

Writer's E-Mail Address: bkeating@gunster.com

May 19, 2017

Hand Delivery

Ms. Carlotta Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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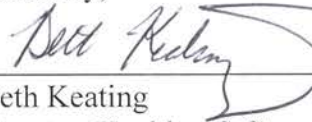
Re: Docket No. 170001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Dear Ms. Stauffer:

Enclosed for filing, please find the original and seven (7) copies of Florida Public Utilities Company's Request for Confidential Classification of information contained in its Responses to the First Requests for Production (Nos. 1-3) from Commission Staff. Consistent with Rule 25022.006(4) Florida Administrative Code, a confidential/highlighted copy of the referenced material is included in the envelope marked "confidential" and two redacted copies have been provided as well.

Should you have any questions whatsoever, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,



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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 170001-EI

DATED: May 19, 2017

REQUEST FOR CONFIDENTIAL CLASSIFICATION

Florida Public Utilities Company (“FPUC” or “Company”), by and through its undersigned counsel, pursuant to Section 366.093, Florida Statutes, and consistent with Rule 25-22.006(4), Florida Administrative Code, hereby submits its Request for Confidential Classification of information contained in the documents provided in response to Commission Staff’s First Request for Production of Documents (Nos. 1-3) in the instant docket. These documents were previously submitted under a Notice of Intent filed May 10, 2017. The documents contain proprietary confidential information regarding FPUC’s request for proposals for a new power purchase agreement, the related negotiations, and ultimate contractual terms, which FPUC, as well as the entities involved, consider to be highly confidential and which has not otherwise been publicly disclosed. In support of this Request, FPUC states that:

1. The information contained in the documents produced includes information about FPUC’s recent 2016 Solicitation for Proposals for Power Supply and Ancillary Services. The information included therein includes a summary of the power supply proposals from the responding entities, correspondence between FPUC and one of the responding entities regarding its proposal, as well as the final executed power supply agreement with Florida Power & Light Company. The information included in each of these documents is treated by the Company as competitively sensitive information and includes contractual information, the disclosure of which would impair FPUC’s

ability to negotiate favorable rates in the future, which would be detrimental to the Company and its customers. Consistent with the terms of the original Solicitation, the Company treats the information that was supplied in response to the Solicitation as confidential, and it is the Company's understanding and belief that the responding entities do as well. Likewise, the executed agreement specifically contemplates at Section 16(q) that the pricing and certain terms of the agreement will be treated as proprietary confidential in the manner of trade secrets under Florida law.

2. The information at issue is, as noted, considered proprietary confidential business information by FPUC, and has not otherwise been disclosed publicly. Disclosure of this information would publicly reveal information regarding a contract and associated negotiations that could also adversely impact the Company and its ability to negotiate similar contracts in the future.
3. The information for which FPUC seeks confidential classification meets the definition of "proprietary confidential business information" as set forth in Section 366.093(3), Florida Statutes, which provides:

(3) Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

4. Specifically, FPUC seeks confidential classification for the highlighted information in the following (lines/pages) in the referenced testimony:

Document	Page/Line/Location	Description	Rationale
Summary – 2016 Solicitation for Proposals: Responses from JEA, Florida Power & Light, Southern Company/Gulf Power Company (Bates Numbers: FPU 01-0001 through 0014)	Page FPU 01-0002 through FPU 01-0014; all lines, all columns on each page	Summary of proposed prices and costs for generation services provided to FPUC	Information reveals specific contractual proposals provided in response to FPUC’s request for bids; disclosure of this information would impair the Company’s ability to contract for goods and services with other providers. The information is treated by FPUC and the responding entities as confidential and has otherwise not been publicly disclosed. (Section 366.093(d))
Email Correspondence dated April 25, 2017 from Steven G. McInall to Mark Cutshaw (Bates Number: FPU 01-0015)	Lines 8, and 10 - 13	Specific information submitted by JEA with regard to its proposal to FPUC	Information reveals specific information regarding JEA’s proposal provided in response to FPUC’s request for bids; disclosure of this information would impair the Company’s ability to contract for goods and services with other providers. The information is treated by FPUC as confidential and has otherwise not been

Document	Page/Line/Location	Description	Rationale
			publicly disclosed. (Section 366.093(d))
<p>Native Load Firm All Requirements Power and Energy Agreement between Florida Public Utilities Company and Florida Power & Light Company (Bates Numbers: FPU 01-0016 through 0041)</p>	<p>Page 1 (Bates Number FPU 01-0016); highlighted information in numbered paragraph 5, lines 2 and 3; Page 2 (Bates Number FPU 01-0017), highlighted information in paragraph (b), in line 1 of paragraph (7)(a), in (7)(a)(iv) and (v), in (7)(c) and (d); Page 3 (Bates Number FPU 01-0018), lines 1-3 at the top of the page; page 15 (Bates Number FPU 01-0030), definition in paragraph x); page 19 (Appendix A)(Bates Number FPU 01-0034), highlighted information in all lines and columns in chart in the middle of the page, as well as the four lines immediately following the chart; page 20 (Bates Number FPU 01-0035), highlighted information in all lines and columns in chart at the top of the page; page 21 (Bates Number FPU 01-0036), highlighted information in all lines and columns in the chart at the top of the page; page 22 (Bates Number FPU 01-0037), highlighted</p>	<p>Rates, terms, and conditions in contract, including information, the disclosure of which would identify potential arrangements outside of the power purchase agreement.</p>	<p>Highlighted information includes specific contractual information. The disclosure of this information would impair the Company's ability to contract for goods and services with other providers, and would violate the confidentiality provisions in the contract itself. The information is treated by FPUC and FPL as confidential and has otherwise not been publicly disclosed. (Section 366.093(a) and (d))</p>

Document	Page/Line/Location	Description	Rationale
	information in all lines and columns of chart at the bottom of the page; page 23 (Bates Number FPU 01-0038), highlighted information in all lines and columns of the chart at the bottom of the page; page 24 (Bates Number FPU 01-0039), highlighted information in lines 1-2 attached to IBSGHR and lines 1-11 attached to GI; page 25 (Bates Number FPU 01-0040), highlighted information in line 1 attached to LFSGHR and lines 1-11 attached to GI; page 26 (Bates Number FPU 01-0041)(Appendix D), highlighted information in first line regarding Monthly Customer Charge.		

5. The information at issue falls squarely under Section 366.093(3)(d), Florida Statutes. Release of the referenced information as a public record would harm FPUC’s business operations and ratepayers by impairing the Company’s ability to effectively negotiate for goods and services. As such, FPUC requests that the Commission afford this information confidential treatment and thus exempt from Section 119.07, Florida Statutes.

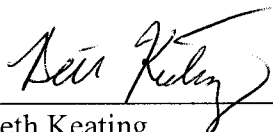
6. Included with this Request is a highlighted copy of the referenced documents. Also enclosed are two redacted copies of the information.

7. FPUC asks that confidential classification be granted for a period of at least 18 months. Should the Commission no longer find that it needs to retain the information, FPUC respectfully requests that the confidential information be returned to the Company.

WHEREFORE, FPUC respectfully requests that:

- 1) the highlighted portions of the documents submitted in response to Staff's First Request for Production of Documents (Nos. 1-3)(Bates Numbers: FPU 01-0001 through FPU 01-0041) be classified as "proprietary confidential business information," and thus, exempt from Section 119.07, Florida Statutes; and
- 2) confidential classification be granted for a period of at least 18 months from the issuance of the Commission's Order.

RESPECTFULLY SUBMITTED this 19th day of May, 2017.



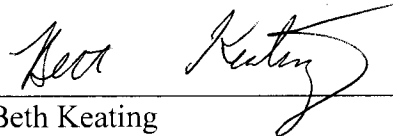
Beth Keating
Bar No. 0022756
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 618
Tallahassee, FL 32301
(850) 521-1706

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 19th day of May, 2017:

<p>Danijela Janjic Suzanne Brownless Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 djanjic@psc.state.fl.us sbrownle@psc.state.fl.us</p>	<p>James D. Beasley/J. Jeffrey Wahlen Ausley Law Firm Post Office Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com</p>
<p>Jeffrey Stone/Russell Badders/Steven Griffin Beggs & Lane P.O. Box 12950 Pensacola, FL 32591-2950 srg@beggslane.com</p>	<p>James W. Brew/Laura Wynn Stone Matheis Xenopoulos & Brew, PC Eighth Floor, West Tower 1025 Thomas Jefferson Street, NW Washington, DC 20007 jbrew@smxblaw.com</p>
<p>John T. Butler Maria Moncada Florida Power & Light Company 700 Universe Boulevard Juno Beach, FL 33408-0420 John.Butler@fpl.com</p>	<p>Kenneth Hoffman Florida Power & Light Company 215 South Monroe Street, Suite 810 Tallahassee, FL 32301 Ken.Hoffman@fpl.com</p>
<p>Ms. Paula K. Brown Tampa Electric Company Regulatory Affairs P.O. Box 111 Tampa, FL 33601-0111 Regdept@tecoenergy.com</p>	<p>Florida Industrial Users Power Group Jon C. Moyle, Jr. Moyle Law Firm 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com</p>
<p>Mike Cassel Florida Public Utilities Company 1750 SW 14th Street, Suite 200 Fernandina Beach, FL 32034 mcassel@fpuc.com</p>	<p>Florida Retail Federation Robert Scheffel Wright/John T. LaVia Gardner Law Firm 1300 Thomaswood Drive Tallahassee, FL 32308 schef@gbwlegal.com</p>

<p>Robert L. McGee, Jr. Gulf Power Company One Energy Place Pensacola, FL 32520 rlmcgee@southernco.com</p>	<p>P. Christensen/C. Rehwinkel/E. Sayler Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 Christensen.patty@leg.state.fl.us Rehwinkel.Charles@leg.state.fl.us Sayler.Eric@leg.state.fl.us</p>
<p>Matthew Bernier Duke Energy 106 East College Avenue, Suite 800 Tallahassee, FL 32301 Matthew.Bernier@duke-energy.com</p>	<p>Dianne M. Triplett Duke Energy 299 First Avenue North St. Petersburg, FL 33701 Dianne.Triplett@duke-energy.com</p>
	<p>Michael Barrett Division of Accounting and Finance Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 32399-0850 mbarrett@psc.state.fl.us</p>

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

Redacted

REDACTED

Summary

2016 Solicitation for Proposals to Provide Power Supply and Ancillary Services

Responses from:

JEA

Florida Power & Light

Southern Company/Gulf Power Company

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From: McInall, Steven G. - Dir, Electric Production Resource Planning [mailto:mcinsg@jea.com]
Sent: Tuesday, April 25, 2017 3:11 PM
To: Cutshaw, Mark <mcutshaw@chpk.com>
Cc: Guyton-Baker, Mary L. - Mgr Electric Generation Planning <GuytML@jea.com>; Crawford, Juli E. - Manager - Financial Planning & Rates <crawje@jea.com>; Brooks, Jody L. - Chief Legal Officer <broojl@jea.com>; Wannemacher, Ryan F. - Dir Financial Planning & Analysis <wannrf@jea.com>; Brost, Mike J. - VP/GM Electric Systems <BrosMJ@jea.com>

Mark:

[REDACTED]

We have enjoyed the long relationship that we have had with FPU, and wish you the best in the future.




Regards,

Steve McInall



Steve McInall, P.E.
Director, Electric Production Resource Planning
JEA
21 West Church Street, Jacksonville, Florida 32202
904 665 4309
mcinsg@jea.com

Please note that under Florida's very broad public records law, most written communications to or from city officials are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

JEA is a not-for-profit, community owned utility   

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NATIVE LOAD FIRM ALL REQUIREMENTS POWER AND ENERGY
AGREEMENT

Between

Florida Public Utilities Company and Florida Power & Light Company

Date: April 10, 2017

Seller: Florida Power & Light Company
700 Universe Blvd, MC: EMT/JB
Juno Beach, FL 33408

Buyer: Florida Public Utilities Company
780 Amelia Island Parkway
Fernandina Beach, FL 32034

Attn: Director of Origination
Phone: 561.691.7880
Fax: 561.625.7517
Email: timothy.gerrish@fpl.com

Attn: Director, Business
Development & Generation
Phone: 904.530.7056
Fax: 904.277.2435
Email: mcutshaw@chpk.com

(Above address for any Notices)

(Above address for any Notices)

WHEREAS, Florida Power & Light Company ("FPL" or "Seller") is the owner and operator of Electric Resources.

WHEREAS, FPL desires to sell and Florida Public Utilities Company ("FPUC" or "Buyer") desires to purchase "Native Load Firm All Requirements Power and Energy" (as hereinafter defined) from FPL's Electric Resources.

NOW THEREFORE, in consideration of the mutual agreements, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

- 1) **Seller's Operating Representative:** Vice President, Energy Marketing and Trading or his/her designee
- 2) **Buyer's Operating Representative:** Director, Business Development & Generation or his/her designee
- 3) **Transaction Date:** April 10, 2017
- 4) **Point(s) of Delivery:** Delivered to the FPL Transmission System
- 5) **Delivery Period:**
 - a) Beginning Hour Ending 0100 Eastern Prevailing Time on January 1, 2018 to Hour Ending 2400 EPT on December 31, [REDACTED] including weekends and NERC Holidays, unless sooner terminated as permitted in this Agreement; provided, however, Seller shall have no obligation to provide, or Buyer to purchase, Power and Energy unless and until the conditions precedent set forth in Section 10 have been satisfied or waived. Seller will make the Power and Energy available to Buyer all hours of every day during the Delivery Period. Prior to the commencement of the

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Delivery Period, Seller shall have no obligation to provide, and Buyer shall have no obligation to purchase, Power and Energy. Nothing in this Agreement is to be construed as extending the time permitted to raise Disputes or as extending the period of time for providing Power and Energy. At the end of the Delivery Period, each Party's obligations to the other Party under this Agreement except those obligations that, pursuant to this Agreement or by their express terms survive the end of the Delivery Period, shall automatically terminate, and each Party expressly waives any and all rights to raise in any forum a claim that the other Party must provide or purchase any level or amount of Power and Energy hereunder on any basis.

[REDACTED]

6) **Power and Energy:** Seller may furnish Power and Energy from any available Electric Resources it chooses for sale to the Buyer. Seller will have no obligation under this Agreement to plan its system or modify its facilities in order to provide or maintain the Power and Energy provider hereunder.

7) **Quantity of Power and Energy:**

a) From January 1, 2018 to December 31, [REDACTED] Seller shall deliver and Buyer shall receive, subject to Force Majeure, the All Requirements Service, to serve Buyer's Retail Load plus any losses between the Point(s) of Delivery and the FPUC Interconnection Points with a firmness equivalent to Seller's Native Load customers but net of the following:

- i) West-Rock QF Generation
- ii) Rayonier Advance Materials QF Generation
- iii) Eight Flags Energy, LLC QF Generation

[REDACTED]

[REDACTED]

b) The All Requirements Service shall consist of the following components:

- i) Intermediate Block Service with the quantities and characteristics specified in Appendix A, B and C.
- ii) Load Following Service with the quantities and characteristics specified in Appendix A, B and C.

[REDACTED]

[REDACTED]

[REDACTED]

8) **Transmission Service & Scheduling:**

- a) The Point(s) of Delivery for the Power and Energy shall be at those FPL Transmission System Interconnection(s) designated by Seller. Seller shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy to the Point(s) of Delivery and for the costs associated with such transmission service(s) to the Point(s) of Delivery. Buyer shall be responsible for obtaining any transmission services necessary for the delivery of Power and Energy from the Point(s) of Delivery and for the costs associated with such transmission service(s) from the Point(s) of Delivery; (iii) transmission service through the FPL Transmission System must be obtained in accordance with the applicable Open Access Transmission of FPL on file with the FERC. Power and Energy shall be scheduled in accordance with the FPL Transmission System's scheduling procedures. With the exception of Alternate Delivery in Section 8(c), any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions to such Point(s) of Delivery shall be the sole responsibility of Seller, and any arrangements with third parties and compensation to any third parties associated with Power and Energy transactions from such Point(s) Of Delivery shall be the sole responsibility of the Buyer.
- b) Buyer recognizes that the Transmission Provider(s) may curtail transmission service and that upon notification of such a requirement to curtail, Buyer and Seller shall be obligated to do so, and if Buyer fails to institute the required curtailment, the Transmission Provider(s) will be entitled to limit deliveries during the period any shortage of capacity and/or energy exists. In no event shall Seller be liable under this Agreement for any shortage of capacity, energy or any element of Power and Energy to the extent resulting from the transmission and/or distribution of Power and Energy, capacity and/or energy or any acts or omissions of Seller in its capacity as a Transmission Provider. There shall be no proration in Buyer's payment or performance obligations under this Agreement as a result of curtailments, interruptions, or reductions of transmission service or Ancillary Services at and from the FPUC Interconnection Point, whether as a result of Force Majeure or otherwise.
- c) Alternate Delivery: Seller and Buyer acknowledge that the interconnection between the FPL Transmission System and the FPUC Interconnection Point is expected to be in service prior to January 1, 2018. In the event that the interconnection is not in service by January 1, 2018, Buyer shall redirect the FPL transmission service from the Point(s) of Delivery to the JEA Transmission System. Buyer shall obtain JEA transmission service to deliver the Power and Energy to the interconnection between JEA and Buyer. Any JEA transmission cost associated with delivering the Power and Energy through the JEA Transmission System shall be paid 50% by Seller and 50% by Buyer. Once the interconnection between the FPL Transmission System and the FPUC Interconnection Point is in service, transmission service will be in accordance with Section 8(a).

9) **Power And Energy Charge:**

- a) The Power and Energy Charge shall be comprised of the monthly sum of the following four (4) components for both the Intermediate Block Service and the Load Following Service:

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- i) Monthly Capacity Payment ("MCP");
 - ii) Monthly Energy Non-Fuel Payment ("MENFP");
 - iii) Monthly Energy Fuel Payment ("MEFP"); and
 - iv) Monthly Customer Charge ("MCC").
- b) Beginning on the first day of the Delivery Period, and thereafter for each Monthly Billing Period of the Delivery Period, Buyer shall be obligated to pay to Seller the MCP set forth in Appendix A, the MENFP set forth on Appendix B, the MEFP set forth on Appendix C, and the MCC set forth on Appendix D.
- c) There shall be added to the Power and Energy Charge any amounts charged to Seller for any transmission services or charges that are incurred in the delivery of Power and Energy (other than those transmission charges which are Seller's responsibility as set forth in the requirements for Power and Energy) in accordance with the OATT of either Transmission Provider, or in connection with related agreements and arrangements for transmission-related schedules or services, and such amounts shall be forwarded to and paid by Buyer.
- d) There shall be added to the Power and Energy Charge any amounts for Change in Law Costs, Tax Adjustments, Indemnification, and any other charges or assessments permitted by this Agreement.
- i) Change in Law Costs. In the event that there is any change in Applicable Laws that is promulgated after the Transaction Date of this Agreement and that results in any additional or new costs, expenses, charges, fees and/or assessments (other than Tax Adjustments) that are attributable or related (in whole or in part) to the production and/or provision of Power and Energy to Buyer, including environmental-related costs, renewable portfolio standards (only if applicable to wholesale contracts), charges, fees, or expenses incurred by Seller to supply the Power and Energy and such costs, whether incurred as part of a voluntary or compulsory measure, are to be recovered from Seller's retail customers as approved by the Florida Public Service Commission, Buyer shall reimburse Seller for Buyer's pro-rata share of such costs, expenses, charges, fees and/or assessments, which amounts shall be calculated and recovered as determined by Seller in a commercially reasonable manner. Seller shall allocate variable Change in Law Costs to MEFP and or MENFP and fixed Change in Law Costs to MCP. Change in Law Costs resulting from capital expenditures shall be allocated over the economic life of the capitalized asset. The determination of additional cost by the Seller shall be net of any reductions in costs associated with the change in Applicable Laws. The Seller shall promptly notify the Buyer upon the determination of any additional or new costs, expenses, charges, fees and/or assessments and the calculation of the pro rata portion of such costs proposed to be recovered from the Buyer.
- e) Timing and Method of Payment. On or before the tenth (10) day of each Monthly Billing Period, Seller shall provide to Buyer a detailed written invoice on paper and/or by electronic media (in the original file format with all formulas and calculations intact) for the amounts owed by the Buyer pursuant to this Agreement (and if applicable the amounts owed by the Seller pursuant to any corrections owed by the Seller). The Parties agree to net any undisputed offsetting amounts which are shown on any monthly billing statement. Buyer shall pay such monthly billing statement on the later of the 20th day of each month or the tenth day after which Buyer receives such invoice (the "Payment Due Date"). The monthly

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billing statement shall detail the amount and calculation of the following: a) MCP, b) MENFP, c) MEFP, and d) MCC.

- f) In case any portion of any bill is in dispute, the full amount of the bill (including the amount in dispute) shall nevertheless be due and payable in accordance with Section 10. Payments made and designated "Paid Under Protest" shall be accompanied by the reason(s) therefor; however, in no circumstances may Buyer simply withhold payment. The Buyer's payment of a bill (whether or not under protest) shall not affect any legal or equitable rights a Party may have to challenge the correctness of the bill within the time limitations established in Section 10(g) below. Upon final determination of the correct bill amount, any necessary billing adjustments shall be made within fifteen (15) days, together with interest from the date of payment of the bill, calculated at the rate provided under the FERC's regulation (18 CFR Section 35.19a) or any successor thereto.
- g) Either Party may challenge the correctness of any bill or billing adjustment pursuant to this Agreement no later than twelve (12) months after the date payment of such bill or billing adjustment is due. If a Party does not challenge the correctness of a bill or billing adjustment within such twelve (12) month period, such bill or billing adjustment shall be binding upon that Party and shall not be subject to challenge. Any such challenge must be in writing. Where it is determined as a result of such challenge that an adjustment to a bill or billing adjustment is appropriate, such adjustment shall include interest accrued at the rate provide under the FERC's regulations (18 CFR Section 35.19a) or any successor thereto, and shall be made in the month following such determination.

10) **Conditions Precedent:** The obligations of Seller to generate, deliver and sell, and of Buyer to accept delivery of and purchase, Power and Energy shall be subject to the satisfaction or waiver (by the Party entitled to waive the applicable condition) of all of the following conditions precedent:

- a) Seller shall file this Agreement with FERC. On or before August 31, 2017, the FERC shall have issued an order accepting or approving this Agreement for filing and permitting it to become effective as filed without modification, suspension, investigation or any condition (including setting this Agreement, or part thereof, for hearing) unacceptable to Seller in its sole discretion.
- b) In the event the condition precedent set forth hereinabove is not satisfied (unless such condition is waived in writing by the date provided above), this Agreement, except for those provisions that pursuant to the Agreement or by their express terms survive such termination, shall terminate automatically without any further obligation and without any need by either Party to take any further action, shall have no further force and effect and Seller and Buyer expressly waive any and all rights to raise in any forum a claim that the other Party must provide or purchase Power and Energy hereunder on any basis.

11) **Performance Security:**

- a) Financial Information. Buyer shall deliver to Seller each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year with respect to Buyer. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. Buyer shall diligently pursue the preparation, certification and delivery of the statements. Such statements shall be delivered to the Seller when available. Buyer's books, records and

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accounts shall be open to inspection, audit and reproduction, during normal working hours by Seller or its authorized representative on three (3) Business Days prior notice.

b) Credit Assurances of Buyer.

- i) If Seller has reasonable grounds for insecurity regarding the performance of any obligation under this Agreement (whether or not then due) by Buyer (including, without limitation, the occurrence of a material change in the creditworthiness of Buyer), Seller may demand Adequate Assurance of Performance. A Buyer Event of Default under Section 13 of this Agreement includes Buyer's failure to give Adequate Assurance of Performance to Seller within 48 hours but at least one Business Day of receipt of a written request by the other party. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to Seller, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).
 - ii) In the event Buyer is required to secure its obligations to Seller by an irrevocable letter of credit, the letter of credit shall be in form and substance reasonably acceptable to Seller naming Seller as the sole beneficiary and from a credit support provider approved by Seller in Seller's sole discretion, and shall at all times be in an amount equal to or greater than twice the highest total monthly bill incurred by Buyer under this Agreement over the most recent prior twelve (12) month period. The letter of credit shall, among other things, permit Seller to make a drawing for the full amount of the letter of credit in the event that (a) Buyer fails to renew or replace the letter of credit at least thirty (30) calendar days prior to the stated expiration of the letter of credit or (b) an Event of Default by Buyer has occurred and is continuing. Upon notice by Seller to Buyer from time to time of the amount of the highest monthly bill incurred by Buyer over the most recent twelve (12) month period, Buyer, if required to post and/or maintain a letter of credit, shall adjust the amount of the letter of credit to the revised required amount within five (5) Business Days. All costs of a letter of credit shall be borne by Buyer.
 - iii) Buyer agrees to meet or exceed a Debt Service Coverage Ratio of 1.25.
- c) Remedies. In the event that (1) an Event of Default by Buyer occurs and is continuing, (2) Buyer fails to satisfy the financial covenant set forth in Section 11(b)(iii), or (3) the Buyer defaults, howsoever defined in the respective agreement, under one or more agreements entered into by the Buyer in order to satisfy Buyer's obligations under this Agreement, then Buyer shall (A) pay all amounts outstanding under this Agreement as of the date of notice or such knowledge within five (5) Business Days of receipt of such notice or such knowledge, (B) post and maintain an irrevocable letter of credit in favor of Seller for the amount required in Section 11(b)(ii) and (C) commence prepaying Seller weekly in advance for all amounts due as reasonably computed and invoiced by Seller until such time as Buyer satisfies the applicable requirements of Section 11(b). In the event that Seller draws on the letter of credit from time to time, Buyer shall post and maintain an additional letter of credit, or amend the existing letter of credit to reinstate the available amount thereunder by an amount equal to the amount drawn within three (3) Business Days after such drawing.

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d) Credit Assurances of Seller. Buyer hereby waives any and all rights it may have at law or otherwise to require Seller to provide financial assurances or security (including cash, letters of credit or other security) in respect of Seller's obligations under this Agreement.

12) **Events of Default:** In addition to bankruptcy or insolvency, the occurrence of any of the following shall constitute an "Event of Default" with respect to a Party (a "Defaulting Party"):

- a) failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;
- b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within five (5) Business Days after written notice;
- d) the failure of such Party to satisfy the creditworthiness/collateral requirements pursuant to Section 11 of this Agreement;
- e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- f) the occurrence and continuation of (1) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than ten million dollars (\$10,000,000.00) ("Cross Default Amount"), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (2) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the Cross Default Amount;
- g) with respect to such Party's Guarantor or a Party's issuer of a letter of credit, if any, (1) if any representation or warranty made by a Guarantor or the issuer of a letter of credit is false or misleading in any material respect when made or when deemed made or repeated; (2) the failure of a Guarantor or issuer of a letter of credit to make any payment required or to perform any other material covenant or obligation in any guaranty or letter of credit made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (3) a Guarantor or issuer of a letter of credit becomes bankrupt or insolvent; (4) the failure of a Guarantor's guaranty or the issuer's letter of credit to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party; or (5) a Guarantor or issuer of a letter of credit shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty or letter of credit.

13) **Remedies.**

- a) If an Event of Default by Buyer occurs and is continuing, then Buyer shall:

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- i) pay all amounts outstanding under this Agreement as of the date of notice or such knowledge within ten (10) Business Days of receipt of such notice or such knowledge,
- ii) post and maintain a letter of credit in favor of Seller for the amount required in Section 11 above, and
- iii) commence prepaying Seller weekly in advance for all amounts due as reasonably computed and invoiced by Seller under this Agreement until such time as Buyer satisfies the applicable requirements of Subsection (b). In the event that Seller draws on the letter of credit from time to time, Buyer shall post and maintain an additional letter of credit, or amend the existing letter of credit to reinstate the available amount thereunder by an amount equal to the amount drawn within three (3) Business Days after such drawing.

Seller may, at its option, exercise any one or combination of the following remedies:

- i) calculate a Settlement Amount owed by Buyer to Seller for the termination of this Agreement and to terminate this Agreement Transaction without penalty or further obligation by Seller by providing notice to Buyer; and/or
 - ii) draw on any outstanding letter of credit issued or any other security issued for Seller's benefit in the amount of Seller's settlement Amount.
- b) Upon the occurrence of any Event of Default by Seller, Buyer may, at its option, calculate a Settlement Amount owed by Seller to Buyer for the termination of this Agreement and to terminate this Agreement without penalty or further obligation by Buyer by providing notice to Seller.
- c) ABSENT FRAUD, THE REMEDIES SET FORTH HEREIN CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AGAINST THE OTHER FOR EVENTS OF DEFAULT, BREACH OF CONTRACT OR ANY FAILURE TO PERFORM ANY OF THE OBLIGATIONS UNDER THIS AGREEMENT.
- 14) **Section 205 Filing:** In the event that there is any filing pursuant to Section 205 of the Federal Power Act to revise this Agreement, including without limitation the pricing formulas and the recovery of Buyer's pro-rata share of fuel charge costs, expenses, charges, Taxes, fees and/or assessments, the Parties reserve their right to oppose any such filing to the extent such filing is inconsistent with the provisions of this Agreement. The Parties shall be limited in any opposition to opposing the matters described in the foregoing sentence and shall not be entitled to argue that changes should be made to any other aspect of this Agreement in order to make the overall rate just and reasonable or otherwise. Notwithstanding the foregoing, nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulation thereunder.

15) **Representations and Warranties.**

- a) **Seller's Representations and Warranties:** Seller hereby represents and warrants as follows:
 - i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

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- ii) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary corporate action, and do not:
 - (1) Require any consent or approval of Seller's board of directors, other than that which has been obtained and is in full force and effect;
 - (2) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
 - (3) Result in a breach or constitute a default under Seller's corporate charter or bylaws, or under any contract relating to the management or affairs of Seller or any indenture or loan or credit contract, or any other contract, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
 - (4) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligation under this Agreement.
 - iii) This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, or by general principles of equity).
 - iv) The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under any contract of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller.
 - v) All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery, and performance under this Agreement have been duly obtained and are in full force and effect.
- b) Buyer's Representation and Warranties. Buyer hereby represents and warrants the following:
- i) Buyer is a Florida investor owned utility properly constituted and existing.
 - ii) The Buyer shall establish levy and collect rents, rates and other charges for the products and services provided by its electric utility system which rents, rates and other charges shall at least be sufficient to meet the operation and maintenance expenses of such electric utility system to comply with all covenants pertaining thereto contained in and all other provisions of any resolution trust indenture or other security agreement relating to any bond or other evidences of indebtedness issues or to be issued by the Buyer to generate funds sufficient to fulfill the terms of all other contracts and agreements entered into by the Buyer including without limitation this Agreement.
 - iii) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate action, and do not:

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- (1) Require any consent or approval other than that which has been obtained and is in full force and effect;
 - (2) Result in a breach or constitute a default under Buyer's charter or bylaws, or under any contract relating to the management or affairs of Buyer or any indenture or loan or credit contract, or any other contract, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;
 - (3) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligation under this Agreement; and
 - (4) Violate any provision of Applicable Laws or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.
- iv) Subject to Section 10 above, this Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors or by general principles of equity).
 - v) The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under any contract of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

16) **Other Terms/Conditions:**

- a) **Force Majeure:** In the event that either of the Parties should be delayed in, or prevented from, performing or carrying out any of the agreements, covenants and obligations made by, and imposed by this Agreement upon, said Party by reason of or through a Force Majeure, then and in such case(s), both Parties shall be relieved of performance under this Agreement and neither Party shall be liable to the other party for, or on account of, any loss, damage, injury or expense (including consequential damages and cost of replacement power) resulting from, or arising out of, any such delay or prevention from performing; provided, however, the excuse from performance will be of no greater scope and of no longer duration than is reasonably required by the Force Majeure, and the Party suffering such delay or prevention shall notify the other Party and use due and, in its judgment, practical diligence to remove the cause(s) thereof. Neither Party shall be required by the foregoing provisions to settle a strike affecting it except when, according to its own best judgment, such a settlement seems advisable. Nothing in this Section 16(a) shall excuse the payment obligations incurred under this Agreement. If an event constituting Force Majeure lasts longer than fifteen (15) days, then the Buyer, at its sole discretion, can terminate this Agreement.
- b) **Indemnification:** Each Party shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties,

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arising out of or resulting from the other Party's performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

- c) **Consequential Damages:** Notwithstanding any other provision of this Agreement, no Party (including its Affiliates) shall be liable to the other Party for any exemplary, indirect, punitive, consequential or incidental damages, which shall include, but not be limited to, loss of profits or revenues and costs of purchased or replacement power, under any claims arising under this Agreement.
- d) **Assignment:** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person other than Seller and the Buyer rights or remedies hereunder. All successors to and assigns of the Buyer shall be subject to the Creditworthiness provisions of Section 11 of this Agreement. This Agreement shall not be assignable or transferable in whole or in part by either Party without the written consent of the other Party, which consent(s) shall not be unreasonable withheld, except that such written consent(s) shall not be required (a) in the case of an assignment or transfer to a successor in the operation of the assignor's or transferor's properties by reason of a merger, consolidation, sale or foreclosure, where substantially all such properties are acquired by such successor, or (b) in the case of an assignment or transfer of all or part of the assignor's or transferor's properties or interests to a wholly-owned subsidiary of the assignor or transferor or to another company in the same holding company as the assignor or transferor.
- e) **Governing Law:** This Agreement and each of its provisions shall be governed by the laws of the State of Florida.
- f) **Interconnection with Other Systems:** Nothing contained in this Agreement shall restrict or limit either Party from establishing, altering or terminating interconnection points with any person not a part to this Agreement or amending or entering into agreements therefor.
- g) **Headings Not to Affect Meaning:** The descriptive headings of the various sections and articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- h) **No Consent to Violation of Law:** Nothing herein contained shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as their provisions may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.
- i) **Complete Agreement:** This Agreement is intended as the exclusive integrated statement regarding service provided hereto. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement.
- j) **No Dedication of Facilities:** Any undertaking or commitment by one Party to the other under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of any Party to the public or to the other Party.
- k) **Relationship of the Parties:** Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Seller and the Buyer, or between either or both of them and any other party.

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- l) **Third-Party Beneficiaries:** This Agreement is intended solely for the benefit of the Parties to the Agreement, and nothing in this Agreement will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to the Agreement.
- m) **Tax Adjustment:** There shall be added to the charges under this Agreement the applicable proportionate part of any new or increased taxes and assessments (except State or Federal income taxes), imposed by any governmental authority in addition to, or in excess of, those in effect as of the date of this Agreement which are assessed on the basis of meters or customers, or the price of, or revenue from, electric energy or service sold, or the quantity of energy purchased or generated for the sale or sold. In the event that Seller is required to pay, and pays, a "gross receipts tax" with respect to power and energy sold hereunder, Seller shall be fully reimbursed by the Buyer. Should any tax or assessment be imposed during the course of a transaction hereunder, the Buyer shall have the right either to continue the transaction at a price which reflects the tax or assessment so imposed or to terminate the remainder of the transaction.
- n) **Prudent Utility Practice:** The Parties shall discharge any and all obligations under this Agreement in accordance with Prudent Utility Practice.
- o) **Operating Representative:** The Buyer and Seller shall each appoint an Operating Representative and so notify other Party. Such appointments may be changed at any time. The Operating Representatives shall represent the Parties in all matters relating to the administration of this Agreement. The duties of the Operating Representative shall include agreeing upon any methods and procedures for implementing transactions under this Agreement. Either Party's Operating Representative may require that such methods and procedures be evidenced in writing.
- p) **Dispute Resolution:** In the event a dispute arises between the parties concerning the operation or interpretation of this Agreement, the Parties' Operating Representatives shall attempt to resolve the matter. In the event the Operating Representatives are unable to resolve the matter after a reasonable time period (not to exceed sixty days), the matter shall be referred to the Parties' principals for resolution. Nothing in this paragraph shall be interpreted to restrict or limit a Party's rights to pursue all remedies available at law or at equity.
- q) **Confidentiality:** Seller and Buyer regard the pricing terms and conditions in this Agreement as proprietary trade secrets under Florida law. Each Party agrees to notify the other Party as soon as possible of any request for proprietary information, and not to distribute any proprietary information without first notifying the other Party; provided, however, nothing herein limits an obligation of Seller or Buyer to disclose such information as may be required under Applicable Laws. Seller shall provide Buyer with a public version of this Agreement and a sample monthly billing statement that redacts all pricing, terms and conditions that Seller considers to be a trade secret, and Buyer agrees to keep such redacted information confidential as exempt from Florida's Public Record Act (Chapter 119, Florida statutes) to the fullest extent allowed by Applicable Laws. Seller may assume the Buyer's defense against any third party challenge seeking disclosure of the redacted information, but in any event Seller shall hold Buyer harmless and indemnify Buyer from and against all third party claims or actions, including attorneys' fees and damages, resulting from or arising out of the assertion of a trade secret exemption under Florida's

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Public Record Act with respect to the redacted information that Seller asserts is a trade secret. All information in this Transaction may be released after December 31, 2026.

- r) **Setoff upon Termination.** Upon the designation of an event of default entitling a Party to terminate this Agreement early ("Early Termination Date"), the terminating Party ("X") may, at its option and in its discretion, setoff, against any amounts Owed to the non-terminating Party ("Y") by X or any Affiliate of X under this Agreement or under any other agreement, instrument and/or undertaking, any amounts Owed by Y to X or any of X's Affiliates (irrespective of the place of payment or booking office of the obligation) under this Agreement or under any other agreement, instrument and/or undertaking. The obligations of Y and X under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff exercised by X and/or X's Affiliates. X will give Y notice of any setoff effected under this Section as soon as practicable after the setoff is effected, provided that failure to give such notice shall not affect the validity of the setoff. For purposes of this Section, "Owed" shall mean any amounts owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) as of the Early Termination Date. If an obligation is unascertained, X may in good faith estimate that obligation and setoff on the basis of such estimate, subject to the relevant Party accounting to the other when the obligation is ascertained.
- s) **Trade Option Representation.** If this Agreement meets the conditions contained in CFTC Regulation 32.3(a) ("Trade Option"), then each Party represents and warrants that the Party that is the offeree of a the Trade Option ("Offeree") represents to the other party ("Offeror") that it is a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this commodity option transaction or the products or by-products thereof and is offered or entering into this commodity option transaction solely for purposes related to its business as such. Offeree and Offeror hereby confirm to each other that the Trade Option is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.
- t) **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this Native Load Firm Transaction through netting, in which case all amounts owed by each Party to the other Party during the monthly billing period, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.
- u) **Standard of Review.** Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party, a nonparty or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).
- v) **Severability.** If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be replaced by a

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term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

- w) **Bankruptcy – Utility Clause.** Each Party agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.

17) **Additional Definitions:** When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following defined meanings:

- a) "Affiliate" means a Party's direct or indirect parent(s), affiliate(s) and subsidiary(ies), and shall include the officers, directors, employees and agents of such Party and of its parent(s), affiliate(s) and subsidiary(ies).
- b) "All Requirements Service" has the meaning specified in Section 7(b).
- c) "Alternate Delivery" has the meaning specified in Section 8(c).
- d) "Ancillary Services" means those services as defined in the OATT.
- e) "Applicable Laws" means any and all federal, state regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, judgments, orders, decrees, Governmental Approvals, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority, that apply to the facilities, services or obligations of either Party under this Agreement, whether now or hereafter in effect and that are enforceable in a court of law.
- f) "Business Day" means any day on which the Federal Reserve Member Banks in Florida are open for business. A Business Day shall begin at 8:00 a.m. EPT and end at 5:00 p.m. EPT.
- g) "Buyer's Retail Load" means the Buyer's hourly load, in kWh, as measured by the meters at the FPUC Interconnection Points.
- h) "Capacity" means net electrical power, in MW, provided by Seller's System and delivered to or available for Buyer's system at the Receipt Point.
- i) "Combined Heat and Power" has the meaning specified in Section 7(c) and means the development by Buyer or Buyer's Affiliate of approximately 20 MW of 1) a new qualifying facility, as defined by the Public Utility Regulatory Policies Act or, 2) a small power producer, located within Buyer's service territory for the purposes of serving Buyer's Retail Load.
- j) "Commercial Operation Date" means the date that a new Combined Heat and Power facility is placed into operational service which must be after December 31, 2019.
- k) "Credit Rating" means the respective rating then assigned to Buyer's unsecured senior long-term debt obligations (not supported by third party credit enhancement) by S&P or Moody's; and if no rating is assigned to Buyer's unsecured, senior long-term debt obligations by such agency, the lower of the general corporate credit rating or issuer rating, as applicable, assigned by such rating agency to Buyer.

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- l) "Debt Service Coverage Ratio" shall mean the ratio of: (1) operating income from their enterprise funds; to (2) all principal payments due within the period on all long-term debt plus total interest expense all as calculated on a consolidated basis for the applicable period in accordance with GAAP.
- m) "Demand Charge" has the meaning specified in Appendix A.
- n) "Demand Quantity" has the meaning specified in Appendix A.
- o) "Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.
- p) "Eight Flags Energy, LLC QF Generation" means the generation interconnected to Buyer's distribution system and capable of producing approximately 20 MW to serve Buyer's Retail Load.
- q) "Electric Resources" means dependable electric power and energy resources available to a Party, consistent with Prudent Utility Practice.
- r) "Energy" means electrical energy, expressed in MWh, provided by Seller and delivered to Buyer at the Point(s) of Delivery in accordance with the terms and conditions of this Agreement.
- s) "Extended Term" has the meaning specified in Section 5(b).
- t) "Federal Power Act" means the Federal Power Act, 16 U.S.C. § 792 et seq., as it is now or shall be amended in the future, or any successor thereto.
- u) "FERC" means the Federal Energy Regulatory Commission or any successor having comparable responsibilities.
- v) "Force Majeure" means any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence of, the Party claiming Force Majeure or its contractors or suppliers. It will include, without limitation, strike, stoppage in labor, failure of contractors or suppliers of materials, shortage of fuel, riot, fire, flood, ice, invasion, civil war, commotion, insurrection, blockades, embargoes, sabotage, epidemics, explosions, military or usurped power, order of any court granted in any bona fide adverse legal proceeding or action, order of any civil or military authority (either de facto or de jure and including orders of governmental and administrative agencies which conflict with the terms of this Agreement), acts of God or public enemies, failure or malfunction of system facilities and unscheduled outage of generating units or transmission facilities.
- w) "FPL" means Florida Power & Light Company, a corporation organized and existing under the laws of the State of Florida.
- x) [REDACTED]
- y) "FPUC" means Florida Public Utilities Company, a corporation organized and existing under the laws of the State of Florida.
- z) "FPUC Interconnection Point" means the Florida Public Utilities Company interconnection point on the FPL Transmission System at the O'Neil 138 kV Substation.
- aa) "Governmental Authority" means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-

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governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a Party at law.

- bb) "HE" means "hour ending."
- cc) "Intermediate Block Service" means the Power and Energy delivered to Buyer from Seller with the quantity and pricing terms as set forth in Appendix A, B and C.
- dd) "Investment Grade Credit Rating" means Buyer has a current and continuous Credit Rating from each of S&P and Moody's equal to or higher than "BBB-" (with a neutral/stable or higher outlook) by S&P (or its equivalent under any successor rating category of S&P) and/or "Baa3" (with a neutral/stable or higher outlook) by Moody's (or its equivalent under any successor rating category of Moody's). In determining whether Buyer has an Investment Grade Rating, if Buyer has a Credit Rating from both S&P and Moody's, Buyer's Credit Rating shall be an Investment Grade Credit Rating only if the above minimum ratings requirements are satisfied with respect to both S&P and Moody's.
- ee) "JEA Transmission System" means the transmission system of JEA.
- ff) "Load Following Service" means the Power and Energy delivered to Buyer from Seller with the quantity and pricing terms as set forth in Appendix A, B, C.
- gg) "Monthly Capacity Payment" or "MCP" means monthly payments calculated in accordance with Appendix A.
- hh) "Monthly Customer Charge" means monthly payments calculated in accordance with Appendix D.
- ii) "Monthly Energy Fuel Payment" or "MEP" means monthly payments calculated in accordance with Appendix C.
- jj) "Monthly Energy Non-Fuel Payment" or "MENFP" means monthly payments calculated in accordance with Appendix B.
- kk) "Native Load" means the demand imposed on Seller by the requirements of retail customers located within a franchised service territory of Seller that Seller has a statutory obligation to serve and wholesale customers with whom Seller has contracted to supply service with a firmness of Native Load.
- ll) "Non-Firm Energy" means Energy that is subject to curtailment due to emergencies.
- mm) "OATT" means the Transmission Provider(s) Open Access Transmission Tariff on file at FERC, as amended from time to time.
- nn) "Other New QF Generation" means a new qualifying facility, as defined by the Public Utility Regulatory Policies Act, unaffiliated with Buyer, but from which Buyer is obligated to purchase the energy.
- oo) "Parties" means the Parties to this Agreement
- pp) "Point(s) of Delivery" means the location at which Power and Energy is first delivered to the FPL's Transmission System from Electric Resources on Seller's System that are interconnected with the Seller's Transmission System or, in the case of purchased power, from points of interconnection between Seller's Transmission System and other transmission systems.

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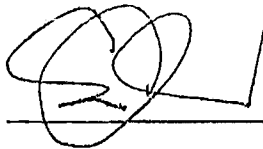
- qq) "Power and Energy" means the product Seller sells and delivers and Buyer pays and receives, consisting of Capacity and associated Energy.
- rr) "Prudent Utility Practice" means any of the practices, methods and acts in which a significant portion of the electric utility industry engages or of which it approves during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts.
- ss) "QF Economic Purchases" has the meaning specified in Section 7(d).
- tt) "Rayonier Advance Materials QF Generation" means the generation interconnected to Buyer's distribution system and capable of producing 15 MW to serve Buyer's Retail Load.
- uu) "Seller's System" means, during the Delivery Period, (i) the Electric Resources as such may change from time to time during the Delivery Period, (ii) capacity and energy purchases by Seller pursuant to power purchase contracts and (iii) to the extent of the sale of electric power to Seller therefrom, all generating plants of co-generators, qualifying facilities, and independent power producers that are not owned by Seller but that produce electric power and sell it to Seller.
- vv) "Settlement Amount" means, with respect to this Agreement and a Party, an amount that such Party determines in good faith and in a commercially reasonable manner to be the present value of the Economic Loss to it (net of any gains) resulting from termination of this Agreement including costs associated, or that would be included, with entering into new arrangements which replace this Agreement and losses (net of any gains) related to terminating or liquidating any hedges or related trading positions, provided that (i) in no event will internal costs, other than reasonable attorney's fees, be included in the calculation of any Settlement Amount; and (ii) the non-defaulting party shall not be required to enter into any offsetting or otherwise mitigating transactions solely for the purpose of establishing such losses or gains. Economic Loss shall (i) mean in the case of the Buyer an amount not to exceed the difference between the payments to be made under this Agreement and the cost of replacement power and energy equivalent to the Power and Energy provided under this Agreement for the balance of the Delivery Period; and (ii) in the case of the Seller, shall in any event include charges under Appendices A, B and D (but not Appendix C fuel costs) associated with sales to be made under this Agreement until such time as the earlier of the end of the Delivery Period or FPSC allows recovery of such costs from Seller's retail customers.
- ww) "T-1 Tariff" means FPL's FERC approved tariff effective January 1, 1997 for sales of Power and Energy by FPL.
- xx) "Transmission Provider" means FPL with respect to the entity transmitting the Power and Energy from the Point(s) of Delivery.
- yy) "Transmission System" means the transmission system of the Transmission Provider.
- zz) "West-Rock QF Generation" means the generation interconnected to the Buyer's distribution system and capable of producing 50 MW to serve Buyer's Retail Load.


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AGREED TO AS OF THE TRANSACTION DATE SET FORTH ABOVE.

FLORIDA POWER & LIGHT COMPANY

FLORIDA PUBLIC UTILITIES COMPANY

By:  _____

By:  _____

Title: VICE PRESIDENT

Title: Vice President

Date: 4/10/17

Date: 4/10/17

APPENDIX A

MONTHLY CAPACITY QUANTITY AND PAYMENT CALCULATION

Intermediate Block Service

The Intermediate Block Service shall be dispatched first by Seller to supply Power and Energy to meet Buyer's Retail Load up to the Intermediate Block Service Monthly Capacity Quantity (IBSMCQ) shown below.

The Intermediate Block Service Monthly Capacity Quantity (IBSMCQ) shall be as follows:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

The Intermediate Block Service Monthly Capacity Payment (IBSMCP) shall be as follows:

Payment for each Monthly Billing Period shall be determined according to the following formula:

$$IBSMCP = IBSMCQ * IBSDC$$

Where:

IBSMCP – Intermediate Block Service Monthly Capacity Payment, expressed in dollars, for the Monthly Billing Period;

IBSMCQ – Intermediate Block Service Monthly Capacity Quantity as shown in the table above and expressed in kW for the calculation;

IBSDC – Intermediate Block Service Demand Charge, expressed in \$/kW-Month as shown in the table below;

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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

APPENDIX B

MONTHLY ENERGY NON-FUEL PAYMENT (MENFP) CALCULATION

Intermediate Block Service

The Intermediate Block Service Monthly Energy Non-Fuel Payment (IBSMENFP) for each Monthly Billing Period shall be determined according to the following formula:

$$IBSMENFP = IBSED * IBSNFEP$$

Where:

IBSMENFP – Intermediate Block Service Monthly Energy Non-Fuel Payment, expressed in dollars, for the Monthly Billing Period;

IBSED – Intermediate Block Service Energy Delivered, expressed in kWh, shall be the total Energy, as measured during the applicable billing period, at the FPUC Interconnection Point(s) and grossed up for losses (expressed in kWh) at and from where Energy is first delivered to the Point(s) of Delivery based on the demand loss factors for FPL Transmission System's delivery points on the FPL Transmission System and in the case of Alternate Delivery, the demand loss factors for the JEA Transmission System's delivery points on the JEA Transmission System. The amount of energy in any hour of the applicable billing period shall not exceed the IBSMCQ for that month.

IBSNFEP – Intermediate Block Service Non-Fuel Energy Price shown in the table below.

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Load Following Service

The Load Following Service Monthly Energy Non-Fuel Payment (LFSMENFP) for each Monthly Billing Period shall be determined according to the following formula:

$$\text{LFSMENFP} = \text{LFSED} * \text{LFSNFEP}$$

Where:

LFSMENFP – Load Following Service Monthly Energy Non-Fuel Payment, expressed in dollars, for the Monthly Billing Period;

LFSED – Load Following Service Energy Delivered, expressed in kWh, shall be the total Energy, as measured during the applicable billing period, at the FPUC Interconnection Point(s) and grossed up for losses (expressed in kWh) at and from where Energy is first delivered to the Point(s) of Delivery based on the demand loss factors for FPL Transmission System's delivery points on the FPL Transmission System and during Alternate Delivery the demand loss factors for the JEA Transmission System's delivery points on the JEA Transmission System less the IBSED for the applicable billing period;

LFSNFEP – Load Following Service Non-Fuel Energy Price shown in the table below.

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

APPENDIX C
MONTHLY ENERGY FUEL PAYMENT (MEFP) CALCULATION

Intermediate Block Service

The Intermediate Block Service Monthly Energy Fuel Payment (IBSMEFP) for each Monthly Billing Period during such period shall be determined according to the following formula:

$$IBSMEFP = [\sum_{k=1}^n (IBSED_k * IBSGHR_k * GI)]$$

Where:

IBSMEFP – the Intermediate Block Service Monthly Energy Fuel Payment, expressed in dollars, for the Monthly Billing Period

IBSED – the hourly Intermediate Block Service Energy Delivered by Seller, expressed in MWh, shall be the total Energy as measured for hour k of the applicable billing period at the FPUC Interconnection Point(s) and grossed up for losses (expressed in MWh) at and from where Energy is first delivered to the Point(s) of Delivery based on the demand loss factors for FPL Transmission System's delivery points on the FPL Transmission System and during Alternate Delivery, the demand loss factors for JEA Transmission System's delivery points on the JEA Transmission System. The amount of energy in any hour of the applicable billing period shall not exceed the IBSMCQ for that month.

IBSGHR – [REDACTED]

GI – [REDACTED]

n – number of hours in the Monthly Billing Period

k – each hour, for the Monthly Billing Period

Load Following Service

The Load Following Service Monthly Energy Fuel Payment (LFSMEFP) for each Monthly Billing Period during such period shall be determined according to the following formula:

$$LFSMEFP = [\sum_{k=1}^n (LFSED_k * LFSGHR_k * GI)]$$

Where:

LFSMEFP – the Load Following Service Monthly Energy Fuel Payment, expressed in dollars, for the Monthly Billing Period

LFSED – the hourly Load Following Service Energy Delivered by Seller expressed in MWh, shall be the total Energy as measured for hour k of the applicable billing period at the FPUC Interconnection Point(s) and grossed up for losses (expressed in MWh) at and from where Energy is first delivered to the Point(s) of Delivery based on the demand loss factors for FPL Transmission System's delivery points on the FPL Transmission System and during Alternate Delivery, the demand loss factors for JEA Transmission System's delivery points on the JEA Transmission System less the IBSED for each hour k of the applicable billing period.

LFSGHR ● [REDACTED]

GI – [REDACTED]

n – number of hours in the Monthly Billing Period

k – each hour, for the Monthly Billing Period

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APPENDIX D

MONTHLY CUSTOMER CHARGE (MCC) CALCULATION

Monthly Customer Charge is [REDACTED]