



RECEIVED FPSC

11 FEB -3 PM 3:35

COMMISSION  
CLERK

February 3, 2011

VIA HAND DELIVERY

110047-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 contract with Trans World 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 contract with Trans World LLC ("Trans World").

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 \_\_\_\_\_
- ECR 6
- GCL 1
- RAD \_\_\_\_\_
- SSC \_\_\_\_\_
- ADM \_\_\_\_\_
- OPC \_\_\_\_\_
- CLK \_\_\_\_\_

JTB/lms  
Attachments

DOCUMENT NUMBER DATE

00838 FEB-3 =

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

---

In re: Petition of Progress Energy  
Florida, Inc. for approval of a  
negotiated purchase power contract  
with Trans World Energy LLC

---

Docket No. 110047-ER

Filed: February 3, 2011

**P E T I T I O N**

On January 20, 2011, Progress Energy Florida, Inc. ("PEF", or "the Company") signed a negotiated power purchase contract with Trans World Energy LLC ("Trans World").

Pursuant to Rule 25-17.0832, F.A.C., PEF hereby petitions the Florida Public Service Commission ("the Commission") for approval of a negotiated purchase power contract for the purchase of firm capacity and energy between Trans World and PEF, dated January 20, 2011 ("the Contract"). A redacted copy of the Contract, 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.

DOCUMENT NUMBER DATE

00838 FEB-3 =

FPSC-COMMISSION CLERK

3. Pursuant to the terms of the Contract, Trans World will construct and own a biomass power production generating facility (“the Facility”) located in Citrus County, Florida, 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 40 MW, using a gasified biomass product as its primary fuel. Trans World will sell firm capacity and energy from the Facility to PEF for a 20-year term from July 1, 2013 through June 30, 2033, with a committed capacity of 40 MW. The expected annual energy from the Facilities is 329,373 MWh.

4. Exhibit B to this petition summarizes a comparison of projected capacity and energy costs under the Contract 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 40 MW and a capacity factor of 94%. The comparison shows that the Contract provides savings with a net present value of \$61.6 million over a 20-year term based on current (the 2010 Ten Year Site Plan) fuel forecasts.

5. Exhibit C to this petition summarizes the Contract 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 Contract 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 Trans World under the Contract.

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

Respectfully submitted,

PROGRESS ENERGY FLORIDA, INC.

By John T. Burnett

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 TRANS WORLD CONTRACT**

(REDACTED)

NEGOTIATED CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND  
ENERGY

between

Trans World Energy LLC

and

PROGRESS ENERGY FLORIDA

TABLE OF CONTENTS

PAGE NO:

1. Definitions.....	4
2. Facility; Renewable Facility or Qualifying Facility Status.....	11
3. Term of Contract.....	13
4. Minimum Specifications and Milestones.....	13
5. Conditions Precedent .....	13
6. Sale of Electricity by the RF/QF.....	15
7. Committed Capacity/Capacity Delivery Date .....	16
8. Testing Procedures.....	17
9. Payment for Electricity Produced by the Facility .....	18
10. Electricity Production and Plant Maintenance Schedule .....	19
11. Completion/Performance Security.....	22
12. Termination Fee .....	24
13. Intentionally Left Blank.....	25
14. Default.....	25
15. Rights in the Event of Default .....	26
16. Indemnification.....	27
17. Insurance.....	28
18. Force Majeure .....	29
19. Representations, Warranties, and Covenants of RF/QF .....	31
20. General Provisions.....	33
APPENDIX A.....	41
APPENDIX B.....	44
APPENDIX C.....	45

TCS

**NEGOTIATED CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY**

**THIS NEGOTIATED CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY (hereinafter referred to as the "Contract")** is made and entered this 20 day of JAN, 2011 (hereinafter referred to as the "Execution Date"), by and between Trans World Energy L.L.C. (hereinafter the Renewable Energy Provider/Qualifying Facility ("RF/QF"), and Florida Power Corporation d/b/a Progress Energy Florida (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 be identified herein as the "Party" and collectively as the "Parties". This Contract contains five Appendices which are incorporated into and made part of this Contract: Appendix A: Termination Fee; Appendix B: Charges to Renewable Energy Provider and Appendix C: Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.310, F.A.C.

**WITNESSETH:**

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

**WHEREAS**, the RF/QF will acquire an interconnection/transmission service agreement with the utility in whose service territory the Facility is to be located, 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 may be PEF and that the transmission service will be provided under a separate agreement; and

**WHEREAS**, Parties understand that this Agreement requires the approval of the FPSC.

**WHEREAS**, the RF/QF guarantees that the Facility is capable of delivering firm capacity and energy to PEF for the term of this Contract in a manner consistent with the provision of this Contract;

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

## 1. Definitions

“Annual Billing Factor” or “ABF” means 12 month rolling average of the monthly availability as further defined and explained in Section 9.3.4.

“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 A” sets forth the Termination Fee.

“Appendix B” sets forth the Charges to Renewable Energy Provider.

“Appendix C” sets forth Florida Public Service Commission (“FPSC”) Rules 25-17.080 through 25-17.310, F.A.C.

“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 Section 4 upon which this Contract is based.

“Base Performance Security Amount” means the dollar amount per MW listed in the Table 2 in Section 11 for years 1-5 associated with the applicable credit class of the Party.

“Base Year” means the year that this Contract was approved by the FPSC.

“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.

“CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes).

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

“Capacity Cost Recovery Clause” has the meaning given to it in Section 20.17.

“Capacity Delivery Date” means the first calendar day immediately following the date of the Facility’s successful completion of the first Committed Capacity Test.

“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 7.

“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 and certification, and obtain all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility. This date is specified in Section 4.

