, } (\%)$$

$$R^{\text{Operating}} = \text{Generation Operating Reserves, } (\%)$$

##### Other Factors (Time and Scalar)

$$\text{Hrs}^{\text{Pk}} = \text{Hours Count during Peak Period}$$

$$\text{WkDays}^{\text{Month}} = \text{WeekDays Count during Months}$$

$$M = \text{Scalar} = 1000$$

## STRUCTURE OF PRICES UNDER THE AGREEMENT

### Energy Price (Week Day and Weekend Day Hours)

$$\text{EnergyCharge} = \text{Fuel Price} * LF^G * LF^D$$

$$\text{Energy Price} = \text{EnergyCharge}$$

### Capacity Prices

#### For Week Day Non-Peak and Weekend Hours

$$C.Charge_{Energy}^G = (P_{MWh}^G + P_{MWh}^{G-Es} + \Delta P_{MWhForward}^G) * (1 - R^{Capacity} - R^{Operating}) * LF^G$$

$$\text{Capacity Price}^{Non-PkHrs} = C.Charge_{Energy}^G * LF^D$$

#### For Week Day Peak Hours

$$C.Charge_{Demand}^G = (P_{kW}^G + \Delta P_{kWForward}^G * \rho^{Peak}^{Season}) * (1 - R^{Capacity} - R^{Operating}) * (1 - F^{Bl.Derotation}) * LF^G$$

$$C.Charge_{Energy}^G = (P_{MWh}^G + P_{MWh}^{G-Es} + \Delta P_{MWhForward}^G) * (1 - R^{Capacity} - R^{Operating}) * LF^G$$

$$C.Charge^T = (P_{kW}^T) * LF^T$$

$$\text{Capacity Price}^{PkHrs} = (((C.Charge^G + C.Charge^T) * M) / (Hrs^{Pk} * WkDays^{Month})) + C.Charge_{Energy}^G * LF^D$$

**EXAMPLE A: COSTS OF CURRENT SUPPLY DETERMINE GOING-IN PRICES**

**CONTEXT:** The costs (input prices) and parameters shown in the equations below reflect the generation and transmission resources of Florida Public Utilities Company. In view of these resources, the prices and input parameters are relevant for a load change significantly greater than that which is envisioned under the Agreement.

**Energy Price for Week Day and Weekend Hours**

Energy Charge = [REDACTED]

Energy Price = [REDACTED]

**Capacity Price For Week Day Non-Peak and Weekend Hours**

C.Charge<sup>G</sup><sub>Energy</sub> = [REDACTED]

Capacity Price<sup>Non-PkHrs</sup> = [REDACTED]

Capacity Price<sup>Non-PkHrs</sup> = [REDACTED]

**Capacity Price For Week Day Peak Hours (shown for winter months)**

C.Charge<sup>G</sup><sub>Demand</sub> = [REDACTED]

C.Charge<sup>G</sup><sub>Demand</sub> = [REDACTED]

C.Charge<sup>G</sup><sub>Energy</sub> = [REDACTED]

C.Charge<sup>G</sup><sub>Energy</sub> = [REDACTED]

C.Charge<sup>T</sup> = [REDACTED]

C.Charge<sup>T</sup> = [REDACTED]

Capacity Price<sup>PkHrs</sup> = ([REDACTED])

Capacity Price<sup>PkHrs</sup> = [REDACTED]





**EXAMPLE B: CHANGE IN COSTS OF CURRENT SUPPLY, NO  
CHANGE IN STRUCTURE OF WHOLESALE MARKETS**

**CONTEXT:** Costs paid by FPU for fuel rise to [redacted] Wh; energy-related charges for generation capacity rise to [redacted] MWh, and demand-related charges for capacity rise to [redacted] W-month. Costs (Input Prices) and related parameters are as follows:

HOURS				
Season	Peak Hours		Peak Hours Count	Seasonal Prob (p)
	Early	Late		
Winter	6-12	13-19	14	[redacted]
Summer	11-12	13-21	11	[redacted]
November	9-12	13-23	15	[redacted]
			Total:	[redacted]
Winter Late Probability		[redacted]		
November Early Probability		[redacted]		
PRICES FOR GENERATION AND TRANSMISSION*				
Energy Price (\$/MWh)				
	Fuel	[redacted]	Δ Price Forward	
	Generation Capacity	[redacted]	[redacted]	
	Environmental	[redacted]		
	Total	[redacted]		
Demand Charges (\$/kW-month)				
	Generation Capacity	[redacted]	[redacted]	
	Transmission Capacity	[redacted]		
	Total	[redacted]		
LOSS %, LOSS FACTORS, RESERVES, BILLING INTERVAL				
		Nominal	Effective	
	Generation	[redacted]	[redacted]	
	Transmission	[redacted]	[redacted]	
	Distribution	[redacted]	[redacted]	
	Implicit Capacity Reserves	[redacted]	[redacted]	
	Implicit Operating Reserves	[redacted]	[redacted]	
	15-Minute Billing Interval Deration	[redacted]	[redacted]	

**Prices for Power Purchase (Week Day and Weekend Hours)**

Energy Charge = [redacted]

Energy Price = [redacted]

**For Week Day Non-Peak and Weekend Hours**

C.Charge<sub>Energy</sub><sup>G</sup> = [redacted]

Capacity.Price<sup>Non-PkHrs</sup> = [redacted]

