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COMMISSION
CLERK

April 1, 2011

VIA HAND DELIVERY

110090-EQ

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

Re: Petition of Progress Energy Florida, Inc. for approval of a negotiated purchase power agreement with U.S. EcoGen Polk, LLC; Docket No. _____

Dear Ms. Cole:

Please find enclosed for filing on behalf of Progress Energy Florida, Inc. ("PEF") the original and seven (7) copies of the petition for approval of a negotiated purchase power agreement with U.S. EcoGen Polk, LLC ("USEG POLK").

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-5184 should you have any questions.

Sincerely,

John T. Burnett
John T. Burnett

COM _____
APA _____ JTB/lms
ELR (6) Attachments
CCL _____
EAB (6) _____
EBC _____
ADM _____
OPC _____
CLK _____

DOCUMENT NUMBER-DATE

02129 APR-1 =

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy
Florida, Inc. for approval of a
negotiated power purchase agreement
with U.S. EcoGen Polk, LLC.

Docket No. 110090-ED

Filed: April 1, 2011

P E T I T I O N

On March 28, 2011, Progress Energy Florida, Inc. ("PEF", or "the Company") signed a negotiated power purchase agreement with U.S. EcoGen Polk, LLC ("USEG POLK"), a subsidiary of U.S. EcoGen, LLC.

Pursuant to Rule 25-17.0832, F.A.C., PEF hereby petitions the Florida Public Service Commission ("the Commission") for approval of a negotiated power purchase agreement for the purchase of firm capacity and energy between USEG POLK and PEF, dated March 28, 2011 ("the Agreement"). A redacted copy of the Agreement, pursuant to Rule 25-17.0832(1)(b), F.A.C., is attached hereto as Exhibit A. In support of this petition, PEF states as follows:

1. Petitioner, PEF, is an investor-owned utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes. PEF's general offices are located at 299 First Avenue North, St. Petersburg, Florida, 33701.

2. All notices, pleadings and other communications required to be served on petitioner should be directed to:

John T. Burnett, Esquire
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5184
Facsimile: (727) 820-5249

For express deliveries by private courier, the address is as stated in paragraph 1.

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3. Pursuant to the terms of the Agreement, USEG POLK will construct and own a biomass power production generating facility (“the Facility”) located in Polk County, Florida, or another county within PEF’s service territory, which it will operate as a Qualifying Facility (“QF”) pursuant to regulations of the Commission. The Facility will have a maximum generating capability of approximately 60 MW, using a biomass product as its primary fuel. USEG POLK will sell firm capacity and energy from the Facility to PEF for a 29-year and 5-month term from January 1, 2014 through May 31, 2043, with a committed capacity of 60 MW. The expected annual energy from the Facility is 494,067 MWh.

4. Exhibit B to this petition summarizes a comparison of projected capacity and energy costs under the Agreement against the costs of the comparative avoided unit, a nominal 178 MW combustion turbine gas-fired plant with an estimated in-service date of June, 2018 (taken from PEF’s 2010 Standard Offer Contract). The comparison in Exhibit B was modeled at a committed capacity of 60 MW and a capacity factor of 94%. The comparison shows that the Agreement provides savings with a net present value of \$60 million over a 29-year and 5-month term based on current (the 2010 Ten Year Site Plan) fuel forecasts.

5. Exhibit C to this petition summarizes the Agreement which includes the required information as set forth in Rule 25-17.0832(1)(b), F.A.C.

6. The rates, terms, and conditions of the Agreement can reasonably be expected to contribute toward the deferral or avoidance of additional capacity construction or other capacity-related costs by PEF at a cost to PEF’s ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the

capacity and energy to be delivered by USEG POLK under the Agreement.

WHEREFORE, PEF respectfully requests that the Commission approve the Agreement as set forth in Exhibit A.

Respectfully submitted,

PROGRESS ENERGY FLORIDA, INC.

By John T. Burnett *ms*

John T. Burnett

Fla. Bar No. 173304

Post Office Box 14042

St. Petersburg, FL 33733-4042

Telephone: (727) 820-5184

Facsimile: (727) 820-5249

Counsel for Progress Energy Florida, Inc.

EXHIBIT A

THE USEG POLK AGREEMENT

(REDACTED)

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RENEWABLE ENERGY POWER PURCHASE AGREEMENT

between

U.S. EcoGen Polk, LLC

and

PROGRESS ENERGY FLORIDA

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APPENDIX 1 - MINIMUM SPECIFICATIONS AND MILESTONES

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APPENDIX 4 - RATES

APPENDIX 5 - RF/QF'S ELIGIBLE COLLATERAL REQUIREMENTS

APPENDIX 6 - FORM OF CONSENT AND AGREEMENT

APPENDIX 7 - TERMINATION FEE

RENEWABLE ENERGY POWER PURCHASE AGREEMENT

THIS RENEWABLE ENERGY POWER PURCHASE AGREEMENT (hereinafter referred to as the "Contract") is made and entered this 29 day of March, 2011 (hereinafter referred to as the "Execution Date"), by and between U.S. EcoGen Polk, LLC (hereinafter the Renewable Energy Provider/Qualifying Facility ("RF/QF")), and Florida Power Corporation d/b/a Progress Energy Florida, Inc. (hereinafter "PEF"), a private utility corporation organized and existing under the laws of the State of Florida. The RF/QF and PEF shall be individually identified herein as the "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the RF/QF is developing a baseload, must-run biomass-fueled power generation facility of approximately sixty (60) MW net electric output to be located in the State of Florida and interconnected with the Transmission System owned and operated by PEF, as more fully described in Appendix 2 (the "Facility");

WHEREAS, the RF/QF desires to sell, and PEF desires to purchase capacity and electricity to be generated by the RF/QF consistent with Florida Statutes 366.91 (2006) and FPSC Rules 25-17.080 through 25-17.310 F.A.C.;

WHEREAS, the RF/QF shall acquire an interconnection/transmission service agreement with PEF, pursuant to which the RF/QF assumes contractual responsibility to make any and all transmission-related arrangements (including ancillary services) between the RF/QF and the Transmission Provider for delivery of the Facility's firm capacity and energy to PEF. The Parties recognize that the Transmission Provider will be PEF and that the transmission service will be provided under a separate agreement; and

WHEREAS, the RF/QF will develop the Facility in order that it will be capable of delivering firm capacity and energy to PEF for the term of this Contract in a manner consistent with the provisions of this Contract.

NOW, THEREFORE, for mutual consideration the Parties agree as follows:

1. Definitions

"Additional Maintenance Outages" has the meaning assigned to it in Section 10.3.

"Affiliate" means with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

"Annual Capacity Billing Factor" or **"ACBF"** means twelve (12) month rolling average of the Monthly Availability Factor as further defined and explained in Appendix 3.

“Appendices” shall mean the schedules, exhibits, and attachments which are appended hereto and are hereby incorporated by reference and made a part of this Contract. Such Appendices include:

“Appendix 1” sets forth information related to the Minimum Specifications and Milestones

“Appendix 2” sets forth a description of the Facility and Site Descriptions

“Appendix 3” sets forth information regarding Monthly Capacity Payment Calculation

“Appendix 4” sets forth rates information regarding Rates

“Appendix 5” sets forth requirements for Eligible Collateral provided by RF/QF’s Eligible Collateral Requirements

“Appendix 6” sets forth the Form of Consent and Agreement

“Appendix 7” sets forth information regarding the Termination Fee.

“Applicable Law” means any and all applicable provisions of any constitution, statute, law, ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, condition, standard and/or objective criteria applicable to this Contract or to any Party’s obligations, performance, or rights under this Contract and/or contained in any Governmental Approval applicable.

“Approval Date” means the date that the FPSC has issued the FPSC Approval.

“Article” means an article of this Contract unless the context requires otherwise.

“As-Available Energy Rate” means the rate calculated by PEF in accordance with FPSC Rule 25-17.0825, F.A.C., and PEF’s Rate Schedule COG-1, as they may each be amended from time to time.

“Authorization to Construct” means authorization issued by any appropriate Government Agency to construct or reconstruct the Facility granted to RF/QF in accordance with the laws of the State of Florida and any relevant federal law.

“Avoided Unit” means the electrical generating unit described in Appendix 1 upon which this Contract is based.

“Avoided Unit Cost Changes” has the meaning assigned to it in Section 20.21(b).

“Base Capacity Payment” or “BCP” means capacity payments made at the rates defined in Appendix 3.

“Biomass” means any fuel source that meets the requirements of the definition of “Biomass” set forth in Florida Statute 366.91(2)(a).

“Business Day” means any day except a day upon which banks licensed to operate in the State of Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a public holiday in the State of Florida. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

“Capacity” means the minimum average hourly net capacity (generator output minus auxiliary load) measured over the Committed Capacity Test Period.

“Capacity Delivery Date” means the date that the Facility has achieved Capacity Delivery Status.

“Capacity Delivery Status” means that (a) the Facility is in material compliance with all Governmental Approvals necessary for the commencement of commercial operation of the Facility; and (b) the Facility has maintained an hourly MW output, as metered at the Electrical Interconnection Point, equal to or greater than the Minimum Committed Capacity over the Committed Capacity Test Period.

“Capacity Payment” means the payment by PEF to RF/QF for Capacity calculated in the manner and payable at the rate set out in Appendices 3 and 4.

“Change(s) in Environmental Law or Other Regulatory Requirements” has the meaning assigned to it in Section 20.21(a).

“Claims” means any claims, demands, judgments, losses, liabilities, penalties (civil or criminal), fines, assessments, costs and expenses (including reasonable attorneys’ fees and expenses), for (a) personal injury or death to persons, damage to any property or facilities of any person or entity, (b) environmental, health or safety matters or conditions (including on-Site or off-Site contamination), and (c) financial responsibility for corrective or remedial action under any environmental law or fines or penalties imposed under any environmental law.

“Committed Capacity” or **“CC”** means the capacity in MW that the RF/QF commits to sell to PEF the amount of which shall be determined in accordance with Section 8.

“Committed Capacity Test” means the testing of the capacity of the Facility performed in accordance with the procedures set forth in Section 8.

“Committed Capacity Test Period” means a test period of twenty-four (24) consecutive hours.

“Completed Permits Date” means the date by which the RF/QF must complete licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility, which date is the Drop Dead Date.

“Condemnation Event” means the actual or threatened exercise by any Government Agency of the power of eminent domain, condemnation or other right, power or authority to acquire or use property which results in the taking ownership of or control over all or any material portion of the Site and/or the Facility.

“Conditions Precedent” means the conditions precedent to the obligations of the Parties hereunder in respect of the production, delivery, purchase and sale of Committed Capacity and associated Energy from the Facility, as further defined in Section 5.1.

“Confidential Information” has the meaning assigned to it in Section 20.18.1.

“Consent and Agreement” means an instrument to be executed and delivered in connection with Financial Closing by PEF in favor of all Persons that are Lenders during the Term, the form and substance of which shall be substantially similar to the document attached as Appendix 6.

“Contract” means this Renewable Energy Power Purchase Agreement and the appendices and attachments hereto, as it may be amended from time to time in accordance with the terms hereof.

“Creditworthy” with respect to a Party or its credit support provider, as applicable, means such Person is rated by at least two (2) of the three (3) following rating agencies Standard & Poor’s (S&P), Moody’s Investor Services (Moody’s) and Fitch Rating Services (Fitch). Ratings shall be the unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement). Both ratings (if company is only rated by 2 of the 3 agencies) or at least two (2) of the three (3) (if company is rated by all three agencies) must be (i) BBB- or greater from S&P (ii) Baa3 or greater from Moody’s (iii) BBB- or greater from Fitch. If the RF/QF elects to provide Eligible Collateral in the form of a cash deposit, the RF/QF’s rating shall for purposes of this Contract be deemed to be A- and above.

[REDACTED]

“Demonstration Period” means a sixty-hour period in which the Committed Capacity Test must be completed.

“Design Committed Capacity” means the design capacity of the Facility as of the Execution Date, as set out in Appendix 2.

“Distribution System” means the distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity from the Transmission System to ultimate consumers, but not including any part of the Transmission System.

“Dispute” has the meaning assigned to it in Section 20.9.1.

“Drop Dead Date” means the date by which the Conditions Precedent must be satisfied or waived, which is [REDACTED] after the Approval Date, as may be extended by Force Majeure or by agreement of the Parties.

“Early Termination Date” has the meaning assigned to it in Section 15.1.

“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.

“Effective Date” has the meaning assigned to it in Section 5.3.

“Electrical Interconnection and Operating Agreement” means the agreement between RF/QF and the Transmission Provider providing for the physical connection and operation of the electrical interconnection facilities between the Facility and the Transmission System.

“Electrical Interconnection Point” means the physical point at which the Facility is connected with the Transmission System or such other physical point on which RF/QF and PEF may agree.

“Eligible Collateral” means performance security in the form of (i) a Letter of Credit from a Qualified Institution, (ii) cash deposited into (a) a PEF Security Account by RF/QF or (b) an RF/QF Security Account by PEF, as the case may be, (iii) RF/QF Guarantee or PEF Guarantee or (iv) a combination of (i), (ii) and/or (iii) as outlined in Section 11.

“Emergency Condition” means a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission System or otherwise be a disruption required in accordance with the requirements of the FPSC, or any system condition not consistent with Prudent Utility Practices.

“Emission Reduction Credits” means any offset, allowance, or credit of any kind created or administered under any current or future voluntary standard, statutory and/or regulatory regime, associated with (a) the underlying Fuel used for the generation of electricity and pursuant to which the generation of electricity using the Fuel is recognized as avoiding the emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change, by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Emission Reduction Credits shall exclude (i) any energy, capacity, ancillary services or other products or services generated or produced by or capable of being generated or produced by the Facility, or (ii) investment, production, or other Tax credits, grants, benefits, and/or deductions associated with the use of the Fuel at the Facility or the construction, ownership, use, and/or operation of the Facility and financial incentives, including credits, reductions, or allowances associated with the Facility that are applicable to local, state or federal Tax obligations.

“Energy” means megawatt-hours generated by the Facility of the character commonly known as three-phase, sixty hertz electric energy that is delivered at a nominal voltage at the Electrical Interconnection Point.

“Energy Rate” means the rate to be paid by PEF to RF/QF for Energy delivered to PEF by RF/QF after the Capacity Delivery Date, as set out in Appendix 4.

“Environmental Attributes” means all attributes of an environmental or other nature (and could include Emission Reduction Credits, if applicable) that are created or otherwise arise from the Facility’s generation of Energy using the Fuel, in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, and the displacement of conventional energy by the Energy generated by the Facility. Such attributes include RECs, however defined under any voluntary standard or local, state or federal law, regulation or ordinance. Environmental Attributes shall exclude (i) any energy or capacity of the Facility, or (ii) investment, production, or other Tax credits, grants, benefits, and/or deductions associated with the use of the Fuel at the

Facility or the construction, ownership, use, and/or operation of the Facility and financial incentives, including credits, reductions, or allowances associated with the Facility that are applicable to local, state or federal Tax obligations.

“EPC Agreement” means the turnkey Engineering, Procurement and Construction Agreement or other agreements entered into between RF/QF and a contractor or contractors selected by RF/QF to manage and complete the design, engineering, procurement and construction of the Facility the form and substance of which is satisfactory to RF/QF in its sole discretion.

“Event of Default” has the meaning assigned to it in Section 14.

“Execution Date” has the meaning assigned to it in the opening paragraph of this Contract.

“Facility” means the baseload, must-run electric generating facility described in Appendix 2.

“FERC” means the Federal Energy Regulatory Commission or its successor.

“Financial Closing” means the fulfillment of each of the following conditions: (a) the execution and delivery of the Financing Documents in form and substance satisfactory to RF/QF in its sole discretion; and, (b) all conditions to the availability of funds under the Financing Documents are satisfied or waived.

“Financing Document(s)” means documentation with respect to any private equity investment in RF/QF, any loan agreements or credit agreements (including agreements for any subordinated debt), notes, bonds, indentures, guarantees, mortgages, collateral agreements, intercreditor agreements, security agreements, pledge agreements, letters of credit, credit support, credit enhancement and swap and other hedging agreements, and all consents, certificates, opinions and other documents to be delivered at the closing of any financing or re-financing and the availability of funds or disbursement thereof relating to the financing or refinancing of the design, development, permitting, interconnection, construction, testing, commissioning, operation, maintenance and decommissioning of the Facility or any guarantee by any Lender of the repayment of all or any portion of any such financing or refinancing the form and substance of which is satisfactory to RF/QF in its sole discretion.

“Force Majeure” has the meaning given to it in Section 18.1.

“Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver, Energy that is not the result of (a) a Planned Outage or Additional Maintenance Outage, (b) a Force Majeure, or (c) an Emergency Condition

“FPSC” means the Florida Public Service Commission or its successor.

“FPSC Approval” means the FPSC has issued its final written order that is no longer subject to re-hearing or appeal, (a) approving this Contract, (b) finding that no FPSC approval is required, or (c) approving this Contract in part or subject to conditions, provided that each of RF/QF and PEF agrees, subject to its reasonable discretion, to accept those conditions or such partial approval as sufficient.

“Fuel” means Biomass.

“Government Agency” means the United States of America, or any state or any other political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

“Governmental Approval” means any authorization, consent, approval, license, ruling, appeal, permit, waiver, exemption, variance, order, judgment, instruction, condition of approval, direction, directive, decree, declaration for regulation by any Government Agency relating to the construction, development, ownership, occupancy, start-up, testing, operation or maintenance of the Facility or the execution, delivery or performance of this Contract.

“IEEE” means the Institute of Electrical and Electronics Engineers, Inc.

“Indemnified Party” has the meaning assigned to it in Section 16.1.

“Indemnifying Party” has the meaning assigned to it in Section 16.1.

“KVA” means one or more kilovolts-amperes of electricity, as the context requires.

“kW” means one or more kilowatts of electricity, as the context requires.

“kWh” means one or more kilowatt-hours of electricity, as the context requires.

“Late Payment Rate” has the meaning assigned to it in Section 9.4.2.

“Lender(s)” means any Person that provides an equity investment or debt funding in connection with any development, bridge, construction, permanent debt or tax-equity financing or re-financing for the Facility, including any Person providing a working capital facility, letters of credit, credit support or credit enhancement, any counterparty to any Financing Document and any assignee or transferee of such Person, and any trustee, collateral agent, administrative agent or other similar entity acting on behalf of such a Person.

“Letter of Credit” means a stand-by letter of credit from a Qualified Institution, the form of which is reasonably acceptable to PEF, whose approval may not be unreasonably withheld.

“Maintenance Outage” means a time period during which the Facility is shut down or its output reduced for purposes of performing maintenance, servicing and repairs necessary for the reliable operation of the Facility.

“Material Adverse Change” means as to PEF, that PEF or PEF Guarantor, if applicable, or, as to RF/QF, that the provider of Eligible Collateral for RF/QF or RF/QF Guarantor, if applicable, any of the following events: (a) such party is no longer Creditworthy or (b) the party or Party’s guarantor, if applicable, defaults on an aggregate of [REDACTED] of equity, whichever is less.

“Material Casualty Event” means the occurrence of a Force Majeure event (a) if prior to the Capacity Delivery Date, that is reasonably likely to extend achievement of the Capacity Delivery Date by more than [REDACTED] or (b) if after the Capacity Delivery Date, that shall have reduced the Capacity of the Facility by more than [REDACTED] and the period for full restoration or repair of that portion of the Facility damaged by the event is reasonably likely to exceed [REDACTED].

“Maximum Committed Capacity” means the maximum amount of Capacity of the Facility that PEF commits to purchase hereunder, as set out in Appendix 2.

“Meters” has the meaning assigned to it in Section 10.5.1.

“Minimum Committed Capacity” means the minimum amount of Capacity of the Facility that RF/QF must demonstrate to achieve Capacity Delivery Status during a Committed Capacity Test Period, as set out in Appendix 2.

“Monthly Availability Factor” or **“MAF”** means the total energy received during the Monthly Billing Period for which the calculation is made, divided by the product of Committed Capacity times the total hours during the Monthly Billing Period.

“Monthly Billing Period” means the period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 0001H, on the Capacity Delivery Date and ending at 2400H on the last calendar day of such month.

“Monthly Capacity Payment” or **“MCP”** means the payment for Capacity calculated in accordance with Appendix 1.

“MW” means one or more megawatts of electricity, as the context requires.

“MWh” means one or more megawatt-hours of electricity, as the context requires.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Operating Representative” means a representative of a Party who shall have authority to act for such Party in all technical, real-time or routine matters relating to construction, testing, operation and maintenance of the Facility and performance of this Contract, and to attempt to resolve disputes or potential disputes, which representatives shall have no authority to amend, modify or waive any provision of this Contract.

“Party” or **“Parties”** has the meaning assigned to it in the opening paragraph of this Contract.

“PEF” has the meaning assigned to it in the opening paragraph of this Contract.

“PEF Entities” has the meaning assigned to it in Section 16.1.

“PEF Guarantee” means, if RF/QF is entitled to reasonable assurance of performance by PEF of its obligations hereunder, a guarantee provided by PEF Guarantor that is acceptable to RF/QF, whose approval may not be unreasonably withheld.

“PEF Guarantor” means a party that, at the time of execution and delivery of its PEF Guarantee is a direct or indirect owner of PEF and is (a) Creditworthy or is (b) reasonably acceptable to RF/QF as having verifiable creditworthiness and a net worth sufficient to secure PEF’s obligations.

“PEF Security Account” means an account designated by PEF for the benefit of PEF free and clear of all liens (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant to a control agreement in a form and substance acceptable to PEF whose cost is to be borne by the RF/QF.

“Person” means any individual, partnership, limited partnership, corporation, limited liability company, limited liability partnership, association, joint stock company trust, joint venture, unincorporated organization, or Government Agency (or any department, agency, or political subdivision thereof).

“Planned Outage” means a time period during which the Facility is shut down or its output is reduced in order for pre-scheduled Maintenance Outages to be performed, or as otherwise agreed by the Parties.

“Project Contracts” means the EPC Agreement, the Electrical Interconnection and Operating Agreement, major Fuel supply agreements, and an operation and maintenance agreement, to the extent applicable.

“Proper Assurance” means a document submitted by RF/QF to PEF in response to PEF’s written request therefor after an occurrence which if not remedied or cured would be an Event of Default by RF/QF under Section 14(a) – (h) of this Contract, setting forth RF/QF’s plan and timeline to perform the remedy or cure of such event.

“Prudent Utility Practices” means any of the practices, methods, standards and acts that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result reliably, cost-effectively for a prudent, cost-conscious electric utility, safely, expeditiously and consistent with good business practices, which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by equipment suppliers and manufacturers, the design limits of the Facility, applicable Governmental Approvals and Applicable Law. Prudent Utility Practice is not intended to be limited to the optimum practices, methods, standards or acts to the exclusion of all others, but rather is intended to include a spectrum of practices, methods, standards or acts generally accepted in the United States, having due regard for, among other things, manufacturers’ recommendations and warranties, contractual obligations, Applicable Law, requirements or guidance of Government Agencies and NERC, and PEF’s obligation to provide interconnection and transmission services and to serve its customers.

“Qualifying Facility” or “QF” means a cogenerator, small power producer, or non-utility generator that has been certified or Self-Certified by the FERC as meeting certain ownership, operating and efficiency criteria established by the FERC pursuant to the Public Utility Regulatory Policies Act of 1978, as amended, and as further provided for under applicable regulations; or, alternatively, applicable provisions under the laws, rules, and regulations of the State of Florida.

“Qualified Institution” means the domestic office of a United States commercial bank or trust company or a foreign bank with a United States branch with total assets of at least ten billion dollars (\$10,000,000,000) (which is not an Affiliate of either party) having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor’s Ratings Group), A3 or higher (as rated by Moody’s Investor Services) or A- or higher (as rated by Fitch Ratings).

“Rate Schedule COG-1” means PEF’s Agreement for Purchase of As-Available Energy and/or Parallel Operation with a Qualifying Facility as approved by the FPSC and as may be amended from time to time.

“Renewable Energy Certificate” or “REC” means renewable energy credits, green tags, green tickets, renewable certificates, tradable renewable energy credits (“T-REC”) or any tradable certificate that is produced by a renewable energy generator in addition to and in proportion to the production of electrical energy.

“Renewable Facility” or “RF/QF” means an electrical generating unit or group of units at a single site, interconnected for synchronous operation and delivery of electricity to an electric utility, where the primary energy in British Thermal Units used for the production of electricity is from one or more of the following sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power or waste heat from a commercial or industrial manufacturing process.

“Required Capacity Delivery Date” means January 1, 2014.

“RF/QF Entities” has the meaning assigned to it in Section 16.1.

“RF/QF Guarantee” means a guarantee provided by RF/QF Guarantor that is acceptable to PEF, whose approval may not be unreasonably withheld.

“RF/QF Guarantor” means a party that, at the time of execution and delivery of its RF/QF Guarantee is a direct or indirect owner of RF/QF and is (a) Creditworthy or is (b) reasonably acceptable to PEF as having verifiable Creditworthiness and a net worth sufficient to secure RF/QF’s obligations.

“RF/QF Insurance” has the meaning assigned to it in Section 17.1.

“RF/QF Security Account” means an account designated by the RF/QF for the benefit of the RF/QF free and clear of all liens (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant to a control agreement in a form and substance acceptable to RF/QF whose cost is to be borne by PEF.

“Section” means a section of this Contract unless the context requires otherwise.

“Self-Certification Process” means the procedure for obtaining or confirming QF Status set forth in FERC’s regulations under the Public Utility Regulatory Policies Act, at 18 §C.F.R.

“Site” means the property in the service territory of PEF on which the Facility is to be constructed and operated, as determined by RF/QF, as further described in Appendix 2.

“Submission Date” means the date upon which the PEF submits this Contract and all required ancillary documents to the FPSC together with a petition for FPSC Approval.

“Supplemental Eligible Collateral” means additional performance security in the form of Eligible Collateral to augment performance security provided by RF/QF in the event of a downgrade affecting the issuer of a Letter of Credit or maker of an RF/QF Guarantee provided by RF/QF in compliance with Section 11.2.

“Tax” or **“Taxes”** means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all federal, state, local, foreign or other income, profits, unitary, business, franchise, capital stock, real property, personal property, intangible, withholding, FICA, unemployment compensation, disability, transfer, sales, use, excise and other taxes, assessments, charges, duties, fees, or levies of any kind whatsoever (whether or not requiring the filing of returns) and all deficiency assessments, additions to tax, penalties and interest.

“Taxation Authority” means any revenue, customs, fiscal, statutory, federal, state, local governmental or municipal authority having the power, authority and jurisdiction to impose any tax, charge, impost, duty, levy or fee in the nature of taxation payable in the United States.

“Term” has the meaning assigned to it in Section 3.

“Termination Date” May 31, 2043, unless this Contract is earlier terminated in accordance with the terms hereof.

“Termination Fee” means the fee described in Section 11.7 and Appendix 7.

“Termination Security” has the meaning assigned to it in Section 11.7.2.

“Threshold” has the meaning assigned to it in Section 20.21(c).

“Transmission Provider” means the operator(s) of the Transmission System(s) or any successor thereof or any other entity or entities authorized to transmit Energy on behalf of RF/QF from the Electrical Interconnection Point.

“Transmission System” means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection owned by the Transmission Provider or PEF, but shall in no event include any

lines which the Transmission Provider has specified to be part of the Distribution System except for any distribution facilities required to accept capacity and energy from the Facility.

1.1 Interpretation

The headings of Articles and Sections in this Contract are provided for convenience of reference only and will not affect the construction, meaning or interpretation of this Contract. All references to "Articles," "Sections," or "Appendices" refer to the corresponding Articles, Sections or Appendices of or to this Contract. All Appendices to this Contract are hereby incorporated by reference. All words used in this Contract will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "include," "includes" and "including" shall be interpreted to mean "including without limitation." Unless otherwise stated, any reference to a Person, whether or not a Party, includes its permitted successors and assigns and, in the case of any Government Agency, any Person succeeding to its functions and capacities. Other grammatical forms of defined words or phrases have corresponding meanings. A reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form. Unless otherwise provided, a reference to a specific time of day for the performance of an obligation is a reference to the time in the place where that obligation is to be performed. A reference to a document, law, code, contract or agreement, including this Contract, 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. 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. The words "hereof," "herein" and "hereunder" and words of similar import shall refer to this Contract as a whole and not to any particular provision of this Contract. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Contract and, unless expressly provided otherwise in this Contract, (a) where the Contract requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever the Contract gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

2. Facility; Renewable Facility or Qualifying Facility Status

The Facility's location and generation capabilities are as described in Appendix 2.

The RF/QF shall use Biomass as the Fuel for the Facility and maintain the status of the Facility as a Renewable Facility or a Qualifying Facility throughout the term of this Contract. RF/QF shall at all times keep PEF informed of any material changes in its business which adversely affects the status of the Facility as Renewable Facility or Qualifying Facility. PEF and RF/QF shall have the right, upon reasonable notice of not less than seven (7) Business Days and subject to the applicable Party's rules and policies regarding safety, security, confidentiality, insurance and indemnity, to inspect the Facility during normal business hours and to examine any books, records, or other documents of the other Party reasonably deemed necessary to verify compliance with this Contract. In the event of an emergency at or in proximity to the Site that impacts PEF's system, PEF shall make reasonable efforts to promptly contact the Facility and make

arrangements for an emergency inspection. On or before March 31 of each year during the Term of this Contract, the RF/QF shall provide to PEF a certificate signed by an officer of the RF/QF certifying that the RF/QF continuously maintained the status of the Facility as a Renewable Facility or a Qualifying Facility during the prior calendar year.

3. Term of Contract

Except as otherwise provided herein with respect to the Parties' respective rights and obligations to produce, deliver, receive, purchase and sell Committed Capacity and associated Energy, which are conditioned upon the attainment of FPSC Approval and the satisfaction or waiver of the Conditions Precedent, this Contract shall become effective immediately upon the Execution Date and shall end at 12:01 a.m. on the May 31, 2043, (the "Term") unless terminated earlier in accordance with the provisions hereof. This Contract shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

4. FPSC Approval

- 4.1** It is a condition precedent to the obligations of PEF hereunder to receive and purchase Committed Capacity and associated Energy that FPSC Approval be obtained, the Facility achieve its status as a Qualifying Facility by the Drop Dead Date and Capacity Delivery Status be achieved by the Required Capacity Delivery Date.
- 4.2** Within ten (10) Business Days after the Execution Date, PEF shall submit a copy of this Contract and related documentation to the FPSC and shall petition the FPSC for FPSC Approval. RF/QF agrees to cooperate with and assist PEF in obtaining FPSC Approval as PEF may reasonably request. PEF agrees to notify RF/QF of any significant developments in obtaining FPSC Approval. RF/QF shall have the right to receive the final draft of any proposed submission by PEF to the FPSC relating to the petition for FPSC Approval as soon as practicable but in any event not less than one (1) full Business Day prior to submission and to confer with PEF for purposes including the redaction of Confidential Information of RF/QF contained in any submission made by PEF to the FPSC.
- 4.3** Notwithstanding Sections 4.1 and 4.2, if FPSC Approval is not obtained to RF/QF's and PEF's satisfaction, each in its sole discretion, within [REDACTED] after the Submission Date, or such longer period as the Parties may agree, then this Contract shall terminate upon [REDACTED] notice by either Party. Termination of this Contract pursuant to this Section 4.3 shall not constitute an Event of Default hereunder and neither Party shall have any further liability under this Contract as a result of such termination.
- 4.4** If FPSC Approval is obtained, RF/QF's obligation to deliver and PEF's obligation to accept and pay for Committed Capacity and associated Energy are conditioned upon satisfaction or waiver of the Conditions Precedent and, subject to Sections 7.5 and 7.6, attainment by the Facility of Capacity Delivery Status on or before the Required Capacity Delivery Date.

4.5 Within thirty (30) days after the Approval Date, the RF/QF shall provide the applicable Eligible Collateral required under Section 11.1 and Appendix 5.

5. Conditions Precedent

5.1 Unless otherwise waived in writing by PEF, PEF's obligation to accept and pay for Committed Capacity and associated Energy is subject to RF/QF satisfying the following "Conditions Precedent" on or before the Drop Dead Date:

- (a) RF/QF shall have obtained firm transmission service necessary to deliver Committed Capacity and associated Energy from the Facility to the Electrical Interconnection Point, in a form and substance and on terms and conditions satisfactory to RF/QF in its sole discretion;
- (b) RF/QF shall have obtained the Authorization to Construct and Governmental Approvals and all other consents or approvals for which it is responsible under the terms hereof in order to commence full scope construction of the Facility in a form and substance and having terms and conditions satisfactory to RF/QF in its sole discretion;
- (c) RF/QF shall have entered into Financing Documents relative to the construction of the Facility and have achieved Financial Closing in a form and substance and on terms and conditions satisfactory to RF/QF in its sole discretion;
- (d) RF/QF shall have entered into the Project Contracts in a form and substance and having terms and conditions satisfactory to RF/QF in its sole discretion;
- (e) RF/QF shall have obtained insurance policies or coverage in compliance with Section 17;
- (f) RF/QF shall have obtained Qualifying Facility status from either the FPSC or FERC or completed the Self-Certification Process.

5.2 RF/QF shall use commercially reasonable efforts to achieve the satisfaction of RF/QF Conditions Precedent by the Drop Dead Date. At RF/QF's request, PEF will reasonably cooperate with RF/QF (at RF/QF's expense) as may be necessary in order to assist RF/QF in achieving the satisfaction of any of the Conditions Precedent to be satisfied by RF/QF.

5.3 Promptly upon satisfaction (or waiver in writing) of each Condition Precedent to be satisfied, the Party having satisfied the same shall deliver to the other Party a certificate evidencing such satisfaction. Subject to there being no Event of Default by RF/QF which has occurred and/or is continuing as of the date upon which the last of such certificates is delivered, the date of such last certificate shall constitute the date that this Contract is in full force and effect (the "Effective Date"). Within thirty (30) days after the Effective Date, each Party shall designate an Operating Representative by notice to the other Party and RF/QF shall deliver to PEF the Eligible Collateral required under Section 11.1 and Appendix 5 associated with such milestone.

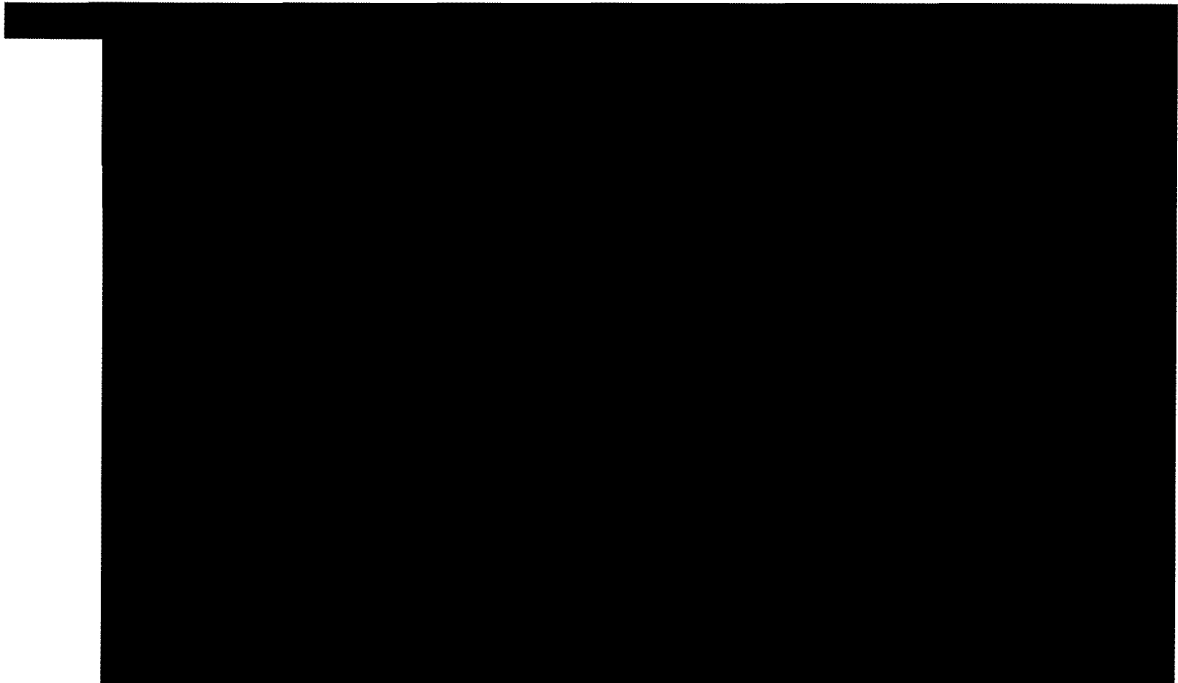
5.4 Unless all Conditions Precedent are satisfied or waived in writing on or before the Drop Dead Date (as such date may be extended by agreement of the Parties), this Contract may be terminated after such date by notice from one Party to the other Party prior to the satisfaction of Condition Precedents pending as of the Drop Dead Date, and upon such termination neither Party shall have any further liability to the other Party for such termination.

5.5 RF/QF shall achieve the Capacity Delivery Date on or before the Required Capacity Delivery Date. RF/QF shall certify to PEF before the initial Committed Capacity Test that the Facility shall have been constructed so that the Committed Capacity Test may be duly and properly undertaken and an operable physical connection from the Facility to the Transmission System shall have been effected in accordance with the electrical interconnection and operating agreement required by the Transmission Provider, provided, however, that such physical connection shall be made consistent with the terms hereof.

6. Sale of Electricity and Environmental Attributers by the RF/QF

6.1 Consistent with the terms hereof, the RF/QF shall sell to PEF and PEF shall purchase from the RF/QF the Committed Capacity and associated Energy generated by the Facility.

6.2 Subject to [REDACTED], RF/QF shall retain any and all rights, title and interest in or to and right to market, exchange, trade, retire, sell or otherwise convey any and all Environmental Attributes and Emission Reduction Credits generated by or associated with the Fuel consumed by the Facility and/or the generation of Energy by the Facility.





6.4 The RF/QF shall not rely on interruptible or curtailable standby service for the start up requirements (initial or otherwise) of the Facility.

6.5 RF/QF shall be responsible for delivery of Committed Capacity and Energy to the Electrical Interconnection Point and, as between the Parties, shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with respect to the delivery of Committed Capacity and associated Energy to the Electrical Interconnection Point. Except as otherwise provided in the Electrical Interconnection and Operating Agreement, PEF shall be responsible for providing or obtaining transmission and distribution service from the Electrical Interconnection Point and, as between the Parties, PEF shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed at and after the delivery of Committed Capacity and associated Energy at the Electrical Interconnection Point.

6.6 Each Party acknowledges that during the Term of this Contract it will be required to obtain and maintain certain Governmental Approvals in connection with the performance of its obligations hereunder.

6.6.1 RF/QF, at its cost and expense, will obtain and maintain in full force and effect from the Drop Dead Date through the end of the Term all applicable Governmental Approvals and insurance as and when are necessary for (a) the ownership, development, construction, operation and maintenance of the Facility and (b) the generation, delivery and sale of Capacity and Energy. Upon reasonable request from RF/QF, PEF shall use commercially reasonable efforts to assist RF/QF in procuring all Governmental Approvals for which RF/QF is responsible. Reasonable out-of pocket expenses incurred by PEF in providing such assistance that have been budgeted by PEF shall be reimbursed by RF/QF upon receipt of PEF's invoice therefor.

6.6.2 RF/QF will, at all times during the Term, comply with all Applicable Laws related to the operation and maintenance of the Facility and RF/QF's performance of its obligations under this Contract, including all applicable environmental laws in effect at any time during the Term.

6.6.3 PEF shall endeavor to obtain the FPSC Approval and obtain and maintain all other Governmental Approvals required for the payment

and performance of its obligations hereunder at its sole cost and expense. PEF will, at all times during the Term, comply with all Applicable Laws necessary for PEF to perform its obligations under this Contract, including all applicable environmental laws in effect at any time during the Term.

6.6.4 If the Parties are required to make any regulatory filings or are subject to the jurisdiction of any regulatory authorities, including the FPSC, the Party subject thereto shall provide prompt notice to the other Party thereof and support any intervention or other participation of the other Party in any proceedings that might affect the performance of such Party's obligations under this Contract after the Approval Date. Each of RF/QF and PEF agrees to abide by any applicable regulatory rulings or orders issued by such authorities, subject to its right to seek a re-hearing, appeal or other reconsideration of such rulings or orders.

7. Committed Capacity/Capacity Delivery Date

7.1 Capacity testing of the Facility (each such test a Committed Capacity Test) shall be performed in accordance with the procedures set forth in Section 8. The Demonstration Period for the first Committed Capacity Test shall commence no earlier than one hundred eighty (180) days before the expected Capacity Delivery Date as estimated in progress reports delivered by RF/QF to PEF during construction of the Facility, or such earlier dates as the Parties may agree upon, and testing must be completed on or before the Required Capacity Delivery Date. The first Committed Capacity Test shall not be successfully completed unless or until the Facility achieves Capacity Delivery Status. Subject to Section 8.1, the RF/QF may schedule additional Demonstration Periods and Committed Capacity Tests to satisfy the requirements of the Contract with respect to the first Committed Capacity Test. PEF agrees to purchase all net Energy produced during any initial Committed Capacity Test at a rate equal to the As-Available Energy Rate.

7.2 PEF shall for good cause have the right exercisable by written notice to RF/QF to require that RF/QF, not more than twice in any twelve (12) month period beginning with the Capacity Delivery Date, re-demonstrate the Committed Capacity of the Facility within sixty (60) days of such notice (or such reasonably longer period if the Facility incurs a Forced Outage or Force Majeure as of or after the giving of such notice); provided, however, that such demand shall be coordinated with RF/QF so that the sixty (60) day period for re-demonstration avoids previously notified periods of Planned Outages, mutually agreed upon outages and Additional Maintenance Outages. RF/QF, at its election, may, upon at least ten (10) days' notice to PEF, conduct tests to determine the Committed Capacity from time to time. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test conducted by RF/QF or at the request of PEF, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity.

7.3 Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the Maximum Committed Capacity without the prior written consent of PEF, which consent shall be granted, withheld or denied in PEF's sole discretion.

7.4 The RF/QF shall be entitled to receive and PEF shall be obligated to purchase and pay for Committed Capacity beginning on the Capacity Delivery Date, provided that the Capacity Delivery Date occurs on or before the Required Capacity Delivery Date, unless or such later date pursuant to Sections 7.5 and 7.6. If the Capacity Delivery Date does not occur before the Required Capacity Delivery Date, and RF/QF does not pay [REDACTED] in accordance with Sections 7.5 and 7.6, PEF shall immediately be entitled to terminate this Contract and draw down the Eligible Collateral, [REDACTED] paid by RF/QF, which shall be its sole and exclusive remedy therefor, and the Parties shall be relieved of any further obligation or liability under this Contract.

7.5 If the Capacity Delivery Date does not occur within ninety (90) days after the Required Capacity Delivery Date, subject to extension for Force Majeure, RF/QF shall [REDACTED], unless this Contract is sooner terminated pursuant to Section 15 for a reason other than non-attainment of Capacity Delivery Status prior to the Required Capacity Delivery Date. Except as provided in Section 13.2 and Section 15, [REDACTED] shall be PEF's sole and exclusive remedy for RF/QF's failure to achieve the Capacity Delivery Status on or before the Required Capacity Delivery Date.

7.6 If the Capacity Delivery Date does not occur within one hundred eighty (180) days after the Required Capacity Delivery Date, subject to extension for Force Majeure, PEF shall have the right to terminate this Contract upon fifteen (15) days notice to RF/QF. Upon termination of this Contract pursuant to this Section 7.6, PEF shall be entitled to receive draw on Eligible Collateral less [REDACTED]. Such right to terminate and receive damages shall be PEF's sole and exclusive remedy for RF/QF's failure to so achieve the Capacity Delivery Date before the Required Capacity Delivery Date. [REDACTED]

8. Testing Procedures

8.1 Capacity Delivery Status must be attained on or before the Required Capacity Delivery Date. A Committed Capacity Test must be completed within the Demonstration Period, which period, including the approximate start time of the

Committed Capacity Test, shall be selected and scheduled by the RF/QF by means of a written notice to PEF delivered at least thirty (30) calendar days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test ordered by PEF under any of the provisions of this Contract, and the Demonstration Period for any such test shall commence on the date of commencement of the Committed Capacity Test. PEF shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract. The results of any Committed Capacity Test, including all relevant data related to Facility operation and performance during testing, shall be submitted to PEF by the RF/QF within seven (7) calendar days of the conclusion of the Committed Capacity Test. The RF/QF shall certify that all such data is accurate and complete.

- 8.2** All Committed Capacity Test results shall be based on a test period of twenty four (24) consecutive hours (the "Committed Capacity Test Period"). The Committed Capacity Test shall be performed according to standard industry testing procedures appropriate for the technology of the Facility. During testing, the Facility will be operated within the normal design, temperature, pressure and other operating limits and parameters defined by the applicable manufacturer(s), consistent with steady state operation, in compliance with the requirements of applicable Governmental Authorizations, and in accordance with Prudent Utility Practices, as confirmed by available unit operating data. The unit will be operated with routine control set points at normal full load conditions for the duration of the test. Blowdown flows, makeup flows, steam turbine extractions, station service and all auxiliary systems will be operated in a routine mode as appropriate for the actual ambient conditions existing during the test period. The Facility shall be brought to normal full load output capacity. The Committed Capacity Test Period shall commence at the time designated by RF/QF, as coordinated with the Transmission Provider and in accordance with the timelines required hereunder.
- 8.3** Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by Applicable Law, shall be in service during the Committed Capacity Test Period.
- 8.4** The Capacity of the Facility shall be the minimum average hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period, provided that such Capacity is not less than the Minimum Committed Capacity and subject to the limitation that regardless of the outcome of the test the Committed Capacity shall not exceed the Maximum Committed Capacity. If the test results demonstrate net electrical generating Capacity greater than the Design Committed Capacity, then RF/QF, in its sole discretion, may establish the Committed Capacity at a greater value up to and including the Capacity demonstrated by the test, but not to exceed the Maximum Committed Capacity.
- 8.5** If the initial Committed Capacity Test demonstrates a Capacity below the Minimum Committed Capacity, RF/QF shall have an initial period of sixty (60) days to address the cause of the Facility's failure to test at the Minimum

Committed Capacity, and on or before the sixtieth (60th) day, RF/QF shall provide PEF with a reasonable cure plan describing the cause of the deficiency and setting forth a plan and timetable for curing the deficiency within a period not to exceed twelve (12) months. During this diagnostic and cure period, RF/QF shall, at its sole expense, have the right to schedule and conduct (within commercially reasonable scheduling limitations) such additional tests of the Capacity of the Facility as it reasonably considers necessary or appropriate or which the EPC Agreement contractor or any equipment vendor has the right to perform or cause to be performed to demonstrate that any deficiency in attaining the Minimum Committed Capacity has been cured. During this diagnostic and cure period the Committed Capacity will be equal to the Capacity demonstrated during the initial Committed Capacity Test.

- 8.6** During the period ending two (2) years immediately following the Capacity Delivery Date RF/QF may, on one occasion only, increase or decrease the initial Committed Capacity by no more than twenty percent (20%) of the Committed Capacity established pursuant to the test procedures set forth in this Article 8. RF/QF shall give PEF at least thirty (30) days notice of any such increase or decrease in the Committed Capacity. Additionally, the Parties, upon their mutual written agreement to same, may establish the Committed Capacity at any level that they mutually agree is appropriate and desirable under this Contract.

9. Payment for Electricity Produced by the Facility

9.1 Energy

9.1.1 Beginning on the Capacity Delivery Date and continuing through the Term of this Contract, RF/QF will deliver and sell to PEF and PEF will purchase and receive all Committed Capacity and associated Energy at the Electrical Interconnection Point or such other point as the Parties may agree. The calculation of payments to RF/QF for Energy delivered to PEF shall be the sum, over all hours of the Monthly Billing Period, of the product of (i) the Energy Rate; and (ii) the sum of the amount of Energy (kWh) delivered to PEF from the Facility.

9.1.2 Deliveries from the Facility under this Contract are limited to the Committed Capacity and associated Energy.

9.2 Capacity

Subject to the terms herein, beginning on the Capacity Delivery Date and continuing through the Term of this Contract, PEF shall pay RF/QF for the Committed Capacity hereunder at the Capacity Payment rate on a monthly basis, without any setoff, reduction or abatement, in accordance with the procedures and rates set forth in Appendices 3 and 4. PEF shall be excused from accepting delivery of Committed Capacity and associated Energy during a curtailment period as permissible allowed under FPSC Rule 25-17.086 and under any

curtailment plan which PEF may have on file with the FPSC from time to time. Except as otherwise provided herein, if RF/QF during any hour delivers any portion of the Energy associated with the Committed Capacity to a third party for any reason other than the inability, failure or refusal of PEF to receive such Energy, RF/QF shall be charged a rate equal to the PEF's Rate Schedule COG-1 times the difference between the quantity of Energy produced by the Committed Capacity and the quantity of Energy associated with the Committed Capacity actually received by PEF in that hour. In PEF's sole judgment the charges in this Section 9.2 may be waived.

9.3 Title and Risk of Loss

Title to and risk of loss of Committed Capacity and associated Energy shall pass from RF/QF to PEF at the Electrical Interconnection Point.

9.4 Billing

9.4.1 The payments calculated in Section 9.1.2 and 9.2 shall be due and payable on or before the twentieth (20th) Business Day of the month. Payments shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the RF/QF. Any amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Any payment that becomes due and payable on a day that is other than a Business Day shall be paid on the next Business Day.

9.4.2 A late payment charge shall accrue on any late payment or refund as specified above, for each calendar month, at the lesser of (a) the thirty (30) day highest grade commercial paper rate as published in the "Money Rates" section of *The Wall Street Journal* (or, if such rate is not published therein, in a successor index mutually selected by the Parties) on the first day of such month that such rates are published, or (b) the maximum rate permitted by Applicable Law (the "Late Payment Rate").

9.4.3 If either Party should in good faith dispute a portion of the charges set forth on any invoice, it shall provide notice of such dispute to the other Party within ten (10) days of receipt of the invoice and explain in detail in such notice the amount in dispute and the basis of the dispute. All undisputed payments shall be paid within the timeframes required hereunder. If it is ultimately determined that either Party owes all or a portion of the disputed amount, then such amount shall be paid, with interest at the Late Payment Rate from the date that amount would have been due in the absence of any dispute.

9.4.4 Payments to be made under this Contract shall, for a period of not longer than one (1) year, remain subject to adjustment based on billing adjustments due to error or omission by either Party.

9.4.5 Any amounts due to either RF/QF or PEF under this Contract, other than those specified in Section 9.4.1, shall be paid within twenty (20) days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.5 Billing Disputes

9.5.1 Either Party may dispute in good faith the accuracy of a reading of the Metering Equipment and/or the accuracy of an invoice or an adjustment to a prior invoice. Where a reading, invoice or adjustment is the subject of a dispute in good faith, the disputing Party shall give notice to the other Party within ten (10) days after delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. Such dispute shall be resolved in accordance with Section 20.9.

9.5.2 All amounts paid as a result of the settlement or resolution of a dispute regarding meter accuracy shall be paid with interest thereon at the Late Payment Rate from the day on which such payment originally fell due to and until the date such payment is made.

10. Electricity Production and Plant Maintenance Schedule

10.1 The Facility shall be operated on a baseload, “must-run” basis, except for Forced Outages, Planned Outages, Additional Maintenance Outages, periods when performance is suspended hereunder or Emergency Conditions. Within ninety (90) days after the Capacity Delivery Date, RF/QF shall provide PEF with a good faith estimate of the quantity of Energy associated with Committed Capacity that is forecasted to be generated and delivered to PEF for the remainder of that calendar year and, thereafter, by October 1 of each such year, RF/QF shall provide PEF with a good faith estimate of the quantity of Energy associated with the Committed Capacity that RF/QF will deliver in each subsequent calendar year including the time, duration and magnitude of any Planned Outage. The RF/QF shall provide updates to its planned maintenance periods as they become known. The Parties agree to discuss coordinating scheduled maintenance outages.

10.2 By October 1 of each year, RF/QF shall deliver to PEF the projected operating schedule for the Facility for the next calendar year, including any Planned Outages. RF/QF shall take manufacturers’ recommendations and Prudent Utility Practices into account when establishing the proposed schedule for and anticipated duration of Planned Outages. Planned Outages and/or Additional Maintenance Outages may not be scheduled during the months of January, February, June, July, August, or September unless agreed to by PEF in its sole

discretion. Within thirty (30) days of receiving RF/QF's proposed operating schedule, including the Planned Outages, PEF may propose reasonable amendments thereto consistent with the terms of this Contract. The RF/QF shall only schedule Planned Outages during periods approved by PEF, which shall not be unreasonably withheld. RF/QF shall not unreasonably withhold its consent to PEF's proposed amendments, provided, however, that, for the avoidance of doubt, it shall not be unreasonable for RF/QF to withhold its consent to any proposed amendments of PEF that would, in RF/QF's opinion, be contrary to manufacturer's recommendation, any applicable warranty or Prudent Utility Practices. Planned Outage Days shall be limited to [REDACTED].

10.3 If the need arises for RF/QF to conduct maintenance on the Facility in addition to the Planned Outages ("Additional Maintenance Outages"), RF/QF shall notify PEF of such maintenance, together with dates for carrying out such maintenance and the estimated duration of the work to be carried out. RF/QF and PEF shall confer in good faith to determine a reasonable schedule during which such Additional Maintenance Outages shall take place.

10.4 If RF/QF identifies the need to remove the Facility from operation due to a Forced Outage, RF/QF shall provide PEF with prompt notice of the Forced Outage. As soon as possible following the commencement of the Forced Outage, RF/QF shall provide PEF with information pertaining to the cause of the outage and the anticipated return to service date. Notwithstanding the foregoing, the RF/QF is required to provide the Capacity from the Facility to PEF except (i) during a Planned Outage or Additional Maintenance Outage, (ii) during a period in which notification of a Forced Outage or reduction was provided, (iii) during an event of Force Majeure, (iv) during a period when performance is suspended hereunder and (v) during Emergency Conditions.

10.5 Control

10.5.1 Power supplied by the RF/QF hereunder shall be in the form of three-phase 60 hertz alternating current, at a nominal operating voltage of the interconnection voltage level as of the Execution Date.

10.5.2 The RF/QF shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, PEF's system, except for normal testing and repair in accordance with Prudent Utility Practices as agreed by the Parties. The RF/QF shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. All RF/QF facilities shall meet IEEE and industry standards. The RF/QF shall have independent, third party qualified personnel test, calibrate and certify in writing all protective equipment at least once every twelve (12) months in accordance with Prudent Utility Practices. A unit functional trip test shall be performed after each overhaul of the

Facility's turbine, generator or boilers and results provided to PEF in writing prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with Prudent Utility Practices as agreed by the Parties.

10.5.3 If the Facility is separated from the PEF system for any reason, under no circumstances shall the RF/QF reconnect the Facility to PEF's system without first obtaining PEF's specific approval.

10.5.4 During the term of this Contract, the RF/QF shall employ or contract with a Person having qualified personnel for managing, operating and maintaining the Facility and for coordinating such with PEF. The RF/QF shall ensure that operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) calendar days a week. Additionally, during the term of this Contract, the RF/QF shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Prudent Utility Practices.

10.5.5 During the term of this Contract, the RF/QF shall maintain sufficient Fuel [REDACTED] to deliver the Committed Capacity and associated Energy for an uninterrupted [REDACTED] period. At PEF's request, the RF/QF shall demonstrate this capability to PEF's reasonable satisfaction. During the term of this Contract, the RF/QF's output shall [REDACTED]. This calculation will be adjusted to exclude all outage periods and periods during which the RF/QF's output is affected by a Force Majeure event or the breach or failure of PEF or the Transmission Provider. In the event of a failure of RF/QF to comply with this Section 10.5.5 with respect to output, it shall within sixty (60) days after receipt of notice thereof from PEF, develop a plan to address such conditions and thereafter implement such plan in accordance with Prudent Utility Practices.

10.5.6 PEF shall not be obligated to purchase, and may require curtailed or reduced deliveries of Energy to the extent allowed under FPSC Rule 25-17.086 and under any curtailment plan which PEF may have on file with the FPSC and as may be amended from time to time.

10.6 Metering

10.6.1 All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the "Meters"), shall be installed at the Facility, and tested at RF/QF's expense in accordance with Prudent Utility Practice and any applicable requirements and standards issued by NERC and the Transmission Provider. The Meters shall be

operated and maintained by PEF as required by Applicable Law and Prudent Utility Practice. The Meters shall be used for the registration, recording and transmission of information regarding the production of Energy by the Facility.

- 10.6.2** Readings of the Meters at the Facility by the Transmission Provider in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Committed Capacity and associated Energy produced by the Facility; provided however, that if RF/QF, at its initiative or PEF shall cause the Meters to be tested by the Transmission Provider in whose territory the Facility is located and any Meter that is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Committed Capacity and associated Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of the Transmission Provider, and any adjustment shall be reflected in the next invoice provided by PEF to RF/QF hereunder and (ii) PEF shall reimburse RF/QF for the cost of such test of the Meters.
- 10.6.3** RF/QF shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from RF/QF to PEF. RF/QF shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by PEF. PEF shall provide RF/QF with timely notice of any such testing or calibration. PEF may conduct a testing or calibration to completion if a RF/QF representative fails to attend or departs prior to completion of a testing or calibration.
- 10.6.4** Either Party may, at its option and expense, install, operate and maintain one or more check meters in accordance with Prudent Utility Practice. Check meters will not be used for measurement of Committed Capacity and associated Energy except as provided in 10.5.5. Check meters will be subject to inspection and testing by the other Party at all reasonable times.
- 10.6.5** If the Meters fail to register, or the measurement made by Meters during a test varies by more than one percent (1%) from the measurement made by the standard meter used in the test, if either Party had installed a check meter and such check meter is registering accurately, an adjustment to prior billings will be made to accord with the check meter (or the average of both Parties' check meters, if applicable). If no check meters have been installed or any installed check meters are not registering accurately, or the Parties cannot agree on the amount or duration of the inaccuracy, the adjustment will be made for the amount of inaccuracy as measured by the test in accordance with Section 10.5.2. In no case shall an adjustment to

previous billings be corrected more than one (1) year from the date that Committed Capacity and associated Energy was received by PEF.

11. Completion/Performance Security

- 11.1** Within thirty (30) days of the Approval Date, RF/QF shall deliver to PEF Eligible Collateral (in cash) in an amount specified in Appendix 5. RF/QF's performance security shall be maintained throughout the Term although the amount of Eligible Collateral shall be adjusted from time to time in accordance with this Article 11 and Appendix 5.
- 11.2** In the event that a Material Adverse Change occurs in respect of RF/QF, then within two (2) Business Day(s) RF/QF shall deliver to PEF Supplemental Eligible Collateral equal to 50 percent of the current Eligible Collateral amount or, if the Material Adverse Change is a downgrade of the Letter of Credit Issuer, a replacement Letter of Credit issued by a Qualified Institution in the amount specified in Appendix 5, as applicable; provided however, that in the PEF's sole discretion, based on a review of the overall circumstances of RF/QF's Material Adverse Change, the total of the Eligible Collateral and the Supplemental Eligible Collateral may be reduced, but in no event shall the amount be less than the amounts set forth in Appendix 5.
- 11.3** Any cash provided by RF/QF as Eligible Collateral under this Contract shall be held in an interest bearing escrow account selected by PEF in its reasonable discretion. All interest accrued on a cash deposit by RF/QF shall be retained in the account; provided, however, that to the extent the amount held in the account exceeds the required level of Eligible Collateral, such excess shall be paid to RF/QF upon request by RF/QF. PEF shall cause all funds in the escrow account to be paid to RF/QF within five (5) days after the Effective Date.
- 11.4** Upon any reduction of the amount of RF/QF performance security pursuant to a change in the nature or issuer of the Eligible Collateral or the credit rating of the issuer as provided in Appendix 5, PEF shall upon two (2) Business Days written request by the RF/QF release any Eligible or Supplemental Eligible Collateral that is no longer required. The choice of the type of Eligible Collateral by the RF/QF may be selected from time to time by the RF/QF and upon receipt of substitute Eligible Collateral, PEF shall promptly release such Eligible Collateral. Following any termination of this Contract, the Parties shall mutually agree to a final settlement of all obligations under this Contract, which such period shall not exceed ninety (90) days from such termination date unless extended by mutual agreement between the Parties. After such settlement, any remaining Eligible Collateral posted by the RF/QF that has not been drawn upon by PEF pursuant to its rights under this Contract shall be promptly returned to the RF/QF. Any dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 20.9.
- 11.5** PEF may draw upon Eligible Collateral or Supplemental Eligible Collateral provided by the RF/QF following the occurrence of an Event of Default by

RF/QF or pursuant to the other express provisions of this Contract in order to recover any damages to which PEF is entitled to under this Contract. In the event of such a draw then, except in the circumstance when this Contract otherwise terminates, the RF/QF shall within two (2) Business Days replenish the Eligible Collateral or Supplemental Eligible Collateral to the full amounts required by Appendix 5.

11.6 RF/QF shall promptly notify PEF of any circumstance that results in RF/QF's failure to be in compliance with the RF/QF performance security requirements of this Article 11. From time to time, at PEF's written request, RF/QF shall provide PEF with such evidence as PEF may reasonably request, that RF/QF and any RF/QF Guarantor, RF/QF Guarantee, Letter of Credit or PEF Security Account is in full compliance with the applicable requirements of this Contract.

11.7 Termination Fee.

11.7.1 Due to the RF/QF's election to receive early levelized capacity payments, the RF/QF shall owe and be liable to PEF for the Termination Fee under the circumstances provided herein. The RF/QF's obligation to pay the Termination Fee shall survive the termination of this Contract. PEF shall provide the RF/QF, on a monthly basis, a calculation of the Termination Fee.

11.7.2 The Termination Fee shall be secured by the RF/QF by: (i) an unconditional, irrevocable, direct pay letter(s) of credit issued by a financial institution(s) with an investment grade credit rating in form and substance acceptable to PEF (including provisions permitting PEF to draw upon such Letter of Credit, in full, if such Letter of Credit is not renewed or replaced at least ten (10) Business Days prior to its expiration date); (ii) a bond issued by a financially sound company in form and substance acceptable to PEF; or (iii) a cash deposit with PEF (any of (i), (ii), or (iii), the "Termination Security"). The specific security instrument selected by the RF/QF for purposes of this Contract is:

- Unconditional, irrevocable, direct pay letter(s) of credit.
- Bond.
- Cash deposit(s) with PEF.

11.8 PEF shall have the right and the RF/QF shall be required to monitor the financial condition of (i) the issuer(s) in the case of any letter of credit and (ii) the insurer(s), in the case of any bond. In the event the senior debt rating of any issuer(s) or insurer(s) has deteriorated, PEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable, in accordance with Appendix 5 and Appendix 7. In the event that PEF notifies the RF/QF that it requires such a replacement, the replacement letter(s) of credit or bond, as applicable, must be

issued by a financial institution(s) or insurer(s) with an investment grade credit rating within thirty (30) calendar days following such notification. Failure by the RF/QF to comply with the requirements of this Section 11.8 shall be grounds for PEF to draw in full on any existing letter of credit or bond and to exercise any other remedies it may have hereunder, subject to the right of RF/QF to receive full reimbursement of the amount of any draw within three (3) days after RF/QF provides sufficient Eligible Collateral.

12. Taxes

- 12.1** RF/QF shall be responsible for all Taxes imposed or levied relating to the ownership or operation of the Facility. PEF will be responsible for all Taxes imposed upon the purchase of Committed Capacity and associated Energy (including any applicable sales or use or similar Tax). If either Party is required to collect or remit any Taxes that are the other Party's responsibility hereunder, it shall give prompt notice thereof to the other Party and thereafter cooperate with the other Party in connection with any challenge to such Tax. The other Party shall upon receipt of notice of payment of the Tax promptly reimburse the Party which has paid such Taxes. The Parties shall use all reasonable efforts to administer this Contract and implement the provisions hereof in a manner that will minimize Taxes due and payable by the Parties.
- 12.2** Each Party will be responsible for its own Tax reporting. Each Party shall provide the other Party, upon written request, with copies of any documentation in its possession and control that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit.
- 12.3** A Party, on notice from the other Party, shall provide a certificate or exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use commercially reasonable efforts to obtain, and cooperate with the other Party obtaining, any exemption or reduction of Taxes.
- 12.4** In the event that PEF becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Service determination, through audit, ruling or other authority, that PEF's payments to the RF/QF for Capacity are not fully deductible when paid (additional tax liability), PEF may bill the RF/QF monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these Capacity payments are not currently deductible for federal and/or state income tax purposes. PEF, at its option, may offset or recoup these costs against amounts due the RF/QF hereunder. These costs would be calculated so as to place PEF in the same economic position in which it would have been if the entire Capacity payments had been deductible in the period in which the payments were made. If PEF decides to appeal the Internal Revenue Service's determination, the decision as to whether the appeal should be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive

and procedural), shall rest exclusively with PEF. PEF shall promptly notify RF/QF of any such determination by the Internal Revenue Service.

13. Non-Default Termination Rights

Notwithstanding any other provision of this Contract, PEF's exclusive remedy for the failure of RF/QF to satisfy by the Drop Dead Date Conditions Precedent to be satisfied by RF/QF shall be the following:

13.1 PEF shall have the right to terminate this Contract by notice to RF/QF if RF/QF fails to timely satisfy by the Drop Dead Date (or such later date as may be agreed upon by the Parties for satisfaction of Conditions Precedent) any Condition Precedent to be satisfied by RF/QF by such date for any reason other than an Event of Default by PEF. If RF/QF's failure to satisfy any such Condition Precedent was not caused by an Event of Default by PEF, PEF shall have the right, as its sole and exclusive remedy hereunder for the failure of RF/QF to satisfy any Condition Precedent, to make a single draw in the full amount of the Eligible Collateral provided by RF/QF pursuant to Section 11.1 and Appendix 5 within thirty (30) days after the Drop Dead Date or such later date agreed upon by the Parties and the Parties shall have no further liability in respect of such termination.

13.2 If, after all Conditions Precedent to be satisfied by the Drop Dead Date are satisfied or waived and RF/QF provides the Eligible Collateral required under Section 11.1 and Appendix 5, RF/QF fails to achieve completion of the Facility and Capacity Delivery Status on or before the Required Capacity Delivery Date (or such later date, if any as permitted in Section 7.5 and 7.6) for any reason other than an Event of Default by PEF, PEF shall have the right to terminate this Contract and make a single draw in the full amount of the Eligible Collateral provided by RF/QF pursuant to Section 11.1, [REDACTED] paid to PEF, in accordance with Section 7.6 and the timelines contained within this Agreement. Such termination of this Contract by PEF and drawing on the Eligible Collateral provided by RF/QF shall be PEF's sole and exclusive remedy and relief for the failure of RF/QF to achieve Capacity Delivery Status before the Required Capacity Delivery Date and the Parties shall have no further liability in respect of such termination.

14. Default

Subject to the applicable cure period, if any, each of the following shall constitute an Event of Default:

(a) the RF/QF permanently and materially changes or modifies the Facility from that described in Appendix 2 with respect to its type, location (subject to Appendix 2), technology or fuel source, without the prior written approval of PEF;

- (b) after the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix 3, of at least seventy-four percent (74%);
- (c) the RF/QF fails to satisfy its obligations to maintain sufficient Fuel on the Site to deliver the Committed Capacity and associated Energy for an uninterrupted [REDACTED] under Section 10.4.4 hereof within five (5) days after written notice from PEF;
- (d) either Party fails to make when due, any undisputed payment required pursuant to this Contract if such failure is not remedied within five (5) Business Days after written notice;
- (e) either Party, or the entity which owns or controls either Party, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against either Party or the entity which owns or controls either Party; or if a receiver shall be appointed for either Party or any of its assets or properties, or for the entity which owns or controls either Party; or if any part of either Party's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof unless such proceedings are commenced by or on behalf of a Lender; or if either Party shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;
- (f) if, at any time after the Capacity Delivery Date, the RF/QF reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 7.2 within twelve (12) months following the occurrence of such event of Force Majeure;
- (g) any representation or warranty made by a Party herein proves to have been false or misleading in any material respect when made or when deemed made or repeated and, if curable, is not cured within sixty (60) days after notice, or if the misrepresentation or breach of warranty is not capable of a cure;
- (h) either Party breaches any material provision of this Contract not specifically mentioned in this Section 14 and fails to cure such breach within sixty (60) days after written notice, or if such breach cannot be cured within sixty (60) days, within one hundred eighty (180) days thereafter, provided that the Party commences efforts to cure the breach within sixty (60) days and thereafter uses best commercially reasonable efforts to cure the breach in no event greater than 90 days.
- (i) The RF/QF fails to give Proper Assurance within thirty (30) calendar days after PEF, with reasonable grounds for insecurity with respect to RF/QF's performance of the cure of any of the events set forth in Section 14(a)–(h), has requested in writing Proper Assurance.

- (j) The RF/QF fails to achieve or maintain licensing, certification, and all federal, state, and local governmental, environmental, and licensing approvals required to initiate construction of the Facility by no later than the Completed Permits Date.

15. Rights in the Event of Default

- 15.1** Upon the occurrence of any of the Events of Default in Section 14, and subject to any obligations set forth in the Consent and Agreement, the non-defaulting Party may, at its option: (a) withhold payments due to the defaulting Party under this Contract; (b) suspend performance under this Contract; and/or (c) designate a day (by providing the defaulting Party with written notice thereof), which day shall be no earlier than the day such notice is effective and shall be no later than sixty (60) days after the delivery of such notice is effective, as a date for early termination of this Contract ("Early Termination Date"), to accelerate all amounts owing between the Parties as of the Early Termination Date, to draw on Eligible Collateral and the Termination Fee provided for its benefit by the defaulting Party and to liquidate and terminate this Contract, upon which date this Contract shall terminate.
- 15.2** Upon such early termination becoming effective, neither Party shall have any further liability to the other Party arising under or related to this Contract, except for any liabilities and obligations accruing prior to the Early Termination Date or any liabilities and obligations which by their nature or the express terms of this Contract extend beyond the termination of this Contract. Except as otherwise expressly provided in this Contract, all of the remedies and other provisions set forth in Section 15.1 shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien, or other right to which any Party is at any time otherwise entitled, whether by operation of law or in equity, under contract, or otherwise.
- 15.3** Upon the breach by either Party hereto of any obligation, covenant or warranty hereunder, the non-defaulting Party damaged by any such Event of Default may in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with Section 20.9 to protect and secure its rights, to recover any damages and to obtain any other relief to which it may be entitled (which shall include all attorney's fees, costs and expenses reasonably incurred in the exercise of its remedy).
- 15.4** TO THE EXTENT ANY EXPRESS REMEDY, PAYMENT OBLIGATION, OR MEASURE OF DAMAGES FOR BREACH OF ANY SECTION OF THIS CONTRACT IS SET FORTH IN THIS CONTRACT, SUCH REMEDY, PAYMENT OBLIGATION OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE BREACH OF SUCH SECTION. ACCORDINGLY, EACH PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH SECTION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY NOT PERMITTED BY SUCH SECTION ARE WAIVED. NEITHER PARTY, ITS AFFILIATES OR ITS LENDERS WILL BE

LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, EXCEPT TO THE EXTENT THAT AN ANTICIPATED CLAIM FOR WHICH A PARTY IS REQUIRED TO INDEMNIFY THE OTHER PARTY UNDER ARTICLE 14 INCLUDES SUCH DAMAGES INCURRED BY THE THIRD PARTY MAKING SUCH CLAIM.

16. Indemnification

16.1 PEF and the RF/QF shall each be responsible for its own facilities and systems. PEF and the RF/QF shall each be responsible for ensuring adequate safeguards for other PEF customers, PEF's and the RF/QF's personnel and equipment, and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by Applicable Law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "PEF Entities" and "RF/QF Entities") from and against any and all Claims to the extent directly caused by, arising out of, or resulting from:

- (a) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;
- (b) any negligent act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation or transmission system or the operation thereof in connection with the other Party's system;
- (c) any defect in, failure of, or fault related to, the Indemnifying Party's generation system or transmission system;
- (d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or
- (e) any other event or act that is the result of, or proximately caused by, the negligence, violation of law or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees related to the Contract or the Parties' performance thereunder.

16.2 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 that failure to provide notice adversely affects or prejudices the Indemnifying Party's interests or its ability to defend the Claim or appear in the proceeding. 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 or proceeding

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, 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 timely assume the defense of a Claim or appear in a proceeding, the indemnification of which is required under this Contract, 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. All indemnity rights herewith shall survive the expiration or any sooner termination of this Contract in full for a period of twenty-four (24) months after the expiration date or effective date of such termination.

17. Insurance

- 17.1** The RF/QF shall procure or cause to be procured and shall maintain throughout the entire Term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable to PEF on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "RF/QF Insurance"). An original certificate of insurance shall be delivered to PEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the RF/QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract or (ii) caused by operation of the Facility or any of the RF/QF's equipment or by the RF/QF's failure to maintain the Facility or the RF/QF's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with PEF's system, the RF/QF Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to PEF, including the deductible amounts. Any premium assessment or deductible shall be for the account of the RF/QF and not PEF except to the extent that the casualty, loss or damage results from the negligence or willful misconduct of PEF or its contractors. In such event, PEF shall only be liable for that portion of the deductible directly attributable to the extent of its negligence.
- 17.2** The RF/QF Insurance shall have a minimum limit of [REDACTED] per occurrence, combined single limit, for bodily injury (including death) or property damage.

- 17.3** To the extent that the RF/QF Insurance is on a “claims made” basis, the retroactive date of the policy(ies) shall be the Effective Date of this Contract or such other date as may be agreed upon to protect the interests of the PEF Entities and the RF/QF Entities. Furthermore, to the extent the RF/QF Insurance is on a “claims made” basis, the RF/QF’s duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the RF/QF Insurance is on an “occurrence” basis, such insurance shall be maintained in effect at all times by the RF/QF during the term of this Contract.
- 17.4** The RF/QF Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days’ written notice to PEF. The RF/QF shall provide PEF with a copy of any material communication or notice related to the RF/QF Insurance within ten (10) Business Days of the RF/QF’s receipt or issuance thereof.
- 17.5** The RF/QF shall be designated as the named insured and PEF shall be designated as an additional named insured under the RF/QF Insurance. The RF/QF Insurance shall be endorsed to be primary to any coverage maintained by PEF.

18. Force Majeure

- 18.1** A “Force Majeure” is defined as an event, or circumstance that is not reasonably expected and is beyond the control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its transportation providers, contractors, vendors, distributors or suppliers and prevents, prohibits, delays or adversely affects the performance by that Party of its obligations or conditions precedent or the cure of breaches under or pursuant to this Contract. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental, regulatory, customs or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage, pestilence, epidemics, pandemics, explosions and fires [REDACTED], earthquakes, sinkholes, hurricanes, tornadoes, floods, tidal surges, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement). Force Majeure shall not be based on (i) the loss or deregulation of PEF’s markets; (ii) PEF’s economic inability to use or resell the Committed Capacity and Energy purchased hereunder; or (iii) RF/QF’s inability to sell the Committed Capacity or associated Energy at a price greater than the price herein. Equipment delivery delays, breakdowns or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet the requirements of Governmental Approvals, financing or regulatory standards, or otherwise caused by an event originating in the control of a Party, or a Party’s failure to obtain on a timely basis and maintain a necessary Governmental Approval, shall not be presumed to be an event of Force Majeure, unless such Party can reasonably demonstrate that the event was not reasonably foreseeable, was beyond the Party’s reasonable control and was not caused by its negligence or lack of due diligence or the negligence or

lack of due diligence of its agents, transportation providers, contractors, vendors or suppliers and adversely affects the performance by that Party of its obligations or conditions precedent or cure rights under or pursuant to this Contract. Force Majeure shall not excuse the obligation to pay or credit any amounts due or accrued under this Contract owed up through the date of the Force Majeure event.

- 18.2** Neither Party shall be considered in default under this Contract for any delay or failure in the performance of its obligations under this Contract if such delay or failure is due to an event of Force Majeure. Except as otherwise provided in this Contract, during the continuance of the impact of a Force Majeure, the affected Party shall be excused from any failure of or delay in performance (and shall be entitled to an extension of time to exercise a cure right) to the extent such delay or non-performance (or inability to exercise a cure right) was caused by the Force Majeure.
- 18.3** In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party claiming Force Majeure shall communicate (with prompt written confirmation) or notify the other Party in writing within five (5) Business Days of the occurrence of the event of Force Majeure, of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A Party claiming Force Majeure shall not be entitled to any relief therefor unless and until conforming communication or notice is provided. The Party claiming Force Majeure shall notify the other Party of the cessation of the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force Majeure in either case within two (2) Business Days thereof.
- 18.4** The Party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, 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 unfavorable. If an event of Force Majeure and the impacts thereof persist for a continuous period of at least twenty-four (24) months, either Party shall have the right, in its sole discretion, to terminate this Contract upon giving written notice to the other Party ninety (90) days in advance of the date of termination (which notice may be given as early as the twenty-fourth (24th) month anniversary of the Force Majeure event). Upon such termination becoming effective, neither Party shall have any further liability to the other Party arising under or related to this Contract.
- 18.5** If RF/QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, RF/QF may, upon notice to PEF, temporarily adjust the Committed Capacity as a result of such event. Such adjustment shall be effective upon the first day immediately following PEF's receipt of such notice or such later date as may be specified by RF/QF.

- 18.6** If the Facility should be rendered completely inoperative as a result of a Force Majeure, RF/QF shall temporarily designate the Committed Capacity at 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed immediately prior to the Force Majeure. RF/QF may redesignate the Committed Capacity for up to twenty-four (24) consecutive months in respect of a Force Majeure; provided, however, that no more than one such temporary redesignation may be made by RF/QF annually within any twenty-four (24) month period as relates to a specific Force Majeure, unless PEF otherwise agrees to such additional temporary redesignation in writing. Any temporary or final re-designation of the Committed Capacity pursuant to this Section 18.6 must be attributable to the Force Majeure and of a magnitude commensurate with the scope and impact of the Force Majeure. Any Dispute regarding the amount of such temporary or final redesignation of the Committed Capacity shall be resolved in accordance with Section 20.9.
- 18.7** If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the RF/QF shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
- 18.8** Within three (3) months after any such Force Majeure is cured as set forth in notice by RF/QF to PEF, RF/QF may, on one occasion, and without penalty or other condition, designate a new Committed Capacity; provided, however, that such new Committed Capacity shall be equal to the Committed Capacity as of the date of the occurrence of the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cure, PEF shall have the right to require a Committed Capacity test to demonstrate the Facility's compliance with the requirements of this Section 18.8. Any Committed Capacity test required by PEF under this Section shall be in addition to any Committed Capacity test that may otherwise be required by PEF under this Contract.
- 18.9** Subject to the right of the Lenders under the Financing Agreements to consent to the reconstruction of the Facility after the occurrence of a Condemnation Event or Material Casualty Event and RF/QF's or PEF's right to terminate this Contract as a result of a Force Majeure as set forth in Section 18.4, the RF/QF agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with PEF's system if the same is (are) rendered inoperative due to actions of the RF/QF, its agents, or Force Majeure events affecting the RF/QF, the Facility or the interconnection with PEF. PEF agrees to reactivate, at its own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by PEF or its agents.
- 18.10** This Contract may be terminated (i) by RF/QF following a Condemnation Event or a Material Casualty Event or (ii) by PEF following a Condemnation Event or Material Casualty Event occurring after the Capacity Delivery Date if RF/QF has not repaired or rebuilt the Facility to the Minimum Committed Capacity within two (2) years of the occurrence of such Condemnation Event or Material Casualty

Event. Termination of this Contract pursuant to Section 18.4 or this Section 18.10 shall not be considered a termination due to an Event of Default or require the payment of damages by either Party except as set forth herein. Following such termination, both Parties will be released from any further liability under this Contract relating to such termination except for payment to PEF of that portion of the Termination Fee due and owing to PEF for any early capacity payments made to the RF/QF.

19. Representations, Warranties, and Covenants

The Parties represent and warrant as follows as of the Execution Date:

19.1 Organization, Standing and Qualification

PEF represents and warrants that it is a corporation duly organized and validly existing in good standing under the laws of Florida and has all necessary power and authority to carry on its business as presently conducted to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The RF/QF represents and warrants that it is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware and has all necessary power and authority to carry on its business as presently conducted to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. Each Party represents and warrants that it is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the other Party.

19.2 Due Authorization, No Approvals, No Defaults

Each of the execution, delivery and performance by each Party of this Contract has been duly authorized by all necessary action on the part of such Party, does not require any approval, except as has been heretofore obtained, of the shareholders PEF or of the board of directors, managers and Members of the RF/QF or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of such Party, except for such as have been duly obtained, those which are not obtainable prior to the Execution Date and those which are not required for the commencement of performance of its obligations under this Contract, and does not contravene or constitute a default under any law, the articles of incorporation of PEF or the articles of organization of limited liability company and operating agreement of RF/QF, or any agreement, judgment, injunction, order, decree or other instrument binding upon such Party, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

19.3 Compliance with Laws

Each Party has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. Each Party also is in compliance with all laws, except to the extent that failure to comply therewith would not, individually in the aggregate, have a material adverse effect on it.

19.4 Governmental Approvals

Except as expressly contemplated herein, neither the execution and delivery by each Party of this Contract, nor the consummation by each Party of any of the transaction contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action with respect to Government Agency, except with respect to Governmental Approvals (a) which have already been obtained and are in full force and effect or (b) are not yet obtainable or required to be obtained (and with respect to which the RF/QF has no actual knowledge of any fact that the same will not be obtainable in the ordinary course of business upon due application therefor).

19.5 No Suits, Proceedings

There are no actions, suits, proceedings or investigations pending or, to the knowledge of each Party, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on its business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. Each Party has no knowledge of a violation or default with respect to any law which could result, individually or in the aggregate, in any such materially adverse effect or impairment.

19.6 Environmental Matters

Each Party has no actual knowledge of (a) existing violations of any environmental laws at the Site, including those governing hazardous materials or (b) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by governmental authorities or other third parties alleging violations of any environmental law or permit which would materially and adversely affect the operation of the Facility as contemplated by this Contract.

20. General Provisions

20.1 Project Viability

To assist PEF in assessing the RF/QF's financial and technical viability, the RF/QF shall provide information and documents reasonably requested by PEF or substantially similar documents in electronic, downloadable or paper format as determined by RF/QF, to the extent the documents apply to the type of Facility covered by this Contract and are within the possession or control of RF/QF. Any such information and documents provided by RF/QF shall be deemed Confidential Information.

20.2 Permits

The RF/QF hereby agrees to use commercially reasonable efforts to obtain and shall maintain any and all Governmental Approvals which the RF/QF is required to obtain as a prerequisite to engaging in the activities specified in this Contract prior to commencing the applicable activity

20.3 Project Management

If requested by PEF, the RF/QF shall submit to PEF, in electronic, downloadable or paper format as determined by RF/QF, its integrated project schedule for PEF's review within sixty (60) calendar days from the Effective Date, and a start-up and test schedule for the Facility at least sixty (60) calendar days prior to the commencement of the first Committed Capacity Test of the Facility. These schedules shall identify applicable key licensing, permitting, construction and operating milestone dates and activities. If requested by PEF, the RF/QF shall submit progress reports in a form satisfactory to PEF every calendar month until the Capacity Delivery Date and shall notify PEF of any material changes in such schedules within ten (10) Business Days after such changes are determined. PEF shall have the right, upon reasonable advance notice in writing, at its cost and expense, to monitor during normal business hours the construction, start-up and testing of the Facility, either on-site or off-site, subject to applicable site rules relating to safety, security, insurance, indemnity and confidentiality. PEF's technical review and inspections of the Facility and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility.

The RF/QF shall provide PEF with the final designer's/manufacturer's generator capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams, and alternating current and direct elementary diagrams for review and inspection at PEF no later than one hundred eighty (180) calendar days prior to the initial synchronization date.

20.4 Assignment

20.4.1 Neither Party may assign this Contract, without the other Party's prior written approval, which approval may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party (and without relieving itself from liability hereunder), transfer or assign this

Contract to an Affiliate of such Party provided that such Affiliate has substantially equivalent financial capability to that of the assigning Party, or transfer or assign this Contract to any creditworthy person or entity succeeding to all or substantially all of the assets of such Party; provided however, that any such assignee shall agree to be bound by the terms and conditions hereof. Approval of PEF shall not be required for RF/QF to mortgage, lien, charge, grant a security interest in, pledge or assign the Facility, this Contract or any of RF/QF's other rights, interests and benefits in, to and under this Contract, or the revenues under this Contract to any Lender as security for the financing or re-financing of the design, development, construction, operation, maintenance, repair and/or decommissioning of the Facility. In connection with any financing or refinancing of the Facility and upon reasonable request therefor, PEF shall (i) execute one or more estoppel certificates in respect of this Contract in a form reasonably acceptable to PEF and to RF/QF's Lenders, and (ii) execute the Consent and Agreement upon the request of RF/QF.

20.5 Disclaimer; Third Parties

In executing this Contract, PEF does not, nor should it be construed, to extend its credit or financial support for benefit of any Lenders or other third parties lending money to or having other transactions with the RF/QF or any assigns of this Contract. Nothing contained in this Contract shall be construed to create an association, trust, partnership, or joint venture between the Parties or to authorize a Party to obligate or bind the other Party. Other than as specified in the assignment provisions contained in Section 20.4, this Contract is intended solely for the benefit of the Parties, and nothing in this Contract shall be construed as creating any duty to, standard of care with reference to, or any liability to, or conferring any cause or right of action on any other Person not a Party to this Contract. The Parties acknowledge that the Lenders are third-party beneficiaries of this Contract, as set forth in the Consent and Agreement as it relates to any breach, default or non-performance by RF/QF under the Financing Documents. No undertaking by one Party to the other hereunder shall constitute the dedication of that Party's facilities and systems or any portion thereof to the other Party or the public, nor affect the status of PEF as a regulated utility company or RF/QF as an independent Person. Notwithstanding any other provision of this Contract, no Person (nor any officer, employee, executive, director, agent or authorized representative of any such Person) other than RF/QF and PEF and, to the limited extent explicitly set forth in (i) any Eligible Collateral documentation, the Person obligated to provide such Eligible Collateral, and (ii) the Consent and Agreement, a Person expressly assuming the obligations of the RF/QF hereunder, shall be liable for any payments due hereunder or for the performance of any obligation hereunder.

20.6 Notification

All formal requests, demands, notices, approvals or consents relating to this Contract, other than matters relating to the day-to-day performance and administration of this Contract, shall be deemed duly given when delivered in person, by registered or certified mail, or by fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated below if delivery is made to the addresses Party during normal business hours on a Business Day; otherwise notice will be deemed delivered at 9:00 a.m. on the next Business Day. The Parties designate the following individuals to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions to contact another individual:

For the RF/QF:

U.S. EcoGen Polk, LLC
1000 N. U.S. HWY 1, Suite 807
Jupiter, Florida 33477
Attn: William F. Quinn
Tel: 561-744-7300
Fax: 561-744-7300

For PEF:

Progress Energy Florida
Cogeneration Manager PEF 155
299 First Avenue North
St. Petersburg, FL 33701
Tel: 727-820-4597
Fax: 727-820-4598

Copies of all notices hereunder shall be sent to the Lenders at the address designated in notice to PEF. Notices or copies of notices required to be sent to RF/QF's Lenders shall be sent to the most current address designated by notice to PEF by RF/QF or the Lenders. Contracts and related documents may be mailed to the address below or delivered during normal business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:

Florida Power Corporation
d/b/a Progress Energy Florida, Inc.
299 First Avenue North
St. Petersburg, FL 33701

Attention: Cogeneration Manager PEF 155

20.7 Applicable Law

This Contract shall be construed in accordance with and governed by the laws of the State of Florida, and the rights of the Parties shall be construed in accordance with the laws of the State of Florida.

20.8 Cost Recovery

PEF's payment obligations under this Contract are expressly conditioned upon the mutual commitments set forth in this Contract and upon PEF being authorized by the FPSC to be fully reimbursed for all payments for Energy through the Fuel Adjustment Clause (as herein defined) and the Capacity Cost Recovery Clause (as herein defined) or other authorized rates or charges, as proposed by PEF in its sole discretion and approved by the FPSC.

- 20.8.1** For purposes of this Contract, "Fuel Adjustment Clause" shall mean the clause set forth in FPSC Order No. 2515-A dated April 24, 1959, as may be amended, revised, and/or replaced from time to time by the FPSC.
- 20.8.2** For purposes of this Contract, "Capacity Cost Recovery Clause" shall mean the clause set forth in FPSC Order No. 25773 dated February 24, 1992, as may be amended, revised, and/or replaced from time to time by the FPSC.
- 20.8.3** Notwithstanding any other provisions of this Contract, should PEF at any time during the Term, despite its prudent efforts, be denied authorization by FPSC (or any other regulatory bodies having future jurisdiction over PEF's rates and charges) to recover from its customers all payments by PEF to RF/QF for Committed Capacity or associated Energy delivered hereunder at the rates required under the terms of this Contract then payments to RF/QF from PEF hereunder shall be reduced accordingly. PEF shall provide prompt notice to RF/QF after it receives notice that the FPSC or other legislative, administrative, judicial or regulatory authority seeks or will seek to prevent PEF from recovering all or any portion of amounts paid by PEF to RF/QF for Committed Capacity or associated Energy under this Contract. PEF shall provide reasonable cooperation to RF/QF if RF/QF files a petition, motion or pleading relating to the disallowed payments. Neither Party shall initiate any action or proceeding or make a filing in a proceeding to reduce, deny or defer recovery of payments made by PEF to RF/QF for Committed Capacity and Energy under this Contract, and each Party shall use its best efforts to defend and uphold the validity and enforceability of all terms and conditions of this Contract, including the payment charges and rates specified in this Contract, in any proceeding in which PEF's authority to recover from its customers payments made to third party owners and operators of electric generating facilities is challenged. Any amounts initially recovered by PEF from its ratepayers, which recovery is subsequently disallowed by FPSC and charged back to PEF, may prospectively be off-set or credited against subsequent Energy payments to be made by PEF for purchases from RF/QF or,

alternatively, shall be repaid and returned by RF/QF to PEF in an amount and with the frequency they were paid.

20.8.4 If PEF has the right to and elects to reduce payments to RF/QF pursuant to this Section 20.8, it shall provide notice thereof to RF/QF and (i) the Parties shall attempt in good faith to equitably adjust the terms of this Contract to maintain the basis of the bargain or, if the Parties are unable to reach such agreement, RF/QF may, without limiting or otherwise affecting any other rights or remedies which RF/QF may have hereunder or at law, terminate this Contract upon thirty (30) days notice; provided, however, that RF/QF gives PEF written notice of said termination within one hundred eighty (180) days after such payment reductions to RF/QF under this Contract take effect. Notwithstanding the foregoing, RF/QF's obligation to repay PEF any disallowed payments shall survive any termination of this Contract.

20.9 Resolution of Disputes

20.9.1 Notice of Dispute

In the event that any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or validity thereof should arise between the Parties (a "Dispute"), the Party may declare a Dispute by delivering to the other Party (with a copy to any lender of the other Party) a written notice identifying the disputed issue.

20.9.2 Resolution by Parties

Upon receipt of a written notice claiming a Dispute, executives of both Parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery 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. No confidential information prepared exclusively for and exchanged in such meetings for the purpose of resolving a Dispute may be used by a Party in litigation against the other Party. If the matter has not been resolved within thirty (30) Days of the disputing Party's notice having been issued, or if the Parties fail to meet within ten (10) Business Days as required above, either Party may initiate binding arbitration exclusively in Tampa, Florida, conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures.

20.10 Severability

If any part of this Contract, for any reason, is declared invalid or unenforceable by a public authority of appropriate jurisdiction, then such decision shall not affect the validity or enforceability of the remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.

20.11 Complete Agreement and Amendments

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties, and no amendment hereto shall be binding on or otherwise adversely affect the rights or interests of the Lenders hereunder unless the Parties comply with the terms and conditions hereof and the Consent and Agreement. This Contract constitutes the entire agreement between the Parties with respect to the subject matter hereof.

20.12 Survival of Contract

Subject to the requirements of Section 20.11, this Contract, as it may be amended from time to time in accordance with the terms hereof, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.

20.13 Record Retention

Each Party shall maintain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder.

20.14 No Waiver

No waiver of any of the terms and conditions of this Contract 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 delay or 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.

20.15 Set-Off

Subject to the terms herein, a Party may at any time, but shall be under no obligation to, set off or recoup any and all sums due from the other Party against sums due to the other Party hereunder without undergoing any legal process.

20.16 Further Assurance

If, after the Execution Date, it should be necessary and proper to execute any additional documents or to take further action to effectuate the intent and purpose of this Contract, each Party agrees to take such action and to execute and deliver any such additional or modified documents upon the reasonable written request and expense of the other Party.

20.17 Provision of Information

Within a reasonable period of time after receiving a written request therefor from the requesting Party, the other Party hereto shall provide the requesting Party with documents, information and reports that are reasonable and related to the non-requesting Party and/or the facilities or operations of the non-requesting Party that the requesting Party reasonably requires in order to comply with a requirement of any Applicable Law, Governmental Approval, any requirement of any Governmental Agency, any requirement of the Financing Documents, or any requirement of Generally Accepted Accounting Principles promulgated by the Financial Accounting Standards Board (or any successor thereto), (including, but not limited to, FIN 46-R) applicable to the requesting Party. In the event that a Party requires documents, information or reports that are not within its possession to meet financial reporting requirements, the Parties will work in good faith to enable the requesting Party to meet its financial reporting requirements.

20.18 Confidential Information

20.18.1 For purposes of this Contract, “Confidential Information” means any written data or information (or an oral communication if the Party requesting confidentiality for such oral communication promptly confirms such communication in writing) that is privileged, confidential or proprietary, and that is marked in a conspicuous manner indicating that such data or information is confidential (or, in the case of an oral communication, is accompanied or promptly followed by a written designation of confidentiality). Except as otherwise set forth in this Contract, neither Party shall publish, disclose, or otherwise divulge Confidential Information to a third person (other than the Party’s employees, Affiliates, actual or potential lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential), at any time during or for two (2) years after the expiration or early termination of this Contract, without the other Party’s prior written consent. Each Party shall be entitled to all remedies available at law or in equity (including specific performance and/or injunctive relief) to enforce, or seek relief in connection with, this confidentiality obligation.

20.18.2 The following shall not be considered Confidential Information, and receiving Party shall not be limited in the use or disclosure of the

following information: (i) information which is or becomes part of the public domain through no act or omission of receiving Party; (ii) information which demonstrably was known or was in the possession of receiving Party without obligation to maintain confidentiality prior to the Execution Date of this Contract; (iii) information which is subsequently rightly received by receiving Party from a third party who is not bound to maintain such information as confidential; (iv) information independently developed by the receiving Party without reference to the Confidential Information received under this Contract; and/or, (v) information required to be disclosed by a Party for its compliance obligations to a Government Agency, the FPSC, the FERC, or the NERC (provided that the disclosing Party shall, to the extent permissible, redact confidential, proprietary, pricing or other trade secret information of the other Party). Further, notwithstanding anything to the contrary, either Party may disclose to the public and third parties, at any time and from time-to-time, the following information in connection with the Parties' respective renewable energy business operations and management, technical evaluation, educational, public relations, and promotional programs: the name of the Parties and the fact the Parties have entered into this Contract for the sale and purchase of renewable power generated by the Facility, a description of the type of renewable energy technology used at the Facility, the capacity of the Facility, and the amount of energy delivered to PEF.

20.18.3 Upon request of disclosing Party, receiving Party shall either (i) return the Confidential Information, including all copies, or (ii) destroy the Confidential Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Confidential Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Contract, in no event shall Receiving Party be required to destroy Confidential Information stored on Back-Up Tapes; provided, however, any Confidential Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Parties agree that receiving party may retain one (1) copy of such Confidential Information in receiving Party's files for audit and compliance purposes for the duration of its existence; provided, however, such Confidential Information shall be kept confidential for the duration of its existence in accordance with the terms of this Contract.

20.18.4 Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose

Confidential Information to comply with applicable requirement of Applicable Law, or any exchange, control area or independent system operator rule, in response to a court order, in connection with any court or regulatory proceeding, or as otherwise required by any Requirement of Law. Such disclosure shall not terminate the obligations of confidentiality unless the Confidential Information thereafter falls within one of the exclusions of this Contract. To the extent the disclosure of Confidential Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Confidential Information that is required or necessary in the opinion of receiving Party's legal counsel and to redact portions thereof containing, setting forth or constituting information or data not required to be disclosed; provided, however, the receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.

20.19 Survival

The rights and obligations that are intended to survive termination, expiration, cancellation or suspension of this Contract are all of those rights and obligations that this Contract expressly provides shall survive any such event and those that arise from PEF's or RF/QF's covenants, agreements, representation and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Contract, including rights, obligations and covenants relating to notice, dispute resolution, indemnity, taxes, payment, confidentiality, remedies, limitation of liability, limitation of damages and other provisions of a similar nature applicable to the Parties after termination or expiration of this Contract.

20.20 Counterparts

This Contract and any amendment hereto may be executed in one or more counterparts, including in facsimile and electronic formats (including portable document format (.pdf)), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

20.21 Change in Environmental Law or Other Regulatory Requirements

- (a) As used herein, "Change(s) in Environmental Law or Other Regulatory Requirements" means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any

Applicable Law that specifically addresses environmental or regulatory issues and that takes effect after the Execution Date.

- (b) The Parties acknowledge that Change(s) in Environmental Law or Other Regulatory Requirements could significantly affect the cost of the Avoided Unit (“Avoided Unit Cost Changes”) and agree that, if any such Change(s) in Environmental Law or Other Regulatory Requirements should affect the cost of the Avoided Unit by an amount greater than the Threshold defined in Section 20.21(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.21(d) below as its sole and exclusive remedy.
- (c) The Parties recognize and agree that certain Change(s) in Environmental Law or Other Regulatory Requirements may occur that do not rise to a level that the Parties desire to impact this Contract. Accordingly, the Parties agree that for the purposes of this Contract, Change(s) in Environmental Law or Other Regulatory Requirements will not be deemed to have occurred unless the change in Avoided Unit Cost Changes resulting from such change(s) exceed a mutually agreed upon net aggregate Threshold amount. This mutually agreed upon aggregate amount is [REDACTED] (“Threshold”).
- (d) If an Avoided Unit Cost Change meets the threshold set forth in Section 20.21(c) above, the affected Party may request the avoided cost payments under this Contract be recalculated and that the avoided cost payments for the remaining term of the Contract be adjusted based on the recalculation. Any dispute regarding the application of this Section 20.21 shall be resolved in accordance with Section 20.9.

**[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S)
FOLLOW]**

IN WITNESS WHEREOF, the RF/QF and PEF executed this Contract on the later of the dates set forth below.

U.S ECOGEN POLK, LLC

FLORIDA POWER CORORPATION d/b/a
PROGRESS ENERGY FLORIDA, INC.

William F. Quinn
Signature

Robert F. Caldwell
Signature

William F. QUINN
Print Name

Robert F. Caldwell
Print Name

PRESIDENT & CEO
Title

Vice President
Title

3-25-11
Date

3/29/11
Date

**APPENDIX 1
MINIMUM SPECIFICATIONS AND MILESTONES**

As required by FPSC Rule 25-17.0832(4)(e), the minimum specifications pertaining to this Contract and milestone dates are as follows:

Avoided Unit	Undesignated CT
Avoided Unit Capacity	178 MW
Avoided Unit In-Service Date	June 1, 2018
Avoided Unit Heat Rate	10,648 BTU/kWh
Avoided Unit Variable O&M	1.507¢ per kWh in mid-2018 dollars escalating annually at 2.00%
Avoided Unit Life	25 years
Capacity Payments begin	Capacity Delivery Date
Minimum Performance Standards – On Peak Availability Factor*	94%
Minimum Performance Standards – Off Peak Availability Factor	94%
Minimum Availability Factor Required to qualify for a Capacity payment	74%
Required Capacity Delivery Date	January 1, 2014

* RF/QF performance shall be as measured and/or described in Appendix 3.

**APPENDIX 2
FACILITY AND SITE DESCRIPTIONS**

FACILITY DESCRIPTION:

The U.S. ECOGEN POLK BIOMASS ELECTRICAL GENERATING FACILITY (“USEG POLK”) will utilize proven conventional direct-fired biomass boiler and steam turbine technology in a “bottom cycle” configuration to minimize project development, construction completion, and performance risk to deliver enhanced facility operating characteristics. Generally the USEG POLK facility can be broken down into several discrete components. Such components include the Boiler Island, the Power Island, Electrical Interconnection Facilities and the Administrative Areas.

A fuel supply area operated by an affiliate will contain all of the equipment and systems required to weigh, unload, prepare, store, and convey the Biomass fuel from the receiving area to the feeder hoppers, which meter the Biomass fuel into the boiler. The boiler island receives the Biomass fuel from the fuel supply area and converts a portion of the chemical energy contained in the Biomass fuel to thermal energy in the form of superheated high pressure steam. This conversion process involves the combustion of the Biomass fuel in a water-tube boiler. The products of combustion leave the boiler as cooled flue gas which is scrubbed using state-of-the-art air emissions technology before leaving the emission stack into the atmosphere. The solid residue or ash left over from the combustion process will be used as a farm soil conditioner.

The power island receives the superheated, high pressure steam from the boiler and converts a portion of the thermal energy contained in the steam to electrical energy within the condensing/extraction steam turbine generator. Additional equipment in the power island includes the condenser, pumps, piping and associated controls. The electrical energy generated in the steam turbine is increased in voltage to PEF’s transmission line voltage by the main power transformer located within the switchyard. The switchyard, switchgear, conductors, breakers, meters, controls and transformers comprise the equipment within the electrical interconnection facilities.

The operators and plant management of the USEG POLK facility are housed within the administrative area. This area includes the control room, laboratory, parts room, machine shop, administrative offices and guardhouse facilities.

Design Committed Capacity	60 MW
Maximum Committed Capacity	66 MW
Minimum Committed Capacity	54 MW

FACILITY SITE DESCRIPTION: The Facility will be located at the site described in this Appendix 2 or such other location as determined by RF/QF if the original site or the terms, conditions and limitations of Governmental Authorization relating to construction, interconnection and operation of the Facility thereon are not acceptable to RF/QF. A legal description for the Site on which the Facility will be constructed will be appended hereto upon RF/QF’s acquisition of Site control rights and interests.

**APPENDIX 3
MONTHLY CAPACITY PAYMENT CALCULATION**

Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Contract.

- A. In the event that the ACBF is less than or equal to 74%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

- B. In the event that the ACBF is greater than 74% but less than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times [1 - [5 \times (.94 - \text{ACBF})] \times \text{CC}]$$

- C. In the event that the ACBF is equal to or greater than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times \text{CC}$$

Where:

- MCP = Monthly Capacity Payment in dollars.
- BCP = Base Capacity Payment in \$/kW/Month as specified in Appendix 4.
- CC = Committed Capacity in kW.
- ACBF = Annual Capacity Billing Factor. The ACBF shall be the electric energy actually received or deemed to have been received by PEF for the 12 consecutive months preceding the date of calculation excluding any energy received during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW, divided by the product of the Committed Capacity and the number of hours in the 12 consecutive months preceding the date of calculation excluding the hours during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW. If an event of Force Majeure occurs during the 12 consecutive months preceding the date of calculation in which the Committed Capacity is temporarily set to a value greater than 0 kW then the 12 month rolling average will be pro-rated accordingly. During the first 12 consecutive Monthly Billing Periods commencing with the first Monthly Billing Period in which Capacity Payments are to be made, the calculation of 12-month rolling average ACBF shall be performed as follows

(a) during the first Monthly Billing Period, the ACBF shall be equal to the Monthly Availability Factor; (b) thereafter, the calculation of the ACBF shall be computed by summing the electric energy actually received by PEF for the number of full consecutive months preceding the date of calculation excluding any energy received during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW, divided by the product of the Committed Capacity and the number of hours in the number of full consecutive months preceding the date of calculation excluding the hours during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW. If an event of Force Majeure occurs during the months preceding the date of calculation in which the Committed Capacity is temporarily set to a value greater than 0 kW then the 12 month rolling average will be pro-rated accordingly. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average ACBF.

MAF = Monthly Availability Factor. The total energy received or deemed received during the Monthly Billing Period for which the calculation is made, divided by the product of Committed Capacity times the total hours during the Monthly Billing Period.

Monthly Billing Period = The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m., on the Capacity Delivery Date and ending with the last calendar day of such month.

**APPENDIX 4
RATES**

A. Capacity Payment Rate. Notwithstanding the cost of any Avoided Unit for any period during the Term, the Capacity Payment rate to be paid by PEF to RF/QF in respect of the Committed Capacity under this Contract shall be computed using the capacity payment rate table below.

Year	Capacity Payment Rate (\$/kW-month)
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
2040	
2041	
2042	
2043	

B. Energy Rate. Notwithstanding the cost of any Avoided Unit, the rate to be paid by PEF to RF/QF for all Energy delivered under the Contract shall be paid at the Energy Rate in the table below.

Year	Energy Rate (\$/MWh)
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
2040	
2041	
2042	
2043	

APPENDIX 5
RF/QF's Eligible Collateral Requirements

RF/QF shall provide Eligible Collateral by the dates and in the amounts specified in the table below. RF/QF shall have the right to elect to provide performance security in the form of a letter of credit, bond or cash or by providing a RF/QF Guarantee to PEF. The Parties acknowledge that RF/QF shall have the right to elect to provide performance security in the form of (i) cash to secure its obligations relating the Conditions Precedent to be satisfied by it prior to the Drop Dead Date and (ii) a Letter of Credit issued in favor of PEF to secure its obligations after the Effective Date.

Credit Class	\$/MW*	\$/MW**	\$/MW***
	30 Days after FPSC Approval Date (Cash Deposit)	Earlier of Financial Closing and Second Anniversary of FPSC Approval Date – Year 5 After Capacity Delivery Date	Years 6 – Termination Date
A- and Above		50,000	40,000
BBB+ to BBB		80,000	70,000
BBB-		135,000	125,000
Below BBB-		190,000	180,000

* - Design Committed Capacity

** - Design Committed Capacity until Capacity Delivery Status achieved, at which time based on Committed Capacity Test

*** - Committed Capacity Test

APPENDIX 6
FORM OF CONSENT TO ASSIGNMENT

[REDACTED]

[REDACTED]

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APPENDIX 7 - TERMINATION FEE

Capitalized terms not otherwise defined herein have the meaning ascribed to them in this Contract.

The "Termination Fee" shall be the sum of the values for each month beginning with the month in which the Capacity Delivery Date occurs through the month of the Termination Date (or month of calculation, as the case may be) computed according to the following formula:

$$\sum_{i=1}^n (MCP_i - MNCP_i) \cdot (1 + r)^{(n-i)}$$

where

- i = number of Monthly Billing Periods commencing with the Capacity Delivery Date (i.e., the month in which Capacity Delivery Date occurs = 1; the month following this month in which Capacity Delivery Date occurs = 2 etc.)
- n = the number of Monthly Billing Periods which have elapsed from the month in which the Capacity Delivery Date occurs through the month of termination (or month of calculation, as the case may be)
- r = 8.10%
- MCP_i = Monthly Capacity Payment corresponding to the Monthly Billing Period i , as shown in Table 2.
- $MNCP_i$ = Monthly Normal Capacity Payment corresponding to the Monthly Billing Period i , as shown in Table 2.

In the event that for any Monthly Billing Period, the computation of the value of the Termination Fee for such Monthly Billing Period (as set forth above) yields a value less than zero, the amount of the Termination Fee shall be decreased by the amount of such value expressed as a positive number (the "Initial Reduction Value"); provided, however, that such Initial Reduction Value shall be subject to the following adjustments (the Initial Reduction Value, as adjusted, the "Reduction Value"):

- a. In the event that in the applicable Monthly Billing Period the Annual Billing Factor, as defined in Section 9.3.4 is less than or equal to 74%, then the Initial Reduction Value shall be

adjusted to equal zero (Reduction Value = 0), and the Termination Fee shall not be reduced for the applicable Monthly Billing Period.

- b. In the event that in the applicable Monthly Billing Period the Annual Billing Factor, as defined in Section 9.3.4, is greater than 74% but less than 94%, then the Reduction Value shall be determined as follows:

$$\text{Reduction Value} = \text{Initial Reduction Value} \times [5 \times (\text{ACBF} - .94)]$$

For the applicable Monthly Billing period, the Termination Fee shall be reduced by the amount of such Reduction Value.

- c. In the event that in the applicable Monthly Billing Period the Annual Billing Factor, as defined in Section 9.3.4, is equal to or greater than 94%, then the Initial Reduction Value shall not be adjusted (Reduction Value = Initial Reduction Value), and the Termination Fee shall be reduced for the applicable Monthly Billing period by the amount of the Initial Reduction Value.

In no event shall PEF be liable to the RF/QF at any time for any amount by which the Termination Fee, adjusted in accordance with the foregoing, is less than zero (0).

REDACTED

EXHIBIT B

REDACTED

**CALCULATION OF COST SAVINGS
FROM THE USEG POLK AGREEMENT**

DOCUMENT NUMBER-DATE

02129 APR-1 =

FPSC-COMMISSION CLERK

REDACTED

REDACTED

Contract MW: 60
 Capacity Factor: 94%
 PV Date: 6/30/2011
 Discount Rate: 8.10%

\$000	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	# of Months	Contract Energy MWh	Contract Capacity Payments	Contract Energy Payments	(3) + (4) Contract Energy & Capacity Payments	Contract Cumulative Payments	Avoided Capacity Payments	Avoided Energy Payments	(7) + (8) Avoided Energy & Capacity Payments	Avoided Cumulative Payments	(9) - (5) Difference from Contract	(10) - (6) Cumulative Difference from Contract	Discount Factor
Units			\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Year													
2011	0	-					\$ -	\$ -	\$ -	\$ -			1.000
2012	0	-					\$ -	\$ -	\$ -	\$ -			0.925
2013	0	-					\$ -	\$ -	\$ -	\$ -			0.856
2014	12	494,067					\$ -	\$ 29,593	\$ 29,593	\$ 29,593			0.792
2015	12	494,067					\$ -	\$ 33,902	\$ 33,902	\$ 63,496			0.732
2016	12	495,420					\$ -	\$ 34,571	\$ 34,571	\$ 98,067			0.677
2017	12	494,067					\$ -	\$ 37,143	\$ 37,143	\$ 135,210			0.627
2018	12	494,067					\$ 2,541	\$ 39,004	\$ 41,545	\$ 176,755			0.580
2019	12	494,067					\$ 4,486	\$ 36,294	\$ 40,780	\$ 217,534			0.536
2020	12	495,420					\$ 4,615	\$ 34,461	\$ 39,076	\$ 256,611			0.496
2021	12	494,067					\$ 4,752	\$ 34,151	\$ 38,903	\$ 295,514			0.459
2022	12	494,067					\$ 4,889	\$ 34,887	\$ 39,776	\$ 335,289			0.424
2023	12	494,067					\$ 5,033	\$ 35,580	\$ 40,613	\$ 375,902			0.393
2024	12	495,420					\$ 5,184	\$ 39,991	\$ 45,175	\$ 421,077			0.363
2025	12	494,067					\$ 5,335	\$ 41,100	\$ 46,435	\$ 467,512			0.336
2026	12	494,067					\$ 5,494	\$ 41,295	\$ 46,788	\$ 514,300			0.311
2027	12	494,067					\$ 5,652	\$ 45,508	\$ 51,160	\$ 565,460			0.288
2028	12	495,420					\$ 5,818	\$ 44,437	\$ 50,254	\$ 615,715			0.266
2029	12	494,067					\$ 5,990	\$ 45,108	\$ 51,099	\$ 666,813			0.246
2030	12	494,067					\$ 6,163	\$ 46,465	\$ 52,629	\$ 719,442			0.228
2031	12	494,067					\$ 6,350	\$ 47,858	\$ 54,209	\$ 773,651			0.211
2032	12	495,420					\$ 6,538	\$ 49,413	\$ 55,950	\$ 829,601			0.195
2033	12	494,067					\$ 6,725	\$ 50,773	\$ 57,498	\$ 887,099			0.180
2034	12	494,067					\$ 6,926	\$ 52,296	\$ 59,222	\$ 946,320			0.167
2035	12	494,067					\$ 7,128	\$ 53,864	\$ 60,992	\$ 1,007,313			0.154
2036	12	495,420					\$ 7,337	\$ 55,616	\$ 62,953	\$ 1,070,266			0.143
2037	12	494,067					\$ 7,560	\$ 57,144	\$ 64,704	\$ 1,134,969			0.132
2038	12	494,067					\$ 7,776	\$ 58,859	\$ 66,635	\$ 1,201,605			0.122
2039	12	494,067					\$ 8,006	\$ 60,626	\$ 68,632	\$ 1,270,237			0.113
2040	12	495,420					\$ 8,244	\$ 62,596	\$ 70,840	\$ 1,341,078			0.104
2041	12	494,067					\$ 8,489	\$ 64,317	\$ 72,806	\$ 1,413,883			0.097
2042	12	494,067					\$ 8,741	\$ 66,247	\$ 74,988	\$ 1,488,871			0.089
2043	5	204,395					\$ 3,747	\$ 24,949	\$ 28,696	\$ 1,517,567			0.083
Total	353	14,541,809					\$ 159,518	\$ 1,358,049	\$ 1,517,567				
NPV 2010\$			\$ 36,776	\$ 322,357	\$ 359,133		\$ 36,573	\$ 382,379	\$ 418,951		\$ 59,818		

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EXHIBIT C

USEG POLK AGREEMENT SUMMARY

DOCUMENT NUMBER-DATE

02129 APR-1 =

FPSC-COMMISSION CLERK

**USEG POLK
Agreement Summary**

Utility Signatory	Progress Energy Florida Robert F. Caldwell
Owner and Operator of the QF Signatory	USEG POLK
Committed Capacity	60 MW
Facility Type	Steam Unit
Fuel	Biomass
Location	Polk County
Transmission Requirements	To Be Determined
Expected Total Annual Energy	494,067 MWH
Expected On-Peak Annual Energy	226,447 MWH
Expected Off-Peak Annual Energy	267,620 MWH
Avoided Unit	178 MW Natural Gas Combustion Turbine with an in-service date of June 1, 2018
Expected In-Service Date of USEG POLK Facility	January 1, 2014

DOCUMENT NUMBER-DATE

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