“Completion/Performance Security” means the security described in Section 11.

“Conditions Precedent” shall have the meaning assigned to it in Section 5.

“Contract” means this contract for the purchase of Firm Capacity and Energy.

“Creditworthy” with respect to a Party or its credit support provider, as applicable, means a party 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). Rating 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.

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

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

“Dispute” shall have the meaning assigned to it in Section 20.8.

“Drop Dead Date” means the date which is twenty four (24) months following the Execution Date.

“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.

“Electrical Interconnection Point” means the physical point at which the Facility is connected with the Transmission System or, if RF/QF interconnects with a Transmission

TLS

System other than PEF's, PEF's interconnection with the Transmission Provider's Transmission System, or such other physical point on which RF/QF and PEF may agree.

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

**"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.

**"Environmental Attributes"** means all attributes of an environmental or other nature that are created or otherwise arise from the Facility's generation of electricity from a renewable energy source in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include, without limitation, any and all environmental air quality credits, green credits, RECs, carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy from or by the Facility, or otherwise attributable to the Facility during the Term. Environmental Attributes include, without limitation, those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described in this Contract under any governmental, regulatory or voluntary program, including, but not limited to, the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency ("CAMD") or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes,).

**"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 all equipment, excluding advanced pyrolysis technology and equipment as described in this Contract, used to produce electric energy and, and all equipment that is owned or controlled by the RF/QF required for parallel operation with the Transmission System.

**"Facility Payment"** means the payment for Capacity and Energy.

“Financial Closing” means the fulfillment of each of the following conditions:

- (a) the execution and delivery of the Financing Documents; and
- (b) all Conditions Precedent to the initial availability for disbursement of funds under the Financing Documents (other than relating to the effectiveness of this Contract) are satisfied or waived.

“Financing Documents” shall mean documentation with respect to any private equity investment in RF/QF, any loan agreements (including agreements for any subordinated debt), notes, bonds, indentures, guarantees, security agreements and hedging agreements relating to the financing or refinancing of the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility or any guarantee by any Financing Party of the repayment of all or any portion of such financing or refinancing.

“Financing Party” means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of RF/QF for the design, development, construction, testing, commissioning, operation and maintenance of the Facility (whether limited recourse, or with or without recourse).

“Force Majeure” has the meaning given to it in Section 18.

“Fuel Adjustment Clause” has the meaning given to it in Section 20.17.

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

“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, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Government Agency relating to the construction, development, ownership, occupation, start-up, Testing, operation or maintenance of the Facility or to the execution, delivery or performance of this Contract as any of the foregoing are in effect as of the date of this Contract.

“Gross Domestic Price Implicit Price Deflator” or “GDPIPD” has the meaning assigned to it in Section 11.

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

“Indemnified Party” has the meaning assigned to it in Section 16.

“Indemnifying Party” has the meaning assigned to it in Section 16.

“Initial Reduction Value” has the meaning assigned to it in Appendix A.

“Insurance Services Office” has the meaning assigned to it in Section 17.

“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.

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

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

“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 12:01 a.m., on the Capacity Delivery Date and ending with the last calendar day of such month.

“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.

“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.

“PEF Guarantee” means 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, corporation, association, joint stock company trust, joint venture, unincorporated organization, or Governmental Agency (or any department, agency, or political subdivision thereof).

“Project Consents” mean the following Consents, each of which is necessary to RF/QF for the fulfillment of RF/QF’s obligations hereunder:

- (a) the Authorization to Construct;
- (b) planning permission and consents in respect of the Facility, and any electricity substation located at the Facility site, including but not limited to, a prevention of significant deterioration permit, a noise, proximity and visual impact permit, and any required zoning permit; and
- (c) any integrated pollution control license.

“Project Contracts” means this Contract, and any other contract required to construct, operate and maintain the Facility. The Project Contracts may include, but are not limited to, the turnkey engineering, procurement and construction contract, the electrical interconnection and operating agreement, the fuel supply agreement, the facility site lease, and the operation and maintenance agreement.

“Prudent Utility Practices” means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants of technology, complexity and size similar to the Facility in the United States) 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 and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts in each case taking into account the Facility as an independent power project.

“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 Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”), the criteria for which are currently set forth in 18 C.F.R. § 292, *et seq.* (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796 *et seq.* (2006), and Section 1253 of EPA Act 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws 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.

“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 generator in addition to and in proportion to the production of electrical energy.

“Reduction Value” has the meaning assigned to it in Appendix A.

“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.

“RF/QF Entities” has the meaning assigned to it in Section 16.

“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.

“RF/QF Performance Security” has the meaning assigned in Section 11.

“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.

“Security Documentation” has the meaning assigned to it in Section 12.

“Supplemental Eligible Collateral” means additional collateral in the form of Letter of Credit or cash to augment the RF/QF Performance Security in the event of a Material Adverse Change.

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

“Termination Date” means the date upon which this Contract terminates unless terminated earlier in accordance with the provisions hereof. This date is specified in Section 3.

“Termination Fee” means the fee described in Appendix A and Section 12.

“Termination Security” has the meaning assigned to it in Section 12.

“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.

## **2. Facility; Renewable Facility or Qualifying Facility Status**

The Facility's location and generation capabilities are as described in Table 1 below.

**TABLE 1**

<b>TECHNOLOGY AND GENERATOR CAPABILITIES</b>	
Location: Specific legal description (e.g., metes and bounds or other legal description with street address required)	City: County: Citrus
Generator Type (Induction or Synchronous)	Synchronous
Technology	Combined Cycle
Fuel Type and Source	Pyrolysis Oil from Biomass
Generator Rating (KVA)	50,000
Maximum Capability (kW)	40,000
Net Output (kW)	40,000
Power Factor (%)	0.8
Operating Voltage (kV)	480
Peak Internal Load kW	10,000

The RF/QF's failure to complete Table 1 in its entirety shall render this Contract null and void and of no further effect.

The RF/QF shall use the same fuel or energy source and maintain the status 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 affects its Renewable Facility or Qualifying Facility status. PEF and RF/QF shall have the right, upon reasonable notice of not less than seven (7) Business Days, to inspect the Facility and to examine any books, records, or other documents that specifically pertain to this Facility and performance under this Agreement reasonably deemed necessary to verify compliance with this Contract. In the event of an emergency at or in proximity to the RF/QF site that impacts PEF's system, PEF shall make reasonable efforts to 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 its status as a Renewable Facility or a Qualifying Facility during the prior calendar year.

### 3. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties and shall end at 12:01 a.m. on June 30, 2033, (the "Term") unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date of the Facility is not accomplished by the RF/QF before July 1, 2013, this Contract shall be rendered null and void and PEF shall have no obligations under this Contract.

### 4. 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
Avoided Unit Fuel	Natural Gas
Avoided Unit total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP	718.42
Avoided Unit Fixed O&M	\$4.46 per kWh in mid -2008 dollars escalating at 2.00%
Completed Permits Date	June 1, 2017

### 5. Conditions Precedent

- (a) Unless otherwise waived in writing by PEF, on or before the Drop Dead Date, RF/QF shall satisfy the following Conditions Precedent:
- (i) RF/QF shall have obtained firm transmission service necessary to deliver Capacity and energy from the Facility to the Electrical Interconnection Point, in a form and substance satisfactory to RF/QF in its sole discretion;
  - (ii) RF/QF shall have obtained the Project Consents and any other Consents for which it is responsible under the terms hereof in a form and substance satisfactory to RF/QF in its sole discretion;
  - (iii) 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 satisfactory to RF/QF in its sole discretion;

- (iv) RF/QF shall have entered into the Project Contracts in a form and substance satisfactory to RF/QF in its sole discretion;
  - (v) RF/QF shall have obtained insurance policies or coverage in compliance with Section 17;
  - (vi) Each Party shall have delivered to the other Party (i) a copy of its constitutional documents (certified by its corporate secretary as true, complete and up-to-date) and (ii) a copy of a corporate resolution approving the terms of this Contract and the transactions contemplated hereby and authorizing one or more individuals to execute this Contract on its behalf (such copy to have been certified by its corporate representative as true, complete and up-to-date);
  - (vii) RF/QF obtaining Qualifying Facility status from either the FPSC or FERC.
- (b) Promptly upon satisfaction (or waiver in writing) of the Conditions 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 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 effective date of this Contract (the "Effective Date").
  - (c) Unless all Conditions Precedent are satisfied on or before the Drop Dead Date or such Conditions Precedent are waived in writing, this Contract shall terminate on such date and neither Party shall have any further liability to the other Party hereunder.
  - (d) RF/QF shall achieve the Capacity Delivery Date on or before July 1, 2013.
  - (e) RF/QF shall ensure that before the initial Committed Capacity Test:
    - (a) the Facility shall have been constructed so that the Committed Capacity Test may be duly and properly undertaken in accordance with Section 7; and
    - (b) 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 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 electric power generated by the Facility. The purchase and sale of electricity pursuant to this Contract shall be a ( ) net billing arrangement or ( ) simultaneous purchase and sale arrangement; provided, however, that no such arrangement shall cause the RF/QF to sell more than the Facility's net output. The billing methodology may only be changed when the RF/QF has not changed billing methods within the last twelve months and when the election to change billing methods will not contravene the provisions of FPSC Rule 25-17.0832.

If a RF/QF elects to change billing methods, such changes shall be subject to the following: 1) upon at least thirty days advance written note to PEF; 2) the installation by PEF of any additional metering equipment reasonably required to effect the change in billing and upon payment by the RF/QF for such metering equipment and its installation; and 3) upon completion and approval by PEF of any alteration(s) to the interconnection reasonably required to effect the change in billing and upon payment by the RF/QF for such alteration(s).

### **6.2 Ownership and Offering For Sale Of Environmental Attributes**

The RF/QF shall retain any and all rights to own and to sell any and all Environmental Attributes associated with the electric generation of the Facility.

If RF/QF intends to offer for sale at a predetermined price any Environmental Attributes associated with the Facility, then before extending such offer to any other entity, RF/QF shall first extend such offer in writing to PEF. PEF shall have thirty (30) Days from the date of receipt of such offer to give written notice that it accepts or rejects the offer; upon receipt of a written rejection or upon expiration of the 30-day exclusivity period, RF/QF shall then be free to sell the Environmental Attribute(s) to any other entity at a price no less than that offered to PEF. Any sale of Environmental Attributes associated with the Facility shall not exceed a period of longer than two (2) calendar years from the date of the sale.

- 6.3** The RF/QF shall not rely on interruptible or curtailable standby service for the start up requirements (initial or otherwise) of the Facility.
- 6.4** The RF/QF shall be responsible for the scheduling of required transmission and for all costs, expenses, taxes, fees and charges associated with the delivery of energy to PEF. The RF/QF shall enter into a

transmission service agreement with the Transmission Provider in whose service territory the Facility is to be located and the RF/QF shall make any and all transmission-related arrangements (including interconnection and ancillary services) between the RF/QF and the Transmission Provider for delivery of the Facility's firm Capacity and energy to PEF. The Capacity and energy amounts paid to the RF/QF hereunder do not include transmission losses. The RF/QF shall be responsible for transmission losses that occur prior to the point at which the RF/QF's energy is delivered to PEF. The Parties recognize that the Transmission Provider may be PEF and that if PEF is the Transmission Provider, the transmission service will be provided under a separate agreement.

## **7. Committed Capacity/Capacity Delivery Date**

- 7.1** The Committed Capacity amount shall be determined in accordance with this Section 7. Subject to Section 7.3, the Committed Capacity is set at 40,000 kW, with an expected Capacity Delivery Date on or before July 1, 2013.
- 7.2** 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 ninety (90) days before the expected Capacity Delivery Date and testing must be completed before July 1, 2013. The first Committed Capacity Test shall not be successfully completed unless the Facility demonstrates a Capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 7.1. Subject to Section 8.1, the RF/QF may schedule and perform up to three (3) Committed Capacity Tests to satisfy the requirements of the Contract with respect to the first Committed Capacity Test.
- 7.3** In addition to the first Committed Capacity Test, PEF shall have the right to require the RF/QF, after notice of no less than ten (10) Business Days prior to such proposed event, to validate the Committed Capacity by means of a Committed Capacity Test at any time, up to two (2) times per year, the results of which shall be provided to PEF within seven (7) calendar days of the conclusion of such test. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity as set forth in Section 7.1. Provided however, any such second test requested within a twelve (12) month period must be for cause.
- 7.4** Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the amount set forth in Section 7.1 without the consent of PEF, which consent shall be granted in PEF's sole discretion.

- 7.5** The RF/QF shall be entitled to receive Facility Payments beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs before July 1, 2013 (or such later date permitted by PEF). If the Capacity Delivery Date does not occur before July 1, 2013, PEF shall immediately be entitled to draw down the Completion/Performance Security in full.

## **8. Testing Procedures**

- 8.1** The Committed Capacity Test must be completed successfully 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. PEF shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract.
- 8.2** The Committed Capacity Test results shall be based on a test period of twenty-four (24) consecutive hours (the "Committed Capacity Test Period") at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The Committed Capacity Test Period shall commence at the time designated by the RF/QF pursuant to Section 8.1 or at such time requested by PEF pursuant to Section 7.3; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that PEF is notified of, and consents to, such earlier time.
- 8.3** Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by 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.
- 8.5** The Committed Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of the RF/QF.
- 8.6** The results of any Committed Capacity Test, including all 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.

**9. Payment for Electricity Produced by the Facility**

**9.1 Energy**

**9.1.1** PEF agrees to pay the RF/QF for energy produced by the Facility and delivered to PEF in accordance with the rates and procedures contained in this Agreement

**9.1.2** PEF may, at its option, limit deliveries under this Contract to 110% of the Committed Capacity as set forth in Section 7. In the event that PEF chooses to limit deliveries, any energy in excess of 110% of the Committed Capacity will be paid for at the rates defined in Rate Schedule COG-1 and shall not be included in the calculations in this Section 9.

**9.2 Capacity**

The Parties agree that the Facility Payment rate in Section 9.3 includes payment for Capacity as well as Energy.

**9.3 Payments for Energy and Capacity**

**9.3.1** Beginning on the Capacity Delivery Date, PEF shall pay RF/QF a Facility Payment at the rate of [REDACTED] for each MWh of net electric Energy delivered to the Delivery Point, subject to adjustment in this Agreement.

**9.3.2** Beginning on [REDACTED] and continuing each year after, the Facility Payment shall be increased by [REDACTED] over the preceeding year amount.

**9.3.3** Beginning on the Capacity Delivery Date, the Annual Billing Factor will be calculated monthly. In the event that the Annual Billing Factor for any rolling 12 month period is less than 74%, the Facility Payment for such month shall be reduced by 5%.

**9.3.4** The Annual Billing Factor for each Monthly Billing Period shall equal the ratio, expressed as a percentage, of the total net electric Energy delivered during the hours for the twelve most recently completed Monthly Billing Periods divided by the sum of the products of the Capacity multiplied by the total hours for each of the twelve most recently completed Monthly Billing Periods. Periods during a Force Majeure Event, or outages at the request of

PEF shall be excluded from calculations of the Annual Billing Factor. For each of the first 11 Monthly Billing Periods after the Capacity Delivery Date, the Annual Billing Factor shall be computed based on the net electric Energy delivered, hours and Capacity for the then most recently completed Monthly Billing Periods. The Capacity utilized in calculating each Facility Payment adjustment in Section 9.3.3 shall be the Capacity reflected in the then most recently completed Committed Capacity Test.

- 9.3.5** Payments due the RF/QF will be made monthly, and normally by the twentieth Business Day following the end of the billing period. The kilowatt-hours sold by the RF/QF and the applicable avoided energy rate at which payments are being made shall accompany the payment to the RF/QF.
- 9.3.6** Payments to be made under this Contract shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties.
- 9.3.7** Prior to the Capacity Delivery Date, the energy rate, in cents per kilowatt-hour (¢/kWh), shall be based on PEF's actual hourly avoided energy costs which are calculated by PEF in accordance with FPSC Rule 25-17.0825, F.A.C.

The calculation of payments to the RF/QF shall be based on the sum over all hours of the billing period, of the product of each hour's avoided energy cost times the amount of energy (kWh) delivered to PEF from the Facility for that hour. All purchases shall be adjusted for losses from the point of metering to the point of interconnection.

## **10. Electricity Production and Plant Maintenance Schedule**

- 10.1** No later than sixty (60) calendar days prior to the Capacity Delivery Date, and prior to October 1 of each calendar year thereafter during the term of this Contract, the RF/QF shall submit to PEF in writing a good-faith estimate of the amount of electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in Capacity. A RF/QF agrees to provide updates to its planned maintenance periods as they become known. The Parties agree to discuss coordinating scheduled maintenance schedules.

- 10.2** By October 31 of each calendar year, PEF shall notify the RF/QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If PEF does not accept any of the requested scheduled maintenance periods, PEF shall advise the RF/QF of the time period closest to the requested period(s) when the outage(s) can be scheduled. The RF/QF shall only schedule outages during periods approved by PEF, and such approval shall not be unreasonably withheld. Once the schedule for the detailed plan has been established and approved, either Party requesting a subsequent change in such schedule, except when such change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to fifteen (15) days per calendar year. In no event shall maintenance periods be scheduled during the following periods: June 1 through September 15 and December 1 through and including the last day of February.
- 10.3** The RF/QF shall comply with reasonable requests by PEF regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.
- 10.4** The Parties recognize that the intent of the availability factor in this Contract includes an allowance for scheduled outages, forced outages and forced reductions in the output of the Facility. Therefore, the RF/QF shall provide PEF with notification of any forced outage or reduction in output which shall include the time and date at which the forced outage or reduction occurred, a brief description of the cause of the outage or reduction and the time and date when the forced outage or reduction ceased and the Facility was able to return to normal operation. This notice shall be provided to PEF within seventy-two (72) hours of the end of the forced outage or reduction.

The RF/QF is required to provide the total electrical output to PEF except (i) during a period that was scheduled in Section 10.2, (ii) during a period in which notification of a forced outage or reduction was provided, (iii) during an event of Force Majeure or (iv) during a curtailment period as described in Section 10.5.5. In the event that the RF/QF delivers any portion of their total output to a third party, during any hour not excluded in the previous sentence, then the RF/QF shall be charged a rate equal to the PEF's Rate Schedule COG-1 times the difference between the energy at the RF/QF's Committed Capacity and the actual energy received by PEF in that hour. In PEF's sole judgment the charges in this Section 10.4 may be waived.

726

## **10.5 Dispatch and 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 480 volts (50,000 kV) and power factor dispatchable and controllable in the range of 90% lagging to 90% leading as measured at the interconnection point to maintain system operating parameters, including power factor, as specified from time to time by PEF.
- 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 good engineering and operating 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 good engineering and operating 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 good engineering and operating 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 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** 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 from time to time.

**10.5.6** During the term of this Contract, the RF/QF shall maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour 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 remain within a band of plus or minus ten percent (10%) of the daily output level or levels specified by the plant operator, in ninety percent (90%) of all operating hours under normal operating conditions. This calculation will be adjusted to exclude forced outage periods and periods during which the RF/QF's output is affected by a Force Majeure event.

**11. Completion/Performance Security**

**11.1** Prior to the Drop Dead Date the RF/QF shall deliver to PEF Eligible Collateral in an amount according to Table 2. 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 Table 2 and Section 11.4. The listed amounts are considered the initial amounts and use 2010 as the Base Year, with all amounts expressed in US Dollars.

Note: The amounts in the following Table are for 2010 and are subject to change based on utility cost estimates for any year subsequent to the Base Year.

**TABLE 2**

Credit Class	Amount per MW Years 1 - 5	Amount per MW 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

**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, 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 Base Performance Security Amount.

*TLG*

- 11.4** Performance Security Annual Adjustments – The RF/QF Performance Security shall be adjusted on an annual basis beginning January 1, 2011 and each year of during the term of the Agreement. The values in Table 2 will be adjusted using the change in the Gross Domestic Price Implicit Price Deflator (GDPIPD) between the Base Year and each year during the term as reported in the Survey of Current Business published in January each year and revised thereafter, by the Bureau of Economic Analysis, United States Department of commerce, Washington, D.C. using the following formula: Current Performance Security amount (CPSA) multiplied by one plus the change in the GDPIPD, (CPSA X (1 + ΔGDPIPD))
- 11.5** Replacement Collateral, Release of Collateral - Upon any reduction of the amount of RF/QF Performance Security pursuant to Section 11.2 or 11.3 PEF thereof 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 agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement which such period shall not exceed 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 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 20.8.
- 11.6** Draws, Replenishment - PEF may draw upon Eligible Collateral or Supplemental Eligible Collateral provided by the RF/QF following the occurrence of an Event of Default or pursuant to the other provisions of this Agreement 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 thirty (30) Business Days replenish the Eligible Collateral or Supplemental Eligible Collateral to the full amounts required by Table 2.
- 11.7** Reporting - 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 Section 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 Security Account is in Full Compliance with this agreement.

## 12. Termination Fee

**12.1** The RF/QF shall owe and be liable to PEF for the Termination Fee. 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.

**12.1.1** 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 (a) permitting partial and full draws and (b) 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:

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

**12.1.2** 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 to a level below investment grade, PEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable. 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, and meet the requirements of Section 12.1.1 within thirty (30) calendar days following such notification. Failure by the RF/QF to comply with the requirements of this Section 12.1.2 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.

**12.1.3** After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, upon PEF's issuance of the Termination Fee calculation as described in Section 12.1, the RF/QF must provide PEF, within ten calendar (10) days, written assurance and

documentation (the "Security Documentation"), in form and substance acceptable to PEF, that the amount of the Termination Security is sufficient to cover the balance of the Termination Fee. In addition to the foregoing, at any time during the term of this Contract, PEF shall have the right to request and the RF/QF shall be obligated to deliver within five (5) calendar days of such request, such Security Documentation. Failure by the RF/QF to comply with the requirements of this Section 12.1.3 shall be grounds for PEF to draw in full on any existing Letter of Credit or bond or to retain any cash deposit, and to exercise any other remedies it may have hereunder.

**12.1.4** Upon any termination of this Contract following the Capacity Delivery Date, PEF shall be entitled to receive (and in the case of the letter(s) of credit or bond, draw upon such letter(s) of credit or bond) and retain one hundred percent (100%) of the Termination Security.

### **13. Intentionally Left Blank**

### **14. Default**

Notwithstanding the occurrence of any Force Majeure as described in Section 18, each of the following shall constitute an Event of Default:

- (a) the RF/QF changes or modifies the Facility from that provided in Section 2 with respect to its type, location, 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 Billing Factor, as described in Section 9, of at least seventy four percent (74%);
- (c) the RF/QF fails to satisfy its obligations to maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour period under Section 10.5.6 hereof;
- (d) the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) 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; 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) the RF/QF fails to give proper assurance of adequate performance as specified under this Contract within thirty (30) calendar days after PEF, with reasonable grounds for insecurity, has requested in writing such assurance;
- (g) the RF/QF fails to achieve 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;
- (h) the RF/QF fails to comply with the provisions of Section 20.3 hereof;
- (i) any of the representations or warranties made by either Party in this Contract is false or misleading in any material respect as of the time made;
- (j) 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 7.1 (as such level may be reduced by Section 7.3) within twelve (12) months following the occurrence of such event of Force Majeure; or
- (k) either Party breaches any material provision of this Contract not specifically mentioned in this Section 14.

## **15. Rights in the Event of Default**

**15.1** Upon the occurrence of any of the Events of Default in Section 14, the non-Defaulting Party may, at its option:

**15.1.1** immediately terminate this Contract, without penalty or further obligation, except as set forth in Section 15.2, by written notice to the Defaulting Party, and offset against any payment(s) due from non-Defaulting Party to the Defaulting Party, any monies otherwise due from the Defaulting Party to the non-Defaulting Party;

**15.1.2** enforce the provisions of the Termination Security requirement pursuant to Section 12 hereof; and

**15.1.3** exercise any other remedy(ies) which may be available to the non-Defaulting Party at law or in equity.

**15.2** Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from any breach of this Contract.

## **16. Indemnification**

**16.1** PEF and the RF/QF shall each be responsible for its own facilities. 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, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) 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 act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation 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;
- (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 Indemnifying Party or its contractors, agents, servants or employees related to the Contract or the Parties' performance thereunder.

**16.2** Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under Section 16. No Indemnified Party under Section 16 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have

no obligations under Section 16 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 16 shall survive termination of this Agreement.

**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. Any premium assessment or deductible shall be for the account of the RF/QF and not PEF.
- 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 "Force Majeure" is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, 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 of PEF's markets; (ii) PEF's economic inability to use or resell the Capacity and Energy purchased hereunder; or (iii) RF/QF's inability to sell the Capacity or Energy at a price greater than the price herein. Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet 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 permit or other regulatory approval, shall not be considered an event of Force Majeure, unless such Party can reasonably demonstrate, to the reasonable satisfaction of the non-claiming Party, that the event was not reasonably foreseeable, was beyond the Party's reasonable control and was not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its agents, contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this agreement.
- 18.2 Except as otherwise provided in this Contract, each Party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of 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 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 therefore unless and until conforming 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.
- 18.5** If the RF/QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the RF/QF may, upon notice to PEF temporarily adjust the Committed Capacity as provided in Sections 18.5 and 18.6. Such adjustment shall be effective the first calendar day immediately following PEF's receipt of the notice or such later date as may be specified by the RF/QF. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.
- 18.6** If the Facility is rendered completely inoperative as a result of Force Majeure, the RF/QF shall temporarily set the Committed Capacity equal to 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 kW, then the payment rate will be reduced in accordance with Section 9.3.3.
- 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** Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cessation or cure, PEF shall have right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this Section 18.8. Any such Committed Capacity Test required by PEF shall be additional to any Committed Capacity Test under Section 7.3.

- 18.9** During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 18.4 all payment rates in Section 9.3 shall reflect, pro rata, the reduction in Committed Capacity, and the Facility Payments will continue to be calculated in accordance with the pay-for-performance provisions in Section 9.3.4.
- 18.10** 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 inoperable 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.

### **19. Representations, Warranties, and Covenants of RF/QF**

Each Party hereto represents and warrants that as of the Effective Date:

#### **19.1 Organization, Standing and Qualification**

PEF 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 is a Limited Liability Company (corporation, partnership, or other, as applicable) 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. Each Party 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 partners (shareholders, partners, or others, as applicable) 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, and does not contravene or constitute a default under any law, the articles of incorporation of PEF or the bylaws (articles of incorporation, bylaws, or other as applicable) of such Party, 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, in the aggregate, have a material adverse effect on the other Party.

### **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 governmental authority, except with respect to permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the RF/QF has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

### **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 each Party's 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 in any such materially adverse effect or impairment.

### **19.6 Environmental Matters**

To the best of its knowledge after diligent inquiry, each Party knows of no (a) existing violations of any environmental laws at the Facility, 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 Permits**

The RF/QF hereby agrees to obtain and maintain any and all permits, certifications, licenses, consents or approvals of any governmental authority which the RF/QF is required to obtain as a prerequisite to engaging in the activities specified in this Contract.

### **20.2 Project Management**

If requested by PEF, the RF/QF shall submit to PEF its integrated project schedule for PEF's review within sixty (60) calendar days from the execution of this Contract, and a start-up and test schedule for the Facility at least sixty (60) calendar days prior to start-up and testing of the Facility. These schedules shall identify 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 changes in such schedules within ten (10) calendar days after such changes are determined. PEF shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. 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/manufacture'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.

### **20.3 Assignment**

Either Party may not assign this Contract, without the other Party's prior written approval, which approval may not be unreasonably withheld or delayed.

**20.4 Disclaimer**

In executing this Contract, PEF does not, nor should it be construed, to extend its credit or financial support for benefit of any third parties lending money to or having other transactions with the RF/QF or any assigns of this Contract.

**20.5 Notification**

All formal notices relating to this Contract shall be deemed duly given when delivered in person, or sent by registered or certified mail, or sent by fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated below. 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:

Trans World Energy L.L.C.  
P.O. Box 481  
Vero Beach, FL 32961-0481

For PEF:

Progress Energy Florida  
Cogeneration Manager PEF 155  
299 First Avenue North  
St. Petersburg, FL 33701

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

**20.6 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.

**20.7 Taxation**

In the event that PEF becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Services determination, through audit, ruling or other authority, that PEF's payments to the RF/QF for Capacity under this Agreement are not fully deductible when paid (additional tax liability), PEF may bill the RF/QF

TG

monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these payments to the RF/QF 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 payments to the RF/QF 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.

## **20.8 Resolution of Disputes**

### **20.8.1 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 a written notice identifying the disputed issue.

### **20.8.2 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 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 in St. Petersburg, Florida, conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures.

## **20.9 Limitation of Liability**

**IN NO EVENT SHALL EITHER PARTY, ITS PARENT CORPORATION, OFFICERS, DIRECTORS, EMPLOYEES, AND**

**AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES RESULTING FROM ANY CLAIM OR CAUSE OF ACTION, WHETHER BROUGHT IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER LEGAL THEORY.**

**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 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. This Contract constitutes the entire agreement between the Parties.

**20.12 Survival of Contract**

Subject to the requirements of Section 20.3, this Contract, as it may be amended from time to time, 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 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**

PEF may at any time, but shall be under no obligation to, set off or recoup any and all sums due from the RF/QF against sums due to the RF/QF hereunder without undergoing any legal process.

**20.16 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 statute, rule, regulation, permit, license, judgment, order or approval by a governmental entity that specifically addresses environmental or regulatory issues and that takes effect after the Effective 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) should affect the cost of the Avoided Unit more than the Threshold defined in Section 20.16(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.16(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 Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, such change(s) will not be deemed to have occurred unless the change in Avoided Cost resulting from such change(s) exceed [REDACTED].
- (d) If an Avoided Unit Cost Change meets the threshold set forth in Section 20.16(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 20.16 shall be resolved in accordance with Section 20.8.

## 20.17 Regulatory Changes :

- (i) PEF's payment obligations under this Agreement are expressly conditioned upon the mutual commitments set forth in this Agreement and upon PEF being fully reimbursed for all payments to RF/QF 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.
- (ii) For purposes of this Agreement, "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.
- (iii) For purposes of this Agreement, "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. Notwithstanding any other provisions of this Agreement, should PEF at any time during the Term 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 required to be made to RF/QF under the terms of this Agreement, payments to RF/QF from PEF shall be reduced accordingly. Neither Party shall initiate any action to deny recovery of payments under this Agreement and each Party shall reasonably defend all terms and conditions of this Agreement, including without limitation, the payment levels specified in this Agreement. Any amounts initially recovered by PEF from its ratepayers, which recovery is subsequently disallowed by FPSC and charged back to PEF, may be off-set or credited against subsequent payments made by PEF for purchases from RF/QF or, alternatively, shall be repaid and returned by RF/QF to PEF. If any disallowance is subsequently reversed, PEF shall repay RF/QF such disallowed payments. Any repayments shall be with interest at a rate equal to the thirty (30) day highest grade commercial paper rate as published in the *Wall Street Journal* on the first Business Day of each Month to the extent such payments and interest are recovered by PEF. Such interest shall be compounded monthly.
- (iv) If PEF elects to reduce payments to RF/QF pursuant to this Section, RF/QF may terminate this Agreement upon one hundred eighty (180) Days notice after such payment reductions to RF/QF take effect.

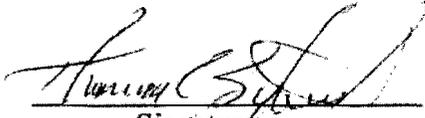
**20.1 8** Within a reasonable period of time after receiving a written request therefore from the requesting Party, the other Party hereto shall provide the requesting Party with information that is reasonable and related to the non-requesting Party and/or the facilities or operations of the non-requesting Party that the requesting Party reasonably requires in order to comply with a Requirement of Law 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 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.

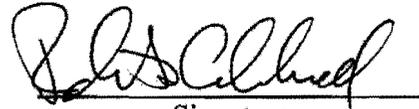
729

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

RF/QF

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

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

THOMAS C SCHMID  
\_\_\_\_\_  
Print Name

ROBERT F. CASWELL  
\_\_\_\_\_  
Print Name

PRESIDENT  
\_\_\_\_\_  
Title

VP  
\_\_\_\_\_  
Title

1/20/11  
\_\_\_\_\_  
Date

1/13/11  
\_\_\_\_\_  
Date



## APPENDIX A

### TERMINATION FEE

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

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<sub>i</sub> = Monthly Capacity Payment corresponding to the Monthly Billing Period i, as shown in Table 2.
- MNCP<sub>i</sub> = 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).

TLS

TABLE 2

Year	MCP (\$/kW-mo.)	MCPC (\$/kW-mo.)
2013		0.00
2014		0.00
2015		0.00
2016		0.00
2017		0.00
2018		6.05
2019		6.23
2020		6.41
2021		6.60
2022		6.79
2023		6.99
2024		7.20
2025		7.41
2026		7.63
2027		7.85
2028		8.08
2029		8.32
2030		8.56
2031		8.82
2032		9.08
2033		9.34

## APPENDIX B

### CHARGES TO RENEWABLE ENERGY PROVIDER

The RF/QF shall be responsible for all applicable charges as currently approved or as they may be approved by the Florida Public Service Commission, including, but not limited to:

A. Retail Service Charges

The RF/QF shall be responsible for all FPSC approved charges for any retail service that may be provided by PEF. The RF/QF shall be billed at the customer charge rate stated in PEF's applicable standby tariff monthly for the costs of meter reading, billing, and other administrative costs.

B. Interconnection Charges

Applicable Interconnection Charges are included in the transmission arrangements entered into with the Transmission Provider. Notwithstanding the above, Interconnection Charges must be in accordance with the provisions of FPSC Rule 25-17.087.

C. Transmission Charges

Applicable Transmission Charges are included in the transmission arrangements entered into with the Transmission Provider. Notwithstanding the above, Transmission Charges must be in accordance with the provisions of FPSC Rule 25-17.087.

**APPENDIX C**  
**FPSC RULES 25-17.080 THROUGH 25-17.310**

**EXHIBIT B**

**CALCULATION OF COST SAVINGS  
FROM THE TRANS WORLD CONTRACT**

# REDACTED

**Comparison of Payments to Trans World and 2018 CT Avoided Costs**

Contract MW: 40  
 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	Contract Energy & Capacity Payments	Contract Cumulative Payments	Avoided Capacity Payments	Avoided Energy Payments	Avoided Energy & Capacity Payments	Avoided Cumulative Payments	Difference from Contract	(10) - (6) Cumulative Difference from Contract	Discount Factor
Units			\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Year													
2011	0	-					\$ -	\$ -	\$ -	\$ -	\$ -		1.000
2012	0	-					\$ -	\$ -	\$ -	\$ -	\$ -		0.926
2013	6	166,040					\$ -	\$ 9,855	\$ 9,855	\$ 9,855	\$ 1,553		0.856
2014	12	329,373					\$ -	\$ 19,729	\$ 19,729	\$ 29,584	\$ 3,052		0.791
2015	12	329,373					\$ -	\$ 22,602	\$ 22,602	\$ 52,185	\$ 5,509		0.732
2016	12	330,276					\$ -	\$ 23,048	\$ 23,048	\$ 75,233	\$ 5,481		0.677
2017	12	329,373					\$ -	\$ 24,760	\$ 24,760	\$ 99,993	\$ 6,803		0.626
2018	12	329,373					\$ 1,693	\$ 26,002	\$ 27,696	\$ 127,689	\$ 9,288		0.579
2019	12	329,373					\$ 2,988	\$ 24,196	\$ 27,184	\$ 154,873	\$ 8,318		0.536
2020	12	330,276					\$ 3,076	\$ 22,975	\$ 26,052	\$ 180,925	\$ 6,661		0.496
2021	12	329,373					\$ 3,167	\$ 22,768	\$ 25,935	\$ 206,860	\$ 6,113		0.458
2022	12	329,373					\$ 3,260	\$ 23,258	\$ 26,517	\$ 233,377	\$ 6,200		0.424
2023	12	329,373					\$ 3,356	\$ 23,720	\$ 27,076	\$ 260,453	\$ 6,251		0.392
2024	12	330,276					\$ 3,454	\$ 26,662	\$ 30,116	\$ 290,569	\$ 8,713		0.363
2025	12	329,373					\$ 3,556	\$ 27,399	\$ 30,955	\$ 321,524	\$ 9,076		0.336
2026	12	329,373					\$ 3,661	\$ 27,529	\$ 31,190	\$ 352,714	\$ 8,764		0.311
2027	12	329,373					\$ 3,768	\$ 30,338	\$ 34,107	\$ 386,821	\$ 11,121		0.287
2028	12	330,276					\$ 3,879	\$ 29,623	\$ 33,502	\$ 420,323	\$ 9,877		0.266
2029	12	329,373					\$ 3,993	\$ 30,073	\$ 34,067	\$ 454,389	\$ 9,916		0.246
2030	12	329,373					\$ 4,111	\$ 30,975	\$ 35,086	\$ 489,476	\$ 10,332		0.227
2031	12	329,373					\$ 4,232	\$ 31,905	\$ 36,137	\$ 525,612	\$ 10,763		0.210
2032	12	330,276					\$ 4,357	\$ 32,942	\$ 37,298	\$ 562,911	\$ 11,220		0.195
2033	6	163,333					\$ 2,243	\$ 15,410	\$ 17,653	\$ 580,564	\$ 4,598		0.180
Total	240	6,591,975					\$ 54,794	\$ 525,769	\$ 580,564		\$ 159,606		
NPV 2011\$							\$ 18,018	\$ 215,114	\$ 233,132		\$ 61,597		

**EXHIBIT C**

**TRANS WORLD CONTRACT SUMMARY**

**Trans World Renewable Energy, Inc.  
Contract Summary**

Utility Signatory	Progress Energy Florida Robert F. Caldwell
Owner and Operator of the QF Signatory	Trans World Renewable Energy, Inc.
Committed Capacity	40 MW
Facility Type	Combined Cycle
Fuel	Gasified Biomass
Location	To Be Determined
Transmission Requirements	To Be Determined
Expected Total Annual Energy	329,373 MWH
Expected On-Peak Annual Energy	150,962 MWH
Expected Off-Peak Annual Energy	178,411 MWH
Avoided Unit	178 MW Natural Gas Combustion Turbine with an in-service date of June 1, 2018
Expected In-Service Date of Trans World	July 1, 2013