Capacity.Price<sup>Non-PkHrs</sup> = [redacted]

**For Week Day Peak Hours (shown for winter months)**

C.Charge<sub>Demand</sub><sup>G</sup> = [redacted]

C.Charge<sub>Demand</sub><sup>G</sup> = [redacted]



**EXAMPLE C: CHANGE IN SUPPLY (FPU ACQUIRES GENERATION);  
RESTRUCTURED WHOLESALE MARKETS**

**CONTEXT:** Unbundled wholesale markets under an Southwest Power Pool-style RTO with hourly pricing are implemented in the Southeast, including Florida. FPU acquires generation with maximum capability of 70MW. FPU's supply is a combination of short-term hourly purchases for energy reserves (for load balancing) from the regional RTO coupled with its recently acquired internal supply.

Market rules require FPU to carry, under contract, 20% capacity reserves during peak hours, or approximately 14MW. Buyer and Seller may agree to hourly prices (real-time or day-ahead) or fixed forward prices, the latter of which would involve an assessment of wholesale price risks and, in the case of Buyer, price hedging. Costs (Input Prices) and related parameters are as follows:

HOURS				
Season	Peak Hours		Peak Hours Count	Seasonal Prob (p)
	Early	Late		
Winter	6-12	13-19	14	N/A
Summer	11-12	13-21	11	N/A
November	9-12	13-23	15	N/A
			Total:	
Winter Late Probability		[REDACTED]		
November Early Probably		[REDACTED]		
PRICES FOR GENERATION AND TRANSMISSION*				
Energy Price (\$/MWh)				
	Fuel	Various	Δ Price Forward	
Market Price of Operating Reserves	[REDACTED]			
Environmental	[REDACTED]			
Total	[REDACTED]			
Demand Charges (\$/kW-month)				
Generation Capacity	[REDACTED]			N/A
Transmission Capacity	[REDACTED]			
Total	[REDACTED]			
LOSS %, LOSS FACTORS, RESERVES, BILLING INTERVAL				
		Nominal	Effective	
Generation	[REDACTED]			
Transmission	[REDACTED]			
Distribution	[REDACTED]			
Capacity Reserves	[REDACTED]			
Operating Reserves	[REDACTED]			
15-Minute Billing Interval Deration	[REDACTED]			

**Prices for Power Purchase (Week Day and Weekend Hours)**

Energy Charge = [REDACTED] (factor for distribution losses)

Energy Price = Various [REDACTED]

**For Week Day Non-Peak and Weekend Hours**

Operating Reserve Charge = [REDACTED]







## Appendix G

### Notice Form for Planned Outage, Maintenance Outage, Forced Outage, Force Majeure Outage Events

Type of Outage:

Start Date(s) and Approximate Time(s):

End Date(s) and Approximate Time(s):

Capacity (MW) not available to FPU during outage Event:

Qualifying Facility:

Submitted By:

Date:

ATTACHMENT B

*Projected Savings Analysis*

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Projected Savings - Rayonier Contract

Attachment B

Projected MWh Purchased	16,980										
	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Projected Cost per MWh - Rayonier Contract											
Projected Cost - Rayonier Contract											
Projected Cost per MWh - JEA Contract											
Projected Cost - JEA Contract											
Projected Cost per MWh - Future Contract											
Projected Cost - Future Contract											
Projected Annual Savings											

Assumptions:

- 1) Power Purchase from Rayonier begins July 1, 2012
- 2) Projected Cost per MWh - Rayonier Contract reflects the projected average price over the entire year
- 3) Projected Cost from JEA and Future Power Provider remains constant over 10 year period
- 4) Provisions of Rayonier Contract will always result in savings compared to alternative purchases (Decremental Cost provision)

ATTACHMENT C

*Letter from Mr. Mark Cutshaw  
to Mr. C.A. McDonald  
regarding Interconnect Study*



March 8, 2012

C. A. McDonald, General Manager  
Rayonier Performance Fibers  
Fernandina Beach Mill  
10 Gum Street  
P. O. Box 2002  
Fernandina Beach, Florida 32034

Dear Mr. McDonald:

Appendix D of the "Negotiated Contract Between Florida Public Utilities Company and Rayonier Performance Fibers, LLC for the Purchase of Electric Energy from a Renewable Generating Facility" references an Interconnect Study that would be conducted by FPU to address the impact of the facility as initially connected and throughout the planning horizon. FPU has evaluated the currently proposed upgrades of the Rayonier Fernandina Beach Mill generating facilities and has concluded that additional study will not be required.

The interconnection of the FPU and Rayonier facilities will be designated as the 69 KV substation bus-work located at the Rayonier Mill. The substation transformer (owned by Rayonier) is rated at 15.0 MVA and is currently the limiting factor within the system. Based on this limiting factor, additional study will not be required. Should modifications occur to the substation that increases the available capacity of the substation, FPU reserves the right to conduct an interconnect study at that time to identify any possible impact to the overall system and to ensure system reliability to both parties.

Should you have any questions regarding this please feel free to contact by email at [mcutshaw@fpuc.com](mailto:mcutshaw@fpuc.com) or phone at (904)277-1957.

Sincerely,

A handwritten signature in black ink that reads "P. Mark Cutshaw".

P. Mark Cutshaw, General Manager  
Florida Public Utilities